MEMORANDUM

Agenda Item No. 14(A)(8)

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

DATE: July 19, 2016

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Resolution approving award of Contract No. RFP-00133 to Adler 13th floor Douglas Station, LP with a positive fiscal impact to the County of approximately $464,000,000 over the initial 30-year term plus two, 30-year options to renew for the lease and development of the Douglas Road Metrorail Station site for the Department of Transportation and Public Works; approving the development agreement and lease agreement; and authorizing the County Mayor to execute same and exercise all provisions contained therein pursuant to section 2-8.1 of the County Code and Implementing Order 3-38; and directing the County Mayor to provide an executed copy of the lease agreement to the Property Appraiser's Office within 30 days of the execution of the agreement

The accompanying resolution was prepared by the Intern Services Department and placed on the agenda at the request of Prime Sponsor Commissioner Xavier L. Suarez.

Abigail Price-Williams
County Attorney

APW/lmp

Memorandum

MIAMI-DADE COUNTY

Date: July 19, 2016

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

From: Carlos A. Gimenez
Mayor

Subject: Recommendation for Approval to Award: Joint Development at Douglas Road Metrorail Station

---

Recommendation

It is recommended that the Board of County Commissioners (Board) approve award of *Contract No. RFP-00133, Joint Development at Douglas Road Metrorail Station*, to Adler 13th Floor Douglas Station, LP (Adler 13th Floor) for the development of the Douglas Road Metrorail Station for the Department of Transportation and Public Works. The County issued a solicitation seeking proposals from experienced developers to achieve the highest and best use of the Douglas Road Metrorail Station through a revenue-generating, mixed-use development that promotes maximum patronage of the transit system. The project includes the upgrade and/or redesign of the Metrorail facilities, including the bus driveways and bays, passenger waiting areas and shelters, and parking lot southwest of the development site. The Douglas Road Metrorail Station development site is approximately seven (7) acres of land composed of four (4) parcels. The Metrorail Station and guideway encumber a single parcel.

The negotiated agreements resulting from the solicitation consist of a development agreement and ground lease agreement. The development agreement specifies Adler 13th Floor's multi-phased approach to the development of this site and requires the firm to submit design and construction documents to the Department of Transportation and Public Works for approval prior to undertaking each project phase. The development – The Link at Douglas – includes the construction of a 150 key hotel and residential towers with ground level retail and structured parking. The hotel and residential component will integrate with the Douglas Metrorail Station. As part of the agreement, the developer will provide $14 million in required station improvements. The developer will also invest $1.25 million in additional improvements, of which $600,000 will be used for the construction of the planned Underline Project. Pursuant to Section 33C-8(C)(1)(b) of the County Code, this mixed-use development, which is located within a Rapid Transit Zone, will provide a minimum of 12.5% of the residential units as work force housing units. The County has approval authority at each phase of the project to monitor, and ensure compliance with, all aspects of the contract requirements. Adler 13th Floor is responsible for all design and construction costs associated with the development of the site, including any applicable taxes.

In addition to increasing density around the Douglas Metrorail Station, the proposed development provides for a substantial long-term revenue source for the Department of Transportation and Public Works over the 30-year initial lease term plus the two (2), 30-year options to renew. As a result of negotiations, County staff was able to achieve: (1) an initial minimum rent payment of $1,500,000, representing payment of rent for the first four (4) lease years; and (2) commencing with the fifth lease year, Adler 13th Floor will pay a minimum rent in the sum of $375,000 per year, subject to increases as provided in the lease, and annual percentage participation rent which is equal to three (3) percent of Adler 13th Floor's annual gross revenue at the development site, less the minimum rent.

It is forecasted that this development will have a significant, positive economic impact on the community. The project's construction component is projected to create approximately 1,400 jobs and, once completed, permanently provide a minimum of 223 jobs.

Scope
The scope of this item is countywide in nature. However, the development site is located within Commission District 7, which is represented by Xavier L. Suarez.

Fiscal Impact/Funding Source
There will neither be County nor other governmental funding required for this project as it will be exclusively financed by the developer. There will be a positive fiscal impact to the County in the form of rent and station improvements. The initial lease term plus the options to renew will generate an estimated $464 million in revenue over the cumulative term of the lease with a net present value of approximately $40 million. All revenue will accrue to the Department of Transportation and Public Works.

Track Record/Monitor
Jesus Lee of the Internal Services Department is the Procurement Contracting Officer. The terms of the agreements will be managed by Froilan I. Baez, Chief of Right of Way of the Utilities and Joint Development Division, Department of Transportation and Public Works. A copy of the lease will be provided to the Property Appraiser's Office within 30 days of its execution.

Delegated Authority
If this item is approved, the County Mayor or County Mayor's designee will have the authority to exercise all provisions of the contract pursuant to Section 2-8.1 of the County Code and Implementing Order 3-38, including any cancellation, renewal and extension provisions.

Vendor Recommended for Award
A Request for Proposals (RFP) was issued under full and open competition on September 5, 2014. Two (2) proposals were received in response to the solicitation. The RFP method of award was used to obtain the best value to the County by conducting a qualitative review of proposals. The criteria used to evaluate proposals included the proposer's approach to the development site, experience, financial projections and strength, and the capability to secure financing. Adler 13th Floor is a Florida limited partnership solely created for purposes of submitting a proposal in response to this solicitation and thus currently has no employees to report in the chart below.

Awardee	Principal Address	Address of Branch Offices or Headquarters in Miami-Dade or Broward*	Number of Employee Residents*	Principal
Adler 13th Floor Douglas Station, LP	1400 NW 107 Avenue Fifth Floor Miami, FL	Same	Miami-Dade - 0 Broward - 0 Percentage - 0	David Adler

*Provided pursuant to Resolution No. R-1011-15. Percentage of employee residents is the percentage of vendors' employees who reside in Miami-Dade County or Broward County as compared to the vendor's total workforce.

Proposer Not Recommended for Award

Proposer	Reason for Not Recommending
Related Development, LLC	Evaluation Scores/Ranking

Due Diligence
Pursuant to Resolution No. R-187-12, due diligence was conducted in accordance with the Internal Services Department's Procurement Guidelines to determine contractor responsibility, including

verifying corporate status and that there are no performance or compliance issues. The lists referenced includes convicted vendors, debarred vendors, delinquent contractors, suspended vendors, and federal excluded parties. There are no adverse findings relating to contractor responsibility.

Applicable Ordinances and Contract Measures

- The two (2) percent User Access Program provision does not apply due to federal participation in the development site.
- The Small Business Enterprise Selection Factor and Local Preference do not apply due to federal participation in the development site.
- The Living Wage Ordinance does not apply.

Alina T. Hudak
Deputy Mayor

MEMORANDUM

(Revised)

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

DATE: July 19, 2016

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Agenda Item No. 14(A)(8)

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. 14(A)(8)
7-19-16

RESOLUTION NO. _____

RESOLUTION APPROVING AWARD OF CONTRACT NO. RFP-00133 TO ADLER 13TH FLOOR DOUGLAS STATION, LP WITH A POSITIVE FISCAL IMPACT TO THE COUNTY OF APPROXIMATELY $464,000,000 OVER THE INITIAL 30-YEAR TERM PLUS TWO, 30-YEAR OPTIONS TO RENEW FOR THE LEASE AND DEVELOPMENT OF THE DOUGLAS ROAD METRORAIL STATION SITE FOR THE DEPARTMENT OF TRANSPORTATION AND PUBLIC WORKS; APPROVING THE DEVELOPMENT AGREEMENT AND LEASE AGREEMENT; AND AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE SAME AND EXERCISE ALL PROVISIONS CONTAINED THEREIN PURSUANT TO SECTION 2-8.1 OF THE COUNTY CODE AND IMPLEMENTING ORDER 3-38; AND DIRECTING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO PROVIDE AN EXECUTED COPY OF THE LEASE AGREEMENT TO THE PROPERTY APPRAISER'S OFFICE WITHIN 30 DAYS OF THE EXECUTION OF THE AGREEMENT

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

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

Section 1. This Board approves award of Contract No. RFP-00133 to Adler 13th Floor Douglas Station, LP for the development of the Douglas Road Metrorail Station site for the Department of Transportation and Public Works, in substantially the form attached hereto and made a part hereof, as set forth in the incorporated memorandum with a positive fiscal impact to the County of approximately $464,000,000 over the initial 30-year term plus two, 30-year options to renew; and authorizes the County Mayor or County Mayor's designee to execute same and

exercise all provisions contained therein pursuant to Section 2-8.1 of the County Code and Implementing Order 3-38.

Section 2. The County Mayor or the Mayor's designee is hereby directed to provide to the Property Appraiser's Office an executed copy of the Lease Agreement within 30 days of its execution.

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 19th day of July, 2016. 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.

for

Alex S. Boker

[EXECUTION VERSION]

AGREEMENT OF LEASE
(DOUGLAS ROAD METRORAIL STATION)

BY AND BETWEEN

MIAMI-DADE COUNTY,
a political subdivision of the State of Florida, through
DEPARTMENT OF TRANSPORTATION AND PUBLIC WORKS

AND

ADLER 13TH FLOOR DOUGLAS STATION, LP,
a Florida limited partnership

_____, 2016

INDEX

LIST OF EXHIBITS

LIST OF SCHEDULES

AGREEMENT OF LEASE
(Douglas Road Metrorail Station)

THIS AGREEMENT OF LEASE (the "Lease") , dated as of the ___ day of _____, 2016, made by and between MIAMI-DADE COUNTY, a political subdivision of the State of Florida, through the Department of Transportation and Public Works, having its principal office and place of business at 701 N.W. 1st Court, Miami, Florida 33136 ("Landlord" or "DTPW"), and ADLER 13TH FLOOR DOUGLAS STATION, LP, a Florida limited partnership, having an office and place of business at 1400 NW 107th Avenue, 5th Floor, Miami, Florida 33172 ("Tenant").

WITNESSETH:

A. Landlord owns certain real property located in Miami-Dade County, Florida, as more particularly described on Exhibit A attached hereto and made a part hereof, upon which it operates the Douglas Road Metrorail Station (the "Station") and a surface parking lot.

B. Landlord recognizes the potential for public and private benefit through a refurbishment of the Station and an overall unified mixed-use development of the Demised Premises (defined below) with the Station, to serve as a positive model for transit-oriented development generally, to promote transit usage and to further economic development in Miami-Dade County.

C. Landlord desires to lease the Demised Premises to Tenant to enable Tenant (and sublessees, assignees and/or transferees as described herein) to develop the Demised Premises in phases as provided herein, and Tenant desires to lease the Demised Premises from Landlord for such purposes.

D. It is hereby mutually covenanted and agreed by and between the parties hereto that this Lease is made upon the agreements, terms, covenants and conditions hereinafter set forth. Capitalized terms used herein shall have the definitions and meanings set forth in Article 2 hereof and/or as elsewhere defined herein, including the foregoing recitals.

ARTICLE 1

Premises - General Terms of Lease

Section 1.1. Lease of Land and Air Rights. In accordance with (a) Chapter 125, Florida Statutes; (b) the powers granted to Landlord pursuant to authority properly delegated by the Florida legislature; (c) the authority to lease real property and air rights over real property belonging to Miami-Dade County; and (d) the Metrorail Joint Use Policy contained in Resolution R-1443A-81, adopted on September 28, 1981; and, for and in consideration of the rents, covenants and agreements specified herein, and the easements reserved unto Landlord, its successors and assigns, Landlord agrees, pursuant to the terms of this Lease, and does hereby lease and demise unto Tenant, its successors and assigns, and Tenant does hereby take and hire, upon and subject to the conditions and limitations herein expressed, the Demised Premises, together with the following rights, privileges and easements appurtenant to the Demised Premises:

(a) All right, title and interest of Landlord (if any) in and to any land lying in the bed of any street, road, alley or right-of-way, open or closed, adjacent to or abutting the Land;

(b) Except to the extent expressly reserved herein to Landlord, the drains, utility lines, or other easements, and improvements of Landlord located in areas within or adjacent to the Demised Premises to be used by Tenant in connection with the Project, provided that any such use shall be set forth in the Plans and Specifications and Tenant shall not have the right to use any electrical service feeders that are dedicated to and required for the operation of the System;

(c) Such rights of support and rights of use in respect of, if necessary, supports, and foundations for the support of the Demised Premises, and any Improvements or other portions of the Project located thereon, provided that the foregoing shall not give Tenant the right to construct on or use in the construction of any portion of the Project on the Demised Premises any of the foundations or support columns of the System;

(d) The right of access to erect, maintain, repair, renew and replace such supports, foundations, and other improvements;

(e) The right of pedestrian ingress, egress and passageway over and across the Station which shall be necessary or desirable for entrance, exit and passageway to and from the Demised Premises, and to and from the Station and the System for the use in common of Landlord and Tenant, and their respective successors, assigns, patrons, tenants, invitees and all other persons having business with any of them;

(f) The right to construct, install and maintain within the area of pedestrian ingress, egress and passageway in the Station, signs for the purpose of advertising the Project or any Phase thereof, or events, activities or operations in the Project or any such Phase, or other commercial or public service advertising; provided, however, that the design, size and location of the structures in which the signs are posted shall be subject to the approval of Landlord in accordance with the other terms of this Lease;

(g) The right to submit the Demised Premises and its air rights and subsurface rights to a collective form of ownership by the recording of a declaration of covenants, restrictions and easements, reciprocal easement agreement or other similar instrument in the Public Records of Miami-Dade County, Florida; and

(h) All development rights with respect to the Demised Premises, if any, owned or held by, or vested with, or issued in favor of or inuring to Landlord.

TO HAVE AND TO HOLD the same unto Tenant, its successors and assigns for the Term, but reserving unto Landlord the rights described herein.

Section 1.2. Term of Lease

(a) The term of this Lease shall be a period of ninety (90) years, consisting of an initial term of thirty (30) years with two (2) additional renewal terms of thirty (30) years each, commencing on the Commencement Date and ending on the date that is ninety (90) years thereafter, subject to extension as hereinafter provided (as so extended, the "Term"). The term shall automatically renew for each renewal term stated herein (without notice or condition of any kind), such that the Term of this Lease shall be an uninterrupted period of ninety (90) years (subject to extension as hereinafter provided). The obligation to pay Minimum Rent shall begin on the Commencement Date, subject to the terms and conditions hereinafter provided. The covenants and conditions of this Lease in effect during the Term, as same may be modified from time to time, shall continue to be in effect during any extension of the Term.

(b) If Tenant exercises its right to bifurcate this Lease pursuant to the terms of Section 17.2, the term of each Bifurcated Lease shall coincide with the Term of this Lease, such that each Bifurcated Lease shall commence on the commencement date thereof and end on the last day of the stated 90-year Term of this Lease set forth in Section 1.2(a); provided, however, that the term of each Bifurcated Lease shall automatically extend to the date that is ninety (90) years following the date a permanent Certificate of Occupancy is issued for the Phase of the Project leased pursuant to such Bifurcated Lease, provided that the improved value of the Bifurcated Lease has an appraised value in excess of Twenty Million Dollars ($20,000,000.00) as required by Section 125.35 of the Florida Statutes (herein, the "value threshold"), failing which the term of such Bifurcated Lease shall not so extend.

(c) If Tenant develops and constructs any Phase of the Project pursuant to the provisions of this Lease (in lieu of exercising its right to bifurcate this Lease with respect to such Phase), then, in such event, the Term of this Lease shall automatically extend to the date that is ninety (90) years following the date a permanent Certificate of Occupancy is issued for the last Phase of the Project developed and constructed pursuant the provisions of this Lease, provided that the improved value of this Lease exceeds the value threshold, failing which the Term of this Lease shall not so extend.

(d) It is the intention of the Parties that this Lease and each Bifurcated Lease be coterminous, with terms ending on the same expiration date, to the extent reasonably feasible. Accordingly, following issuance of a permanent Certificate of Occupancy for the last Phase of the Project, whether under this Lease or a Bifurcated Lease (whichever is later), but exclusive of any Phase no longer included in the Project under this Lease or a Bifurcated Lease (by reason of the termination of this Lease or a Bifurcated Lease with respect to such Phase or otherwise), the Term of this Lease and each Bifurcated Lease shall automatically extend to the date that is ninety (90) years following the date such final Certificate of Occupancy is issued; provided, however that (i) the Term of this Lease shall automatically extend under this Section 1.2(d) only if the value threshold set forth in Section 1.2(c) has been met, failing which the Term of this Lease shall not extend under this provision), (ii) the term of each Bifurcated Lease shall automatically extend under this Section 1.2(d) only if the value threshold set forth in Section 1.2(b) has been

met with respect to such Bifurcated Lease, failing which the term of such Bifurcated Lease shall not extend under this provision, and (iii) the Term of this Lease or the term of any Bifurcated Lease shall not extend beyond the date that is twenty-five (25) years following the last day of the initial 90-year Term (measured from the Commencement Date) set forth in Section 1.2(a) under any circumstances.

(e) For purposes of this Section 1.2, Tenant shall, at Tenant's expense, obtain an appraisal to determine whether the improved value of this Lease and/or any Bifurcated Lease has an appraised value in excess of $20,000,000, in the aggregate, taking into consideration all factors relevant to such determination under Section 125.35 of the Florida Statutes. Without limiting the foregoing, any appraisal of the capital investment in the Improvements under this Lease and any Bifurcated Lease may be verified through reasonable documentation evidencing payment of any and all costs and expenses of such Improvements, which evidence may include without limitation evidence of paid draw requests, architect and/or contractor affidavits or certificates, paid invoices and receipts, and any other customary evidence of payment (or a combination thereof). Tenant shall select the appraiser to perform any appraisal hereunder, subject to Landlord's reasonable approval of such appraiser.

(f) Landlord shall deliver possession of the Demised Premises on the Commencement Date at which time Tenant may take possession thereof. Landlord further agrees that during the Review Period, Tenant may enter upon the Demised Premises to perform studies, tests, evaluations and similar type inspections in coordination with the Department of Transportation and Public Works (DTPW) pursuant to the terms of Section 1.6.

Section 1.3. **Conditions Precedent to Effectiveness of Lease**. This Lease shall not become effective unless and until the Federal Transit Administration (FTA), the Florida Department of Transportation (FDOT) and the Board shall have approved the execution of this Lease, and this Lease has been executed and delivered by Landlord and Tenant. The date on which this Lease becomes effective as provided herein is called the "Effective Date". If Tenant does not elect to terminate the Lease during the Review Period, Landlord shall deliver and Tenant shall take possession of the Demised Premises on the first day following the expiration of the Review Period, which date is referred to herein as the "Commencement Date". The Effective Date and Commencement Date will be confirmed in the Confirmation of Date(s) Certificate in the form attached hereto as Schedule 1.3 upon request of either party following the occurrence of the Effective Date and Commencement Date (as applicable). Similarly, the parties shall confirm the expiration of the Term from time to time through the Confirmation of Date(s) Certificate upon request of either party. Each party shall respond promptly to any request for a Confirmation of Date(s) Certificate hereunder. Each Bifurcated Lease shall include a provision regarding confirmation of the Term through a Confirmation of Date(s) Certificate consistent with this provision.

Section 1.4. **Conditions Precedent to Commencement of Construction**. Before Commencement of Construction of any Phase of the Project, and in addition to the submission and approval process specified in Article 4:

(a) Tenant shall comply with the DTPW submittal and review process by submitting Plans and Specifications for such Phase;

(b) Tenant shall have submitted to Landlord a copy of a letter of intent that Tenant has received from a lending institution, such as a bank, savings bank, savings and loan, pension fund, insurance company, real estate investment trust or other entity included within the definition of Lender hereunder, to finance, if such financing is being obtained, construction of the Project; and

(c) With respect to the Commencement of Construction of the first Phase, Tenant shall have submitted to Landlord the lump sum payment of Minimum Rent for the first four (4) years of the Term required pursuant to Section 3.1.

(d) Tenant and Landlord agree that specific construction and development plans for the Affected Area shall be subject to the review and approval of DTPW to assure the public safety and the System's integrity and operation. Precedent to any construction, excavation, demolition, restoration, testing or staging within the Affected Area, Tenant shall submit to the DTPW Right-of-Way, Utilities and Joint Development Division through the DTPW Director, or DTPW's Designated Representative, three (3) copies of plans, drawings and calculations showing the relationship between the proposed activities within the Affected Area and the System. The drawings and calculations shall have sufficient detail to allow DTPW to determine if such activities are likely to impact the System and the extent of that impact, if any. The drawings and calculations shall include the following:

(i) Site plan;

(ii) Drainage area maps and calculations;

(iii) Sheeting and shoring drawings and calculations;

(iv) Architectural drawings for all underground levels through the top floor;

(v) Sections showing foundations in relation to System structures

(vi) Structural drawings;

(vii) Pertinent drawings detailing possible impacts on the System;

(viii) Geotechnical reports;

(ix) Settlement monitoring, mitigation and remediation plan;

(x) Proposed sequence of activities.

Any such proposed construction, excavation, demolition, restoration, testing or staging within the Affected Area may commence only after DTPW has completed its review and the

DTPW Director or DTPW's Designated Representative has issued written approval of the plans, drawings and calculations. Notwithstanding anything herein, all construction shall be in substantial compliance with the latest edition of the Miami-Dade Transit Adjacent Construction Safety Manual or its replacement, except as otherwise expressly provided herein. DPTW recognizes that certain of the minimum standards and requirements in DTPW's Adjacent Construction Safety Manual applicable to transit-oriented developments may materially increase the cost of construction of the Project and/or materially delay completion thereof due to, *inter alia*, the design of the Project over the Station and other portions of the System and the construction of portions of the Project within the Affected Area, including without limitation requirements that Tenant engage only DPTW authorized spotters to coordinate construction activities in the Affected Area and limitations on construction work that may impact the System (such as restricting the performance of such work to non-revenue hours for the System and limiting the ability to lift materials over the System). Accordingly, DTPW agrees to cooperate with Tenant and work in good faith to mitigate such standards and requirements with reasonable alternative practices and procedures that are mutually acceptable to the Parties to facilitate the construction of the Project and each Phase thereof without material increase in construction costs or material delay in construction wherever reasonably possible, provided that such alternative practices and procedures shall not jeopardize the safety of the System or the users of the System or of any employees, agents, licensees and permittees of Landlord.

Section 1.5. **Performance and Payment Bonds**. The Parties agree that the Improvements are not a public building or public work as contemplated under Section 255.05, Florida Statutes. Prior to Commencement of Construction of each Phase, Tenant shall deliver to Landlord executed performance and payment bond(s), or reasonably equivalent security (such as a guarantee), if required by Landlord to guarantee that the construction of the Improvements in such Phase will be completed and that all contractors, subcontractors and suppliers will be paid. The amount of such bond(s) or other security shall be equal to the contract price between Tenant and its direct general contractor(s) for such Phase or such other lesser amount as may be customary. Each bond shall name Landlord, Tenant and Tenant's Lender(s) as dual obligees on the multiple obligee rider attached to the bonds, and shall be issued by a surety reasonably acceptable to Landlord. Tenant shall have the right from time to time to substitute or replace, or cause its contractors to substitute or replace, such bonds or other security as deemed necessary by Tenant for any portion of the work then being constructed. With respect to each Phase, any such performance and payment bond(s), or other security, and Tenant's obligations thereunder (if any), shall terminate upon Completion of Construction of such Phase. The rights of Landlord under any performance bond(s) shall be subordinate to the rights of any Lender.

Section 1.6. **Review Period**. During the Review Period, Tenant, its employees, agents, consultants and representatives, shall be entitled, at Tenant's sole cost and expense, to investigate and evaluate the Demised Premises. Such right of investigation shall include the right to enter the Demised Premises, and perform any studies, tests or inspections of the Demised Premises as Tenant may deem necessary or appropriate, including without limitation assessments of soil and subsurface conditions, utility services and environmental audits (including Phase I, Phase II and any other audit recommended by Tenant's environmental consultant), title review, reports and commitments, and surveys of the Demised Premises. Tenant shall also have the right to enter the Station Land, and perform comparable studies, tests or inspections of the Station and Station Land as Tenant may deem necessary or appropriate in connection with the Station

Improvements and the Project. Landlord agrees to cooperate reasonably with any such investigations, tests, samplings, analyses, inspections, studies or meetings made by or at Tenant's direction. If the results of Tenant's inspections reflect site conditions that were not disclosed to Tenant prior to the date of submission of the Proposal, then the following provisions shall apply:

(a) If, as a result of such site conditions, Tenant is not able to develop the Project as contemplated in the Proposal, then Tenant shall have the right, in its sole discretion, to terminate this Lease and its obligations hereunder as to the Project or any Phase by giving written notice to Landlord prior to the end of the Review Period, and in such event, (i) this Lease shall terminate (in whole or with respect to the applicable Phase(s), as applicable) as of the date Landlord receives such notice of termination, and (ii) in the event Tenant does not terminate this Lease as set forth above, Tenant shall become entitled to an adjustment and reduction in Rent (Minimum Rent, Penalty Rent and Participation Rent) on an equitable basis taking into consideration the amount and character of the aspects of the Project described in the Proposal, the use of which will be denied to Tenant as a result of such site conditions. Tenant shall be deemed to have waived its right to terminate this Lease (in whole or in part) pursuant to this Section 1.6(a) if Tenant does not notify Landlord of such termination during the Review Period; and

(b) If, as a result of such site conditions, Tenant is required (1) to remediate the Demised Premises or any portion thereof (such as, by way of example and not limitation, remediation of any environmental condition) to develop and use the Demised Premises as contemplated in this Lease, (2) to increase the scope of development work or redesign the Project or any portion thereof to address such site conditions (such as, by way of example and not limitation, the discovery of underground conditions or facilities that require relocation and/or cannot be relocated), and/or (3) to incur any other unanticipated cost relative to the Project or any Phase thereof, and the cost of such remediation or increased scope of work, or the additional cost of the Project as a result of such redesign and/or other unanticipated costs (herein, collectively, the "unanticipated development costs") exceed $150,000 in the aggregate, Tenant shall so notify Landlord of the estimated amount of the unanticipated development costs and the following provisions shall apply:

(i) If the aggregate amount of the unanticipated development costs is greater than $150,000 but less than $3,000,000, Tenant shall be entitled to a credit against Rent under this Lease equal to the aggregate amount of such unanticipated development costs in excess of $150,000, to be applied from time to time as a credit against fifty percent (50%) of each monthly installment of Rent coming due, beginning with the first month after any unanticipated development costs are incurred, until credited in full. By way of example and not limitation, if Tenant incurs $1,000,000 of unanticipated development costs at a time when the monthly installment of Rent due under this Lease is $375,000, Tenant shall be entitled to a credit against Rent equal to $187,500 per month (50% of $375,000) until fully credited, provided that if the monthly installment of Rent increases before Tenant realizes the entire credit, then the credit against Rent shall increase to 50% of the amount of the new monthly installment of Rent.

(ii) If the aggregate amount of the unanticipated development costs equal or exceed $3,000,000, Landlord and Tenant shall negotiate in good faith, acting reasonably, appropriate adjustments to the terms of this Lease (such as, by way of example and not limitation, additional credits against Rent, contributions by Landlord to such unanticipated development costs, extensions of Construction Phase Deadlines and commencement of Rent, and/or other adjustments to the economic terms of this Lease) mutually acceptable to the Parties. If the Parties are unable to achieve a mutually acceptable agreement in writing with respect to such unanticipated development costs within sixty (60) days following Tenant's initial notice of such costs hereunder, then Tenant shall have the right, in its sole discretion, (x) to terminate this Lease and its obligations hereunder as to the Project or any Phase by giving written notice to Landlord within fifteen (15) days following the end of such 60-day period, and in such event, the provisions of Section 1.6(a) with respect to such termination and/or any adjustment in Rent (in the case of a partial termination) shall apply, or (y) to proceed with the Project under the terms and conditions of this Lease.

Unanticipated development costs shall include hard and soft costs (including without limitation the cost of remediation plans and/or any redesign of the Project) and may be verified through reasonable documentation evidencing payment of same, which evidence may include without limitation evidence of paid draw requests, consultant, architect and/or contractor affidavits or certificates, paid invoices and receipts, and any other customary evidence of payment (or a combination thereof). Any and all delays caused by or associated with such site conditions shall be deemed Unavoidable Delays for purposes of this Lease.

ARTICLE 2

Definition of Certain Terms

In addition to other capitalized terms as defined in the introductory recitals or elsewhere in this Lease, the terms set forth below, when used in this Lease (whether before or after this Article), shall be defined as follows:

(a) Affected Area shall mean the System and the area within thirty (30) feet of the System.

(b) Affiliate or Affiliated Person shall mean, when used with reference to a specified Person:

(i) any Person that, directly or indirectly, through one or more intermediaries, controls or is controlled by or is under common control with the specified Person;

(ii) any Person that, directly or indirectly, is the beneficial owner (herein a "beneficial owner") of ten percent (10%) or more of any stock, partnership interest or member interest of, or other beneficial interest in, the

specified Person and is responsible for the day-to-day management of the specified Person;

(iii) any Person in which the specified Person is, directly or indirectly, is the beneficial owner of ten percent (10%) or more of any stock, partnership interest or members interest of, or other beneficial interest in, such Person and is responsible for the day-to-day management of such Person; and

(iv) any Person in which any beneficial owner (as defined in clause (ii) above) is, directly or indirectly, the beneficial owner of ten percent (10%) or more of any stock, partnership interest or members interest of, or other beneficial interest in, such Person and is responsible for the day-to-day management of such Person.

(c) Approved Transferee shall have the meaning ascribed to such term in Section 17.1(a).

(d) Bifurcated Lease shall have the meaning ascribed to such term in Section 17.2(a).

(e) Board or Commission shall mean the Board of County Commissioners of Miami-Dade County, Florida.

(f) Building(s) shall mean the buildings or structures (as the context indicates) and other Improvements to be erected on, above, or below the Demised Premises or a portion thereof in accordance with Article 4 below (including any replacements, additions and substitutes thereof).

(g) Certificate of Occupancy shall mean the temporary or permanent certificate issued by the governmental agency and/or department authorized to issue a certificate of occupancy or certificate of completion, as applicable, evidencing that the applicable Building(s) is (are) ready for occupancy in accordance with applicable Laws and Ordinances.

(h) Code shall mean the Code of Miami-Dade County, as amended from time to time.

(i) Commencement Date shall mean the first day following the expiration of the Review Period, on which date Landlord shall deliver and Tenant shall take possession of the Demised Premises as provided in Section 1.3, to be confirmed by execution of the Confirmation of Date(s) Certificate attached as Schedule 1.3.

(j) Commencement of Construction and "commenced" when used in connection with construction of any Phase shall mean the earlier of the filing of the notice of commencement under Florida Statutes Section 713.13 (as amended from time to time) or the visible start of work on the site of such Phase, including on-site utility, excavation or soil stabilization work. In order to meet the definition of "Commencement of Construction" or "commenced", such filing of notice or visible start of work must

occur after Tenant has received a Permit for the particular Phase of the Project on which construction is proposed to commence.

(k) Completion of Construction shall mean, for any Phase, the date a Certificate of Occupancy is issued for that Phase.

(l) Construction Phase Deadlines shall mean the milestone dates for commencement and completion of construction of each Phase of the Project set forth in Schedule 3.3, which deadlines, if not achieved will result in Penalty Rent becoming due under Section 3.3 of this Lease.

(m) Construction Phases shall mean the division of the Project into four (4) separate Phases, as further described in Section 3.2. For purposes of development, construction, and mortgaging of each Phase, notwithstanding the fact that Phases are identified numerically in this Lease or any Schedule attached hereto, there shall be no obligation to construct Phases in any sequence or chronological order. The term Construction Phases is used interchangeably with Phase or Phases in this Lease.

(n) Construction Plans shall consist of Final Design Plans for particular improvements comprising a Phase, the drawings and specifications for which are in a format with sufficient detail as required to obtain building permits for such improvements and as further described in Section 4.5.

(o) County and Miami-Dade County shall mean Miami-Dade County, a political subdivision of the State of Florida.

(p) CPI shall mean the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the United States Department of Labor, All Items (1982-84 = 100) or, if such index ceases to be published during the Term, or if a substantial change is made in the method of establishing such index, any comparable successor or substitute index reasonably designated by Landlord and Tenant.

(q) Default Rate shall mean the lesser of (i) an interest rate equal to six percent (6%) per annum, or (ii) the maximum rate permitted by law.

(r) Demised Premises shall mean, collectively:

(i) The Land described in Exhibit A-1 attached hereto and made a part hereof;

(ii) The Improvements and any other improvements now or hereafter existing;

(iii) The "air rights" portion of the Demised Premises, which shall mean and include (x) the airspace above the Land and (y) the airspace above the Station Land located above, below and outside the exterior of the Station and Station-related improvements and facilities (such as the rail lines and supports); and

(iv) The subsurface rights under the Land and the Station Land, sidewalks, Improvements, streets, avenues, curbs and roadways comprising or abutting the Demised Premises, and all rights of ingress and egress thereto, excluding those subsurface rights hereinafter expressly reserved to Landlord.

RESERVING UNTO LANDLORD, subject to the remaining provisions of this Lease, the following:

(A) the permanent and perpetual non-exclusive right of ingress, egress and passageway in, over, through and across the Public Areas of the Demised Premises which shall be necessary or desirable for entrance, exit and passageway of persons and property, including vehicles, to and from the Station and the System; provided, however, that all entrances, exits and passageways to be used in exercising such rights shall be as set forth in the Plans and Specifications, subject to modification if and to the extent required by Laws and Ordinances;

(B) all existing subsurface rights under the sidewalks, streets, avenues, curbs and roadways fronting on and abutting the Demised Premises for the purpose of maintaining subsurface supports, utilities and other infrastructure related to the Station or System;

(C) the permanent and perpetual non-exclusive right to use the space located in the Public Areas of the Demised Premises solely for the purpose of ingress and egress of passengers using the Station and System of Landlord, as well as the transportation of baggage, mail, supplies and materials of such passengers, from the Demised Premises, public thoroughfares and the Station; and

(D) the permanent and perpetual non-exclusive right to use and occupy the space located in the Public Areas of the Demised Premises to be occupied by Station signs approved by Tenant as to location, size, and consistency pursuant to the terms of this Lease.

IT BEING UNDERSTOOD between the Parties hereto that no portion of the Station and/or System is leased or intended to be leased to Tenant and that all portions or areas of the Station and/or System are expressly EXCEPTED AND RESERVED unto Landlord, except to the extent that parts thereof are leased or rights in respect thereof are granted to Tenant as herein provided.

(s) Development Agreement shall mean that certain Development Agreement for Douglas Road Metrorail Station of even date herewith by and between Landlord and Tenant, which governs the construction and performance of the Station Improvements, a copy of which is attached hereto as Exhibit B, as modified, amended, restated and supplemented from time to time.

(t) DTPW's Designated Representative shall mean the individual designated from time to time, by written notice to Tenant, as DTPW Director's designee to serve as and carry out the responsibilities of DTPW's Designated Representative under this Lease.

(u) Economic Unavoidable Delay shall mean economic or political conditions or events that result in a significant decline in economic activity spread across the economy and materially impair access to debt or equity markets by developers for development of projects in the United States similar to any Phase of the Project or allow a committed debt or equity participant to terminate its debt or equity commitment, such as a temporary or long term liquidity crisis or major recession. Tenant shall be entitled to an extension of time because of its inability to meet a time frame or deadline specified in this Lease due to Economic Unavoidable Delay equal to the duration of the Economic Unavoidable Delay, except that the outside deadline for the Commencement of Construction of the first Phase of the Project under Section 3.3(e)(i) shall not be extended for more than five (5) years due to Economic Unavoidable Delay as more particularly provided in that Section.

(v) Effective Date shall mean the date on which this Lease shall become effective as provided in Section 1.3.

(w) Event(s) of Default shall have the meaning ascribed to such term in Section 20.1 (as to Events of Default of Tenant) and Section 20.7 (as to Events of Default of Landlord), as the context dictates.

(x) Fair Market Value shall be that sum which, considering all of the circumstances, would be arrived at by good faith, fair, arm's-length negotiations between an owner willing to sell and an independent third party purchaser willing to buy, neither being under any pressure.

(y) Final Design Plans shall mean the final plans and specifications.

(z) Gross Revenue shall have the meaning ascribed to such term in Section 3.6.

(aa) Impositions shall mean all ad valorem taxes, special assessments, sales taxes and other governmental charges and assessments levied or assessed with respect to the Demised Premises and the activities conducted thereon or therein, except for such taxes, assessments and charges as they relate to the Land, structures or improvements of Landlord located on the Demised Premises which shall be the responsibility of Landlord.

(bb) Improvements shall mean the Buildings to be constructed on the Demised Premises, parking areas, parking garages, above and below surface improvements, utilities, utility lines and appurtenant equipment, vaults, infrastructure and other improvements to be developed and erected on, above or below the Demised Premises or a portion thereof in accordance with Article 4 below, and all fixtures located or to be located therein which are owned by Tenant (including any replacements, additions and substitutes thereof) as part of the Project on the Demised Premises.

(cc) Land shall mean the real property described in Exhibit A-1 attached hereto, which is the real property owned by Landlord and described on Exhibit A less the Station Land.

(dd) Landlord shall mean, on the Effective Date, Miami-Dade County, a political subdivision of the State of Florida, through the Department of Transportation and Public Works (or any successor thereto). Thereafter, "Landlord" shall mean the owner at the time in question of Landlord's interest in the Demised Premises.

(ee) Laws and Ordinances or Laws or Ordinances shall mean all present and future applicable laws, ordinances, rules, regulations, authorizations, orders and requirements of all federal, state, county and municipal governments, the departments, bureaus or commissions thereof, authorities, boards or officers, any national or local board of fire underwriters, or any other body or bodies exercising similar functions having or acquiring jurisdiction over all or any part of the Demised Premises.

(ff) Lease shall mean this Lease (including all Exhibits and Schedules) and all amendments, replacements, supplements, addenda or renewals thereof, but expressly excluding the Bifurcated Leases.

(gg) Leasehold Mortgage shall mean a mortgage or mortgages or other similar security agreements given to any Leasehold Mortgagee of the leasehold interest of Tenant hereunder, and shall be deemed to include any mortgage or trust indenture under which this Lease shall have been encumbered, as modified, amended, restated, renewed and consolidated from time to time.

(hh) Leasehold Mortgagee shall mean a Lender holding a Leasehold Mortgage.

(ii) Lease Year shall mean each separate and consecutive period of twelve (12) full calendar months beginning upon the first day of the first month following the Commencement Date and upon each anniversary of such date thereafter, provided that Tenant may, with the written consent of Landlord, cause the Lease Year to be a calendar year. The first Lease Year shall include any partial month (and, if Lease Years are adjusted to coincide with calendar years, any partial year) at the beginning of the Term, anything herein to the contrary notwithstanding.

(jj) Lender shall mean a Federal or State bank, savings bank, association, savings and loan association, credit union, commercial bank, foreign banking institution, trust company, family estate or foundation, insurance company (whether foreign or domestic), pension fund, an institutional investor such as a publicly held real estate investment trust, an entity that qualifies as a "REMIC" under the Internal Revenue Code of 1986, as amended, or other public or private investment entity; a brokerage or investment banking organization; an employees' welfare, benefit, pension or retirement fund; an institutional leasing company; an entity qualified to provide funding under the EB-5 program pursuant to USCIS (United States Citizenship and Immigration Service) guidelines; any governmental agency or entity insured by a governmental agency or similar institution authorized to take mortgage loans in the State of Florida, in all events

whether acting individually or in a fiduciary or representative capacity (such as an agency capacity), or any combination of Lenders. The term Lender also includes (x) a Person that is controlled by, controls or is under common control with a Lender as described in this paragraph, (y) any Person which is a party to a bond financing, as the initial purchaser or indenture trustee of a bond, certificate, warrant or other evidence of indebtedness, or any fiduciary of such issuer, owner or holder, or any provider of credit enhancement and/or liquidity support for such indebtedness, and/or (z) any Person providing purchase money financing in connection with a sale, assignment or transfer of this Lease or any interest herein. References to Lender under this Lease shall mean an entity or entities meeting the above definition that is a Leasehold Mortgagee or a Subleasehold Mortgagee or a Mezzanine Financing Source (or any combination thereof).

(kk) Master Covenants shall mean those certain covenants, conditions, restrictions and easements for the Project to be recorded in the Public Records of Miami-Dade County, Florida, which, *inter alia*, will govern the relationship of some or all of the Phases of the Project and/or portions of the Project leased pursuant to this Lease and/or the Bifurcated Leases; govern the use of certain components of the Demised Premises (which may include, without limitation, walkways, promenades, driveways, parking facilities, park areas, project-wide lighting and signage, and other shared components, areas and facilities) shared by some or all of the Demised Premises leased pursuant to this Lease and/or the Bifurcated Leases; establish easements for access, pedestrian and vehicular ingress and egress, utilities, structural support, encroachments, loading areas and other common property easements; address landscaping, maintenance and repairs of shared facilities, and financial contributions by each Phase of the Project and/or portions of the Project leased pursuant to this Lease and any Bifurcated Leases to cover the cost of the foregoing; and establish certain maintenance and use standards with respect to the Demised Premises, as modified, amended, restated, supplemented and extended from time to time.

(ll) Mezzanine Financing shall mean a loan or equity investment made by the Mezzanine Financing Source to provide financing or capital for the Project or any portion thereof, which shall be subordinate to the first Leasehold Mortgage and may be secured by, *inter alia*, a Mortgage and/or a pledge of any direct or indirect equity or other ownership interests in Tenant or a Sublessee or structured as a preferred equity investment with "mezzanine style remedies", the exercise of which would result in a change of control.

(mm) Mezzanine Financing Source shall mean a Lender or preferred equity investor selected by Tenant or a Sublessee to provide Mezzanine Financing.

(nn) Minimum Rent shall have the meaning ascribed to such term in Section 3.1 and Schedule 3.1.

(oo) Mortgage or Mortgages shall mean Leasehold Mortgage(s) or Subleasehold Mortgage(s) (or both) as the context dictates.

(pp) Mortgagee or Mortgagees shall mean Leasehold Mortgagee(s) or Subleasehold Mortgagee(s) (or both) as the context dictates.

(qq) Parcel Component shall mean a portion of the leasehold estate under a Bifurcated Lease which is designated as a unit, lot, parcel or other component in a Parcel Development Regime. In the event that any Parcel Component is submitted to a commercial condominium, cooperative or other collective form of ownership, it shall nevertheless be deemed a single Parcel Component for purposes of such Bifurcated Lease, and the master association, property owner's association, condominium association or other entity primarily responsible for the infrastructure and/or other common or shared components of the Parcel Component shall be deemed to be the "owner" or Sublessee of the Parcel Component for purposes of the Parcel Development Regime.

(rr) Parcel Declaration shall mean the declaration of covenants, conditions, easements and/or restrictions and all other documents necessary or required to submit the leasehold estate created by a Bifurcated Lease to a Parcel Development Regime, as amended and supplemented from time to time.

(ss) Parcel Development Regime shall mean the leasehold estate under a Bifurcated Lease that consists of a mixed-use development divided into multiple subparts or components (such as, by way of example and not limitation, a vertical subdivision consisting of a multi-level podium containing parking, retail and other commercial uses, together with improvements constructed above such podium (e.g. hotel, office and/or residential towers), or a single building consisting of hotel, office, retail and/or other components) pursuant to a Parcel Declaration, whereby the leasehold estate under such Bifurcated Lease is submitted to a commercial condominium, cooperative or other collective form of ownership.

(tt) Parcel Manager means any master association, property owner's association, condominium association or other entity primarily responsible for the infrastructure and/or other common or shared components serving some or all of the Parcel Components within the Parcel Development Regime. If any Parcel Component in the Parcel Development Regime is submitted to a commercial condominium, cooperative or other collective form of ownership, the term "Parcel Manager" for purposes of the Bifurcated Lease shall nevertheless mean and refer to the master association, property owner's association, condominium association or other entity for the Parcel Development Regime (and not the master association, property owner's association, condominium association or other entity primarily responsible for the infrastructure and/or other common or shared components of the Parcel Component).

(uu) Party or Parties (whether or not by use of the capitalized term) shall mean jointly or individually (as the context dictates) Landlord and Tenant.

(vv) Participation Rent shall have the meaning ascribed to such term in Section 3.4.

(ww) Penalty Rent shall have the meaning ascribed to such term in Section 3.3 and Schedule 3.3.

(xx) Permit shall mean any permit issued or to be issued by the appropriate governmental agency and/or department, including but not limited to applicable permits for construction, demolition, installation, foundation, dredging, filling, the alteration or repair or installation of sanitary plumbing, water supply, gas supply, electrical wiring or equipment, elevator or hoist, HVAC, sidewalk, curbs, gutters, drainage structures, paving and the like.

(yy) Permitted Transferee shall mean an Affiliate of Tenant.

(zz) Person (whether or not by use of the capitalized term) shall mean any natural person, trust, firm, partnership, corporation, limited liability company, joint venture, association or any other legal or business entity or investment enterprise.

(aaa) Phase or Phases shall have the meaning ascribed to such term(s) in Section 3.2. The terms Phase or Phases are used interchangeably with Construction Phases in this Lease.

(bbb) Plans and Specifications shall mean the plans and specifications for all the work in connection with the demolition or alteration of existing Improvements (if any), and the alteration, construction and reconstruction of each Phase of the Project required to be done or performed hereunder and shall include any changes, additions or modifications thereof, provided the same are approved (if required) as provided herein.

(ccc) Preliminary Plans shall mean conceptual plans for the Demised Premises or a portion thereof, as the case may be, which have been or will be submitted by Tenant to Landlord.

(ddd) Project shall mean the overall development of all Phases of the Project contemplated by the response by Tenant to the Request for Proposal for Joint Development at Douglas Road Metrorail Station, as such proposed development may be amended and/or revised from time to time ("Proposal"). If this Lease terminates with respect to any Phase of the Project, or any Phase is otherwise released from the terms and conditions of this Lease, then, as used herein, the term "Project" shall exclude the applicable Phase and, from and after the date Tenant surrenders the applicable Phase to Landlord, Tenant shall have no further rights or obligations with respect to such Phase (with respect to the payment of Rent, payment of Impositions, construction, maintenance or repair, or otherwise) hereunder, except as otherwise expressly provided herein.

(eee) Proposal shall have the meaning ascribed to such term in the preceding definition.

(fff) Public Areas shall mean those areas of the Demised Premises both enclosed and unenclosed, generally available and open to the public during normal business hours, but shall not include common areas in the respective residential, office or other non-public commercial components of the Project.

(ggg) Rent shall mean, collectively, Minimum Rent, Participation Rent, and Penalty Rent.

(hhh) Review Period shall mean the period commencing on the Effective Date and ending on the date that is ninety (90) days after the Effective Date or earlier termination of this Lease.

(iii) Space Lease shall mean a lease (other than this Lease or a Bifurcated Lease), sublease, license or other agreement between Tenant or a Sublessee and a third party for the use or occupancy of space on or within the Demised Premises.

(jjj) Space Lessee shall mean the tenant/lessee, subtenant/sublessee, or licensee, or their successors or assigns, under a Space Lease.

(kkk) Station shall mean the existing Douglas Road Metrorail Station portion of the System.

(lll) Station Improvements shall mean the "Required Improvements" and "Additional Improvements" (as each such term is defined in the Development Agreement).

(mmm)Station Land shall have the meaning ascribed to such term in the Development Agreement.

(nnn) Station Parking Spaces shall mean the structured parking spaces designated for DTPW's use located in parking facilities to be constructed by Tenant on the Demised Premises as part of the Station Improvements pursuant to the Development Agreement.

(ooo) Sublease shall mean any instrument pursuant to which all or a portion of the Demised Premises is subleased or sub-subleased, including but not limited to a grant by Tenant to a Sublessee for the right to develop a specific Phase(s) of the Project, but expressly excluding any Space Leases.

(ppp) Subleasehold Mortgage shall mean a mortgage or mortgages or other similar security agreements given to any Subleasehold Mortgagee encumbering the subleasehold interest of a Sublessee under a Sublease, and shall be deemed to include any mortgage or trust indenture under which any Sublease shall have been encumbered, as modified, amended, restated, renewed and consolidated from time to time.

(qqq) Subleasehold Mortgagee shall mean a Lender holding a Subleasehold Mortgage.

(rrr) Sublessee shall mean the entity to which a Sublease is granted or its successors or assigns under any such Sublease.

(sss) System shall mean the Miami-Dade County Transit System including, without limitation, all trains, buses, fixed guideways, stations, parking lots and parking

structures, drop off/pickup areas, bus stops and shelters, bus bays, streets and sidewalks, maintenance facilities, structures and all associated facilities required in the operation of the System.

(ttt) Taking shall mean the exercise of the power of eminent domain as described in Article 19.

(uuu) Tenant shall mean, on the Effective Date, ADLER 13TH FLOOR DOUGLAS STATION, LP, a Florida limited partnership. Thereafter, "Tenant" shall mean the owner(s) at the time in question of Tenant's interest under this Lease, and if Tenant or any successor to its interest hereunder ceases to have any interest in the leasehold estate hereby created, whether by reason of (i) assignment, transfer or sale of Tenant's interest hereunder, subject to the provisions of Section 17.1, or (ii) a bifurcation of this Lease pursuant to Section 17.2, the assignor, transferor or seller shall be released from and relieved of all agreements, covenants and obligations of Tenant hereunder to be performed after the date of such assignment, transfer, sale or bifurcation. Nothing herein shall be construed to relieve Tenant from any liability or damages arising from actions or omissions occurring or agreements, covenants and obligations required to be performed prior to the date of any such assignment, transfer, sale or bifurcation of Tenant's interest hereunder. Notwithstanding the foregoing Tenant shall remain liable for the representations and warranties of Section 25.2.

(vvv) Term shall have the meaning ascribed to such term in Section 1.2 (and shall include all extensions thereof in accordance with the terms of this Lease).

(www) Unavoidable Delays shall mean delays beyond the control of a party required to perform, such as (but not limited to) delays due to strikes; slowdowns; lockouts; acts of God; floods; fires; unusually severe weather conditions (such as tropical storms or hurricanes); casualty; any act, neglect or failure to perform of or by Landlord; war; enemy action; civil disturbance; acts of terrorism; sabotage; restraint by court or public authority; litigation or administrative challenges by third parties to the execution or performance of this Lease or the procedures leading to its execution; inability to obtain labor or materials; delays in settling insurance claims; moratoriums or other delays relating to Laws and Ordinances (including without limitation delays associated with Laws and Ordinances enacted subsequent to the date of the submission of the Proposal as contemplated under Section 3.9); and/or delays due to site conditions discovered during the Review Period under Section 1.6 or of the nature contemplated by Section 4.10. The obligated party shall be entitled to an extension of time because of its inability to meet a time frame or deadline specified in this Lease where such inability is caused by an Unavoidable Delay, provided that such party shall, within thirty (30) days after it has become aware of such Unavoidable Delay, give notice to the other party in writing of the causes thereof and the anticipated time extension necessary to perform. Neither party shall be liable for loss or damage or deemed to be in default hereof due to any such Unavoidable Delay(s), provided that party has notified the other as specified in the preceding sentence and further provided that such Unavoidable Delay did not result from the fault, negligence or failure to act of the party claiming the delay. Failure to notify a party of the existence of Unavoidable Delays within the thirty (30) days of its discovery

by a party shall not void the Unavoidable Delays, but the time period between the expiration of the thirty (30) days period and the date actual notice of the Unavoidable Delays is given shall not be credited to the obligated party in determining the anticipated time extension.

(xxx) Work shall have the meaning ascribed to such term in Section 16.1.

ARTICLE 3

Rent

Section 3.1. Minimum Rent. During the Term of this Lease, Tenant shall pay annual minimum rent for the Demised Premises as described on Schedule 3.1 attached hereto and by this reference made a part hereof. Minimum rent shall be paid and payable as follows (herein, "Minimum Rent"):

(a) No later than thirty (30) days following the Commencement Date, Tenant shall make an upfront payment of Minimum Rent in the amount of One Million Five Hundred Thousand and No/100 Dollars ($1,500,000.00), representing payment of Minimum Rent for the first four (4) Lease Years in the amount of Three Hundred Seventy-Five Thousand ($375,000.00) per year. Following such payment, no Minimum Rent whatsoever shall be due under this Lease until the commencement of the fifth (5^{th}) Lease Year of the Term, as indicated in Schedule 3.1 and hereinafter provided.

(b) Commencing with the fifth (5^{th}) Lease Year of the Term, Tenant shall pay Landlord as Minimum Rent the sum of Three Hundred Seventy-Five Thousand and No/100 Dollars ($375,000.00) per annum, subject to increases as hereinafter provided.

(c) Commencing with the sixth (6^{th}) Lease Year of the Term and each Lease Year thereafter, annual Minimum Rent shall adjust each Lease Year by the lesser of (i) three percent (3%) of the annual Minimum Rent for the immediately preceding Lease Year, or (ii) the percentage change in the CPI, measured by multiplying annual Minimum Rent for the immediately preceding Lease Year by a fraction, (x) the numerator of which is the CPI for the month preceding the commencement of the Lease Year of the Term to which such increase applies, minus the "base" CPI for the same calendar month in the immediately preceding Lease Year, and (y) the denominator of which is the "base" CPI (from preceding clause (x)). The Parties acknowledge and agree that Schedule 3.1 attached hereto reflects scheduled payments based on the Minimum Rent increasing by three percent (3%) annually and does not reflect changes in the CPI (if lower) which are not yet known. Actual adjustments in Minimum Rent under this Lease will be based on the formula set forth in this Section and not the amounts set forth in Schedule 3.1, which are provided for informational purposes only. Minimum Rent shall be calculated and determined as provided herein during the initial Term and all renewals thereof.

(d) Minimum Rent shall be payable monthly in advance on or before the fifth (5^{th}) day of each month in an amount equal to one-twelfth of the Minimum Rent due for the applicable Lease Year.

(e) Notwithstanding anything herein to the contrary, as more particularly provided in the Development Agreement, Tenant shall be entitled to a credit against Rent under this Lease equal to (i) the aggregate amount of the increased cost resulting from change order(s) requested by DPTW with respect to the Required Improvements, to be applied against Rent first coming due, beginning with the first month after Completion of Construction of the applicable Stage of the Required Improvements occurs, until credited in full, and (ii) the amount of the Excess Investment, to be applied against Rent first coming due, beginning with the first month after Completion of Construction of the applicable Stage of the Additional Improvements occurs, until credited in full. As used in this subsection, the terms "Excess Investment", "Completion of Construction", "Required Improvements", "Additional Improvements" and "Stage" shall have the meanings given to them in the Development Agreement. In the event Tenant is entitled to a credit against Rent under this provision and the Development Agreement concurrently with a credit against Rent due pursuant to Section 1.6, the credit due under this provision and the Development Agreement shall be applied against Rent first until fully credited, and then the credit under Section 1.6 shall be applied, with the intention that Tenant receive the full benefit of both credits.

Section 3.2. **Phased Development**. Tenant has proposed a phased construction approach and contemplates developing the Improvements on the Demised Premises in Phases as set forth on Schedule 3.2 attached hereto and by this reference made a part hereof, and as further set forth in the Preliminary Plans when delivered to Landlord pursuant to the terms of this Lease. Each of the phases described in Schedule 3.2 is hereinafter referred to as a "Phase" and are collectively referred to as the "Phases". Notwithstanding the fact that Phases are identified numerically in Schedule 3.2, each Phase may be constructed and developed independently of the other Phases and in any sequence. In addition, notwithstanding anything to the contrary contained in this Lease (and for the avoidance of doubt), each Phase may be constructed and developed pursuant to this Lease, a Bifurcated Lease, one or more Subleases or through a combination thereof.

Section 3.3. **Penalty Rent**. As used herein, the term "Penalty Rent" shall mean the penalty rent payable by Tenant in the event Tenant fails to achieve the Construction Phase Deadlines set forth in Schedule 3.3, in the per annum amounts set forth in Schedule 3.3 and payable as provided below. With respect to the Construction Phase Deadlines and Penalty Rent, Landlord and Tenant agree as follows:

(a) Commencement of Construction for each Phase shall take place on or before the Construction Phase Deadline for Commencement of Construction for such Phase set forth in Schedule 3.3, subject to Unavoidable Delays, Economic Unavoidable Delay and duly requested changes to the Commencement of Construction date which are approved by Landlord in writing. If Commencement of Construction for any Phase does not take place by the Construction Phase Deadline therefor, subject to Unavoidable Delays, Economic Unavoidable Delay and duly requested changes to the Commencement of Construction date which are approved by Landlord in writing, Tenant shall pay to Landlord Penalty Rent for the applicable Phase in accordance with Schedule 3.3, payable as provided herein. In addition, if Commencement of Construction for any Phase does not occur within one (1) year following the Construction Phase Deadline for the

Commencement of Construction for such Phase (reflected as the Commencement of Construction Default date in Schedule 3.3), subject to Unavoidable Delays, Economic Unavoidable Delay and duly requested changes to the Commencement of Construction Default date which are approved by Landlord in writing, it shall be considered to be an Event of Default and Landlord shall be entitled to additional Penalty Rent for the applicable Phase in accordance with Schedule 3.3 in lieu of the remedies provided in Article 20 of this Lease.

(b) If Tenant has not received a Certificate of Occupancy on or before the Construction Phase Deadline for a temporary Certificate of Occupancy set forth in Schedule 3.3, subject to Unavoidable Delays, Economic Unavoidable Delay, permitted changes to the construction schedule and duly requested changes to the construction schedule which are approved by Landlord in writing, Tenant shall pay to Landlord Penalty Rent for the applicable Phase in accordance with Schedule 3.3, payable as provided herein. All construction contracts for the construction of each Phase shall initially provide that the Improvements in that particular Phase will be substantially completed within three (3) years following the date of Commencement of Construction of such Phase, subject to Unavoidable Delays and Economic Unavoidable Delay.

(c) If Tenant has not received a final Certificate of Occupancy on or before the Construction Phase Deadline for a final Certificate of Occupancy set forth in Schedule 3.3, subject to Unavoidable Delays, Economic Unavoidable Delay, permitted changes to the construction schedule and duly requested changes to the construction schedule which are approved by Landlord in writing, Tenant shall pay to Landlord Penalty Rent for the applicable Phase in accordance with Schedule 3.3, payable as provided herein.

(d) If Tenant has not fully completed development of the Project (excluding any Phase no longer included in the Project or subject to this Lease) on or before the date that is fifteen (15) years following the Commencement Date as set forth in Schedule 3.3, subject to Unavoidable Delays, Economic Unavoidable Delay or by mutual written agreement of the Parties, Tenant will pay to Landlord Penalty Rent in accordance with Schedule 3.3 until such completion of the Project occurs.

(e) Notwithstanding any of the above, portions of the Project may revert to Landlord under the following limited circumstances:

(i) If Tenant has not commenced construction of the first Phase of the Project and closed a construction loan or loans with a Lender for development and construction of the Improvements comprising such Phase (herein, the "required construction conditions") on or before the date that is eight (8) years and six (6) months following the Commencement Date, subject to Unavoidable Delays or Economic Unavoidable Delay (provided that any extension of the foregoing outside deadline for the satisfaction of the required construction conditions with respect to the first Phase of the Project due to Economic Unavoidable Delay shall not exceed five (5) years), then this Lease shall automatically terminate and all

right, title and interest of Tenant in and to the Demised Premises shall automatically revert to Landlord.

(ii) If Tenant has not satisfied the required construction conditions with respect to any other Phase of the Project on or before the date that is fifteen (15) years following the Commencement Date, subject to Unavoidable Delays or Economic Unavoidable Delay, then, unless otherwise mutually agreed by the Parties, this Lease shall automatically terminate with respect to such Phase(s), but not with respect to any other Phases or portion of the Demised Premises (it being agreed that this Lease shall remain in full force and effect with respect to such other Phases or portions of the Demised Premises), and all right, title and interest of Tenant in and to such Phase(s) where the required construction conditions have not occurred shall automatically revert to Landlord.

Tenant shall be obligated to pay, if applicable, Penalty Rent (in installments, as hereinafter provided) after Landlord gives Tenant written notice that Tenant has failed to achieve a Construction Phase Deadline and, therefore, Penalty Rent is due. Tenant shall pay Penalty Rent, in equal monthly installments, by the fifth (5^{th}) day of the month after Landlord notifies Tenant that Penalty Rent is due, and on the fifth (5^{th}) day of each month thereafter, commencing with the first calendar month following receipt of Landlord's notice that that a Construction Phase Deadline has been missed and ending with the calendar month in which the construction milestone contemplated by such Construction Phase Deadline is actually achieved (notwithstanding that the entire annual amount of the Penalty Rent may not be paid). Penalty Rent shall be paid in addition to any other Rent due. With respect to any Phase that is no longer included in the Project or subject to this Lease by virtue of the termination of this Lease as to (and/or reversion of) such Phase hereunder, all Penalty Rent with respect to such Phase shall cease and no longer be due from or payable by Tenant as of the date of such termination or reversion. At the request of either Party, Landlord and Tenant shall confirm in writing the termination of this Lease (in whole or with respect to any Phase) under this Section.

Section 3.4. **Participation Rent**. From and after the fifth (5^{th}) Lease Year, Tenant shall pay to Landlord an annual percentage rent equal to three percent (3%) of annual Gross Revenue (as defined in Section 3.6 below), reduced in all events by the amount of Minimum Rent per annum paid in accordance with Section 3.1 ("Participation Rent").

Section 3.5. **Payment of Participation Rent**. Tenant shall prepare and submit to Landlord a separate statement of Gross Revenue for the Demised Premises for each Lease Year, certified as being accurate by a reputable, independent certified public accountant selected by Tenant. Participation Rent shall be paid to Landlord in one lump sum within one hundred twenty (120) days after the end of each Lease Year that Participation Rent is due. For purposes of calculating Participation Rent, items of revenue included in the definition of Gross Revenue hereunder shall be included without duplication.

Section 3.6. **Gross Revenue**. "Gross Revenue" shall mean all revenue generated or derived and received, directly or indirectly, by Tenant as a result of this Lease. Gross Revenue shall include, but not be limited to, (a) income received for the occupancy of space within the Improvements or any portion of the Demised Premises (including any parking space), (b) any

revenue realized in lieu of rents pursuant to claims asserted under any business interruption insurance or rental insurance proceeds as described in Article 16, (c) revenue received as a result of granting certain rights to a third party such as the granting of easements and/or the right to install and/or use equipment in or on any part of the Demised Premises and/or Improvements, such as advertising or directional signage and antennae, and (d) revenue received by Tenant for the purpose of providing amenities, insurance coverage, security services, maintenance of common areas, equipment and facilities and replacement, betterments and/or additions to Improvements, equipment and facilities located on the Demised Premises and all reimbursements for such services, amenities and fees paid to Tenant on behalf of its sublessees, space lessees, subtenants or any other entity and any and all other expenses that may be construed to be pass-through expenses; i.e., expenses for goods and services provided to subtenants, space tenants or sublessees. Notwithstanding anything to the contrary contained herein, with respect to any portion of the Demised Premises leased to a Space Lessee, only the rent paid by such Space Lessee to its landlord or sublessor under the Space Lease (but not Gross Revenue of such subleased portions of the Demised Premises) shall be included in calculating Gross Revenue hereunder.

The following expenses and other items shall be deducted or excluded in calculating Gross Revenue for all purposes of this Lease:

(a) Security deposits (but interest earned by Tenant on security deposits to the extent not required to be paid to others shall be included in Gross Revenue);

(b) Any insurance proceeds (except for any business interruption insurance or rental insurance proceeds as hereinabove provided);

(c) Any condemnation awards (except for an award from a temporary Taking pursuant to Section 19.5);

(d) Any proceeds of sale (except as otherwise expressly provided herein) or refinancing of any Phase or Improvements;

(e) Ad valorem taxes on the Land and any Impositions, including without limitation ad valorem taxes on the Improvements, sales or any other governmental charges on Rent or this Lease, and federal, state or local excise, sales, use, occupancy or similar taxes collected directly from Sublessees, Space Lessees, patrons, guests or otherwise;

(f) Any gratuities or service charges added to a customer's bill and distributed as compensation to employees of any business operating on the Demised Premises;

(g) Any credits, rebates or refunds made to customers, guests or patrons, and any unrealized or foregone revenue as a result of promotions or complimentary services;

(h) Any sums and credits received for lost or damaged merchandise;

(i) Any proceeds from the sale or other disposition of personal property (such as inventory, furniture, fixtures and/or equipment);

(j) Any interest income, except as expressly provided in clause (a) above; or

(k) Amounts paid by Tenant to cure defaults of Sublessees under Subleases or Space Lessees to the extent such monies are reimbursed to Tenant by such Sublessees or Space Lessees.

Section 3.7. **Landlord's Right to Verify and Audit Information Submitted.** Landlord may, at Landlord's expense, during normal business hours and upon ten (10) business days' prior written notice to Tenant, inspect, take extracts from and make copies of Tenant's books and records pertaining to the Demised Premises for the purpose of verifying any statement of Gross Revenue submitted to Landlord as required by this Lease. Landlord also may, at its option and at its sole expense, conduct or cause to be conducted an audit (by a reputable, independent certified public accountant who shall not be compensated on a contingency fee or commission basis) to verify the Gross Revenue received by Tenant from the operation of the Demised Premises for any Lease Year or to verify any payments or rents under this Lease. To the fullest extent permitted by law, Landlord shall protect from disclosure any records that are confidential and exempt from disclosure under Florida law. Landlord shall use its good-faith, diligent efforts to provide timely written notice to Tenant of any public records request seeking any records of Tenant that may be within Landlord's custody, possession or control, to permit Tenant the opportunity to seek to protect such information from disclosure. If Landlord's audit shall disclose that an amount is due to Landlord in excess of the amount Tenant had previously or should have paid to Landlord for such Lease Year, then, unless disputed by Tenant, such amount shall be paid by Tenant within thirty (30) days after receipt by Tenant of a written notice from Landlord setting forth the amount due and the calculations used in making the determination. If the amount due Landlord under the preceding sentence exceeds the amount Tenant had previously or should have paid to Landlord for such Lease Year by five percent (5%) or more, unless disputed by Tenant, the cost of such audit shall be at Tenant's expense and Tenant shall also pay interest on the additional amount due at the Default Rate. If Landlord's audit shall disclose that Landlord has been overpaid for such Lease Year, Landlord shall credit such overpayment to the next payment or payments required to be paid by Tenant under the terms of this Lease until fully credited. Tenant's books and records regarding the Demised Premises shall be maintained in Miami-Dade County, Florida, or such other location approved by Landlord in writing. Landlord's right to inspect and audit Tenant's books and records under this Section shall continue for a period of one (1) year after submittal of any statement or report of Gross Revenue by Tenant pursuant to this Lease, after which time Landlord shall not have the right to audit such statement or report. Landlord and Tenant shall in good faith, acting reasonably, attempt to resolve any dispute with respect to Tenant's statement of Gross Revenue and Landlord's audit within a period of thirty (30) days of one Party notifying the other of such dispute prior to pursuing resolution through legal proceedings.

Section 3.8. **Late Payments.** In the event that any payment of Minimum Rent, Penalty Rent, or Participation Rent due Landlord shall remain unpaid for a period of twenty (20) days beyond the applicable due date, interest at the Default Rate shall accrue against the delinquent payment(s) from the original due date until Landlord receives payment. In addition to the rights and remedies provided for herein, Landlord shall also have all rights and remedies afforded by law for enforcement and collection of Rent and any interest at the Default Rate which are not inconsistent with the limitations or remedies contained in this Lease. All Rent and

other payments due Landlord under this Lease shall be paid to Landlord at the address specified herein for notice to Landlord.

Section 3.9. **Approved Restriction Adjustments.** Landlord and Tenant acknowledge and agree that the rights, duties and obligations of the Parties provided for in this Lease have been negotiated based upon the materials, proposals and projections for the Project exchanged between the Parties in connection with Landlord's Request for Proposal for Joint Development at Douglas Road Metrorail Station, Tenant's Proposal and the negotiation of this Lease and the Development Agreement, and, accordingly, the terms of this Lease are substantially the result of the information, analysis and projections contained in such materials. Landlord and Tenant further acknowledge that the Minimum Rent and Penalty Rent established in this Lease were based on the understanding that Tenant would be able to develop the Project substantially as described in the Proposal. If, due to Laws and Ordinances enacted subsequent to the date of the submission of the Proposal, Tenant is not able to develop the Project as contemplated in the Proposal, then in addition to any other rights Tenant has hereunder, (a) Tenant shall have the right, in its sole discretion, to terminate this Lease and its obligations hereunder as to the Project or any Phase by giving written notice to Landlord within six (6) months after such inability becomes known to Tenant, and the obligations of Tenant to pay Rent under this Lease shall be abated (in its entirety or partially with respect to the applicable Phase(s), as applicable) as of the date of the giving of such notice, and in such event this Lease shall terminate (in whole or with respect to the applicable Phase(s), as applicable) fifteen (15) days following Landlord's receipt of notice of termination; and (b) in the event Tenant does not terminate this Lease as set forth above, any delays caused by or associated with such newly enacted Laws and Ordinances shall be deemed Unavoidable Delays for purposes of this Lease and Tenant shall become entitled to an adjustment and reduction in Rent (Minimum Rent, Penalty Rent, and Participation Rent) on an equitable basis taking into consideration the amount and character of the Building space or other aspect of the Project described in the Proposal, the use of which will be denied to Tenant, as compared with the Building space described in the Proposal, provided that Tenant's upfront payment of Minimum Rent in the amount of $1,500,000.00 shall be retained in full by the County and shall not be subject to adjustment or reimbursement.

Section 3.10. **Operation of Station and System.** Landlord covenants and agrees with Tenant that Landlord will not permanently discontinue or cease the operation of the Station or the System, or reduce the use of the Station in any material manner, at any time during the Term. In the event Landlord determines to permanently discontinue or cease the operation of the Station or System, or reduce the use of the Station in any material manner, despite such covenant and agreement, then, in addition to any other rights Tenant may have under this Lease, (a) Tenant shall have the right, in its sole discretion, to terminate this Lease and its obligations hereunder as to the Project or any Phase by giving written notice to Landlord within six (6) months after such discontinuance, cessation or material reduction in use, and the obligations of Tenant to pay Rent under this Lease shall be abated (in its entirety or partially with respect to the applicable Phase(s), as applicable) as of the date of the giving of such notice, and in such event this Lease shall terminate (in whole or with respect to the applicable Phase(s), as applicable) fifteen (15) days following Landlord's receipt of notice of termination; and (b) in the event Tenant does not terminate this Lease as set forth above, Tenant shall become entitled to an adjustment and reduction in Rent (Minimum Rent, Penalty Rent, and Participation Rent) on an

equitable basis taking into consideration the impact of such discontinuance, cessation or material reduction in use on the Project.

Section 3.11. **Payment Where Tenant Sells, Assigns or Transfers Right to Develop Demised Premises or any Phase**. In the event Tenant sells, assigns or transfers the right under this Lease to develop any unimproved and vacant portion or Phase of the Project, in contrast to an already developed and improved (in whole or in part) portion or Phase where Commencement of Construction has occurred (which shall not be subject to this Section under any circumstances) and, as a result thereof, Tenant or an Affiliated Person retains less than a ten percent (10%) interest in such portion of the Project or Phase and does not otherwise control the day-to-day management of transferee (by contract or otherwise), then in such event, Tenant shall pay Landlord three percent (3%) of the actual consideration Tenant receives for such sale, assignment or transfer, less a proportionate share of the hard costs expended by Tenant for infrastructure actually placed in the ground to the extent such infrastructure actually benefitted such portion or Phase and net of any and all transaction costs (e.g., brokerage commissions, documentary stamp taxes, surtaxes and/or other transfer taxes, and other customary closing costs paid by Tenant). Tenant shall pay Landlord's share of any consideration Tenant receives, less the above costs and expenses, within thirty (30) calendar days of Tenant's receipt of same. The payments to Landlord under this section shall be in addition to and with no offsets for any other rents or payments to which Landlord is entitle under any other provisions of this Lease. This Section shall not apply to any transfer that results from a foreclosure of a Leasehold Mortgage, Subleasehold Mortgage or security for a Mezzanine Financing or any deed or assignment in lieu thereof or any other enforcement action thereunder or any transfer to a purchaser at foreclosure under any circumstances.

ARTICLE 4

Development of Land and Construction of Buildings

Section 4.1. **Land Uses**.

(a) Tenant and Landlord agree, for themselves and their successors and assigns, to devote the Demised Premises to the uses specified in this Lease, which may include residential, hotel, office, retail, self-storage and/or other commercial uses.

(b) The parties recognize and acknowledge that the manner in which the Demised Premises and Improvements are developed, used and operated are matters of critical importance to Landlord and to the general welfare of the community. Tenant agrees that, during the Term of this Lease, Tenant will use reasonable efforts to create a development on the Demised Premises which (i) enhances the ridership and usage of the System from the Station, (ii) creates strong access links between the Demised Premises and the Station, and (iii) creates a mixed-use residential and commercial development with a quality of character and operation consistent with that of similar, comparable projects of this nature in Miami-Dade County, Florida.

(c) Tenant shall establish such reasonable rules and regulations governing the use and operation by Space Lessees of their premises as Tenant shall deem necessary or

desirable in order to assure the level or quality and character of operation of the Demised Premises required herein; and Tenant will use reasonable efforts to enforce such rules and regulations.

Section 4.2. **Development Rights and Construction Phases**. Tenant shall have the right to develop the Demised Premises and to construct the Buildings required in connection with such development, subject to the terms and conditions of this Lease and to the densities and uses described in subsections (a) or (b) below:

(a) Development Rights of Land. In connection with the Project and each Phase thereof, the parties agree Landlord will, without charge by Landlord, grant and join in any plat, Permit or other application, temporary and permanent easements, restrictive covenants, easement vacations or modifications and such other documents, including but not limited to estoppel certificates and nondisturbance and attornment agreements as provided in this Lease, as may be necessary or desirable for Tenant to develop and use the Demised Premises in accordance with the Preliminary Plans and/or Proposal and in a manner otherwise permitted hereunder, provided that such joinder by Landlord shall be at no cost to Landlord other than its costs of review, and also provided that the location and terms of any such easements or restrictive covenants and related documents shall be reasonably acceptable to Landlord, which acceptance shall not be unreasonably withheld or delayed. Landlord agrees to use best efforts to review and approve (or disapprove with an explanation for such disapproval) any such requests within ten (10) business days of such request from Tenant (except in the event that Board approval is required under applicable Laws and Ordinances for such approval, in which event Landlord shall use its reasonable diligent efforts to expedite the approval process as soon as reasonably practicable in an effort to assist Tenant in achieving its development and construction milestones for the Project). If Landlord has not provided Tenant with written notice of its approval or disapproval within said 10-business day period (subject to requirements for Board approval as hereinabove provided), Tenant shall have the right to deliver written notice to Landlord advising Landlord that Landlord has not responded to Tenant within the required 10-business day period and Landlord shall have an additional three (3) business days thereafter to respond to Tenant with such approval or disapproval. In the event that Landlord fails to respond after the expiration of the additional 3-business day period, Landlord shall be deemed to have approved the applicable request of Tenant that is then at issue under such request.

(b) Financial Incentives and Land Use Approvals. Landlord agrees to cooperate with Tenant with respect to and in support of (i) any applications dealing with governmental or other financing sources or incentives to which Tenant may be entitled to apply for in connection with the Project, and/or (ii) Tenant's efforts to up-zone or otherwise increase the development capacity or development rights available to or associated with the Demised Premises, including without limitation any proposed change in the land use designation for the Demised Premises, provided that Tenant shall be responsible for any and all costs associated with the foregoing, including all costs relating to applications and other materials that may be necessary or desirable to implement same. Landlord shall not be entitled to any additional consideration for Landlord's cooperation and support of Tenant's efforts under this provision, if Tenant is successful in securing

financial incentives or any additional development capacity or rights for the Project or otherwise.

(c) Miami-Dade County's Rights As Sovereign. It is expressly understood that notwithstanding any provision of this Lease and Miami-Dade County's status as Landlord hereunder:

(i) Miami-Dade County retains all of its sovereign prerogatives and rights as a county under Florida laws (but not in regard to its status as Landlord and the performance of its contractual duties hereunder) and shall in no way be estopped from withholding or refusing to issue any approvals of applications for building or zoning; from exercising its planning or regulatory duties and authority; and from requiring development under present or future Laws and Ordinances of whatever nature applicable to the design, construction and development of the Buildings and Improvements provided for in this Lease; provided, however, that Landlord acknowledges and agrees that, during the Term, Landlord's development regulations applicable to the development of the Project under Laws and Ordinances in effect as of the Effective Date shall govern the development and construction of the Project during the Term to the fullest extent permitted by law. To that end, at Tenant's request, Landlord agrees to cooperate with Tenant, in good faith and with reasonable diligence, with any efforts by Tenant to seek approval from Miami-Dade County under Chapter 163 of the Code that such existing development regulations shall govern the development of the Project throughout the Term, including without limitation Landlord's joinder in any applications for and active support of such approval.

(ii) Miami-Dade County shall not by virtue of this Lease be obligated to grant Tenant, the Demised Premises or the Project any approvals of applications for building, zoning, planning or development under present or future Laws and Ordinances of whatever nature applicable to the design, construction and development of the Buildings and other Project improvements provided for in this Lease. Recognizing the public and private benefits afforded by the Project, Landlord agrees to use reasonable, diligent efforts to facilitate the approval and permitting process through Miami-Dade County in order to expedite the development of each Phase of the Project as soon as reasonably practicable in an effort to assist Tenant in achieving its development and construction milestones for the Project. In furtherance thereof, Landlord has or will designate DTPW's Designated Representative to serve as Landlord's point of contact and liaison with Tenant in order to coordinate and facilitate the submission of applications, authorizations, Permit documents and the like across all of the various departments and offices of the County which have the authority, right or responsibility to review and approve same on behalf of the County.

(iii) Miami-Dade County remains the legal and equitable owner of the Land and does not intend to nor does it grant Tenant an equitable ownership interest in the Land. It is the intent of the Parties hereto that Miami-Dade County retains all of the benefits and burdens of ownership in the Land.

Section 4.3. **Conformity of Plans**. Preliminary Plans and Construction Plans and all work by Tenant with respect to the Demised Premises and to Tenant's construction of Buildings thereon shall be in substantial conformity with this Lease and all applicable Laws and Ordinances, including applicable provisions of the Fire Life Safety Criteria found in the Metrorail Compendium of Design Criteria, Volume 1, Chapter 9 and DTPW's Adjacent Construction Safety Manual or its replacement. It should be noted that the DTPW Adjacent Construction Safety Manual contains minimum requirements and Landlord may impose more stringent requirements as to portions of the Project within the Affected Area if Landlord reasonably determines that more stringent requirements are warranted to adequately protect the System and its operation, provided that Landlord shall (a) impose such requirements at the earliest stage of the approval process for the Plans and Specifications when the matter of concern is or should be apparent, and (b) cooperate and work in good faith with Tenant to mitigate any safety standards and requirements that would materially increase construction costs or materially delay construction through alternative practices and procedures that are mutually acceptable to the Parties to facilitate the construction of the Project and each Phase thereof without such increase in costs or delays in construction wherever reasonably possible, provided that such alternative practices and procedures shall not jeopardize the safety of the System or the users of the System or of any employees, agents, licensees and permittees of Landlord.

Section 4.4. **Design Plans; DTPW Review and Approval Process**.

(a) Tenant shall submit design and construction documents to DTPW for review, coordination and approval of each Phase, at the different stages of the Project. For each submittal, Tenant shall submit an electronic and three (3) sets of full prints with the date noted on each print.

(b) At fifteen percent (15%) of the overall design completion (of any Phase, if applicable) of the Project, Tenant shall submit conceptual site layouts and plans, sections, and elevations to DTPW for review in conformity with applicable Laws and Ordinances, including applicable provisions of the Metrorail Compendium of Design Criteria.

(c) At fifty percent (50%) design completion (of any Phase, if applicable) of the Project, Tenant shall submit drawings, conceptual site layouts and plans, sections, elevations and pertinent documentation to DTPW for review.

(d) At one hundred percent (100%) design completion (of any Phase, if applicable) of the Project, Tenant shall submit to DTPW the Final Design Plans. DTPW shall review these plans to ensure that all previous DTPW comments to which the parties have agreed have been incorporated therein. However, Tenant may request reconsideration of any comments made by DTPW.

(e) Upon receipt of each of the above-mentioned submittals, DTPW shall review same and shall, within thirty (30) days after receipt thereof, advise Tenant in writing of its approval or disapproval, setting forth in detail its reasons for any disapproval. In the event of a disapproval, Tenant shall, within thirty (30) business days after the date Tenant receives such disapproval, make those changes necessary to meet DTPW's stated grounds for disapproval or request reconsideration of such comments and

DTPW shall respond to such request for reconsideration within ten (10) days after receipt of such request. Within thirty (30) business days of DTPW's response to such request for reconsideration, Tenant shall, if necessary, resubmit such altered plans to DTPW. Any resubmission shall be subject to review and approval by DTPW, in accordance with the procedure hereinabove provided for an original submission, except that DTPW shall have fifteen (15) days to respond to resubmissions in lieu of thirty (30) days, until the same shall receive final approval by DTPW. DTPW and Tenant shall in good faith, acting reasonably, attempt to resolve any disputes concerning the Plans and Specifications in an expeditious manner, failing which matter shall be resolved in accordance with Section 27.1. If DTPW fails to respond to any submission or request for reconsideration by Tenant hereunder within the time frame required herein for such response, Tenant's submittals or requests shall be deemed approved. In addition, if DTPW shall have approved any aspect of the Preliminary Plans (and, thereafter, Plans and Specifications) in any submittal, and no portion of the revised Plans and Specifications has affected the earlier-approved aspect, DTPW shall not have the right to disapprove that which it approved earlier, absent a finding that the aspect of the Plans and Specifications fails to comply with applicable Laws and Ordinances.

(f) Upon the approval of the Final Design Plans for each Phase, such design shall serve as the basis for the Construction Plans for that Phase. DTPW's approval shall be in writing and each party shall have a set of Construction Plans signed by all parties as approved. In the event any material and adverse change occurs after approval of the Final Design Plan for a Phase, then Tenant must resubmit the changed portion of the Construction Plans for DTPW's reasonable approval (unless the change is required by another Miami-Dade County department as part of the permitting process).

(g) DTPW's acceptance of Final Design Plans for any Improvements to be located on land or other property that is subject to the Development Agreement shall constitute final approval under the Development Agreement for such Improvements. To the extent that DTPW accepts final design plans under the Development Agreement for any improvements to the Demised Premises that constitute a part of the Improvements, such approval shall constitute final approval of such Improvements under this Lease.

Section 4.5. **Construction Plans**. Tenant shall give Landlord final site and elevation plans for each Phase prior to submittal for the building permits for each Phase. All Construction Plans for each Phase must be in substantial conformity with the Final Design Plans approved for that Phase by DTPW and the procedure in this Lease.

Section 4.6. **"As-Built" Plans**. As soon as reasonably practicable after completion of the entire Project, Tenant shall provide to Landlord an electronic copy and three (3) sets of "as-built" construction plans for any portions of the Improvements constructed under this Lease that impact any portion of the System as defined herein.

Section 4.7. **Tenant Obligations**. DTPW approval of any Plans and Specifications pursuant to this Article 4 shall not relieve Tenant of its obligations under law to file such Plans and Specifications and/or Construction Plans with any department of the County or any other governmental authority having jurisdiction over the issuance of building or other Permits and to

take such steps as are necessary to obtain issuance of such Permits. Landlord agrees to cooperate with Tenant in connection with the obtaining of such approvals and Permits, and join in (if applicable), with Tenant in connection with the obtaining of such approvals and Permits, as provided herein (including without limitation Section 4.2). Tenant shall have the right to execute any and all applications, approvals and consents for any Permits relating to the Improvements without any further joinder, consent or approval from Landlord (if Landlord's joinder is not required by Laws and Ordinances), but in the event that Landlord's authorization or signature is required for any Permit, Landlord agrees to execute any such Permit, approval, consent or authorization within ten (10) business days. Tenant acknowledges that any approval given by DTPW, as Landlord pursuant to this Article 4, shall not constitute an opinion or agreement by DTPW that the Construction Plans are structurally sufficient or in compliance with any Laws and Ordinances, codes or other applicable regulations, and no such approval shall impose any liability upon DTPW. Tenant shall include a provision in each applicable Leasehold Mortgage which will vest DTPW with all right, title and interest in the Construction Plans for the Phase financed thereby, should an Event of Default occur, and the affected Lender does not elect to construct and complete the Improvements of such Phase; subject, however, to the rights of the affected Lender under Article 18 and Article 20. The rights of Landlord with respect to any and all Plans and Specifications (including the Final Design Plans) shall be subject and subordinate to the rights of any Lender therein, anything herein to the contrary notwithstanding.

It should be noted that the County retains jurisdiction for building and zoning approvals, including issuance of building permits, building inspections and issuance of certificates of occupancy within the Rapid Transit Zone in accordance with Florida Statutes 125.011 and 125.015 and Code, Chapter 33C-2.

Section 4.8. **Construction Costs**. Landlord shall not be responsible for any costs or expenses of construction of the Buildings and Improvements, except as otherwise provided herein or agreed to by the Parties.

Section 4.9. **Progress of Construction**. From the Commencement of Construction of any Phase until Completion of Construction of such Phase, upon written request of DTPW's Designated Representative, but not more frequently than quarterly, Tenant shall submit a report to DTPW's Designated Representative of the progress of Tenant with respect to development and construction of such Phase of the Project.

Section 4.10. **Site Conditions**. Tenant, by executing this Lease, represents it has visited the site and is familiar with local conditions under which the construction and development is to be performed. Tenant further represents that, during the Review Period, Tenant will perform or cause performance of all test borings and subsurface engineering generally required at the site under sound and prudent engineering practices, and will correlate the results of the test borings and subsurface engineering and other available studies and its observations with the requirements of the construction and development of the Buildings. Tenant shall restore the site to a condition substantially similar to its pre-testing condition after all testing to the extent reasonably feasible, and shall provide Landlord with a copy of all written reports received from third parties (without representation or warranty). Landlord makes no warranty as to soil and subsurface conditions. Subject to the provisions hereof regarding Unavoidable Delays and Tenant's rights under Section 1.6, Tenant shall not be entitled to any

adjustment of rental payments or of any applicable time frame or deadline under this Lease in the event of any abnormal subsurface conditions unless the subsurface conditions are discovered after the Review Period and are so unusual that they could not have reasonably been anticipated, and in such event, any resulting delays shall be deemed Unavoidable Delays for purposes of this Lease and all time periods (including Construction Phase Deadlines and corresponding time frames for the commencement of Penalty Rent) and the commencement of Minimum Rent shall be extended by the reasonable time necessary to accommodate redesign and lengthened construction schedules resulting from that event.

Section 4.11. **Ownership of Improvements**. All Buildings and Improvements and all material and equipment provided by Tenant or on its behalf which are incorporated into or become a part of the Project (excepting all of the System facilities) shall, upon being added thereto or incorporated therein, and the Project itself, be and remain the property of Tenant, unless otherwise specifically excepted in this Lease, but subject to the same (not including personal property of Tenant, Sublessees or Space Lessees) becoming the property of Landlord at the expiration or termination of this Lease, as extended by renewal terms.

Section 4.12. **Mutual Covenants of Non-Interference**. Tenant's development and construction of the Project and its use and operation of the Demised Premises shall not materially and adversely interfere with Landlord's customary and reasonable operation of the System, unless prior arrangements have been made in writing between Landlord and Tenant. Tenant may request interruption of the System operation by Landlord for construction of the Improvements and Landlord agrees to reasonably cooperate with such interruption in order to enable such construction. Similarly, Landlord's use of the Station area and the Station Improvements shall not materially and adversely interfere with Tenant's development and construction of the Project and its use and operation of the Demised Premises and the Buildings and Improvements to be constructed thereon, unless prior arrangements have been made in writing between Landlord and Tenant. Landlord may at any time during the term of this Lease, stop or slow down construction by Tenant, but only upon Landlord's reasonable determination that the safety of the System, or of the users of the System or of any employees, agents, licensees and permittees of Landlord is jeopardized, provided that (i) Landlord shall first notify Tenant of such determination (and the basis for it), (ii) the Parties shall cooperate in good faith to abate or effectively manage the source of the problem, and (iii) Landlord shall stop or slow down construction by Tenant under this provision only if, despite the good faith efforts of the Parties to abate or effectively manage the problem, the safety of the System or its users remains in jeopardy. Any such slowdown or stoppage shall be deemed to be an Unavoidable Delay and shall entitle Tenant to appropriate extensions of time hereunder (including, without limitation, time frames pertaining to Penalty Rent), provided that such safety hazard which caused the slowdown or stoppage is not the result of Tenant's negligence or willful act. Landlord acknowledges that operations at the Station may be affected during the construction of the Improvements, by, *inter alia*, general noise emanating from the construction of the Improvements, vehicle and traffic noise (including loading and unloading of trucks) from construction and other large vehicles, construction staging, traffic congestion and the like, and agrees that these customary conditions, activities and disruptions (in contrast to conditions that constitute a safety hazard) shall not trigger a slowdown or stoppage of Tenant's work under this provision.

Section 4.13. **Connection of Buildings to Utilities**. Tenant, at its sole cost and expense, shall install or cause to be installed all necessary connections between the Buildings constructed or erected by it on the Demised Premises, and the water, sanitary and storm drain mains and mechanical and electrical conduits and other utilities, whether or not owned by Landlord. Tenant shall pay for the additional cost, if any, of locating and installing new facilities for sewer, water, electrical, and other utilities as needed to service the Demised Premises, for any extension, relocation and/or upgrading of such utilities, and for relocation of existing utilities presently serving the Station if necessary to develop the Project. Landlord shall cooperate with Tenant, in accordance with Section 4.2 and Section 8.3, to the extent that Tenant needs Landlord to (a) join in any agreements or documents for installation of any connections necessary or desirable for the Improvements or required to comply with its obligations hereunder, or (b) grant easements to public utility providers across the Land and other property owned by Landlord as may be required or desirable to serve the Project, or (c) relocate existing utility lines and facilities to develop or improve the Project.

Tenant's obligations hereunder shall be subject to Landlord's express obligation hereunder to disclose in writing (and accompanied by plats, surveys, legal descriptions or sketches of surveys to the extent applicable and available) the location of all utilities (and utility-related equipment) and all recorded or unrecorded easements or licenses affecting the Demised Premises, which disclosure shall be made prior to the Effective Date.

Section 4.14. **Connection Rights**. Landlord hereby grants to Tenant, commencing with the Commencement Date and continuing during the Term hereof, the non-exclusive right to construct utility infrastructure and connections and to tie-into existing infrastructure and utility connections serving the Demised Premises as indicated on the Construction Plans, subject to the right of Landlord to construct above or below grade connections between the Station and any land or facilities, excluding the Project, owned or operated by Landlord or another governmental agency or entity. Landlord shall cooperate with Tenant as provided in Section 4.13 to effect the intent of this provision.

Section 4.15. **Art in Public Places**. Tenant shall at its sole cost expend one and one-half percent (1.5%) of the construction cost of improvements to facilities that remain under the ownership of the County for acquisition of Works of Art for and placement of same in the Public Areas of the Demised Premises. The term "Works of Art" as utilized in the preceding sentence shall mean landscaping, plazas, arcades, lighting, walkways, fountains, tile, courtyards, terraces, walkways, roof gardens, passive and active recreational areas, murals, special graphic presentations, amphitheaters, entertainment areas, gazebos, water features, other similar decorative features and facilities, and works of art. All works of art acquired and placed in the Public Areas of the Demised Premises shall meet, if applicable, the requirements of Miami-Dade County "Art in Public Places" policy.

Section 4.16. **Off-site Improvements**. Any off-site improvements required to be performed, paid for or contributed as a result of the development or redevelopment of the System or the performance of the Station Improvements shall be paid or contributed by Landlord. Any off-site improvements required to be paid or contributed as a result of Tenant's development of the Demised Premises shall be paid or contributed by Tenant or third parties to which Tenant delegates such responsibility.

Section 4.17. **Signage and Landscaping of Entrances; Vehicular Access**. Landlord agrees to cooperate with Tenant in the development of plans regarding entrances to the Demised Premises in order to achieve an aesthetic blend of landscaping and signage. All costs of developing such plans shall be paid by Tenant. Landlord further agrees to cooperate with Tenant and facilitate approval of the proposed vehicular access (a) from any Miami-Dade County right-of-way to and from the Land in the location depicted in the Proposal and any other location proposed by Tenant and approved by Landlord, and (b) from FDOT or the City of Miami with respect to any FDOT or City of Miami right-of-way abutting the Demised Premises.

Section 4.18. **Designation of Landlord's Representative**. The County Mayor or the County Mayor's designee shall have the power, authority and right, on behalf of Landlord, in its capacity as Landlord hereunder, and without any further resolution or action of the County Commission, to:

(a) review and approve documents, plans, applications, lease assignments and requests required or allowed by Tenant to be submitted to Landlord pursuant to this Article and this Lease, including without limitation the Master Covenants and any Parcel Declaration;

(b) consent to actions, events, and undertakings by Tenant for which consent is required by Landlord;

(c) make appointments of individuals or entities required to be appointed or designated by Landlord in this Lease;

(d) execute Confirmation of Date(s) Certificates, grant extensions of construction deadlines (including without limitation the Construction Phase Deadlines set forth in Schedule 3.3), execute non-disturbance agreements and issue estoppel statements as provided elsewhere in this Lease (whether in connection with this Lease, any Bifurcated Lease, any Sublease, any Space Lease, the Master Covenants, any Parcel Declaration, any Mortgage, any Mezzanine Financing, or otherwise);

(e) consent to (or join in) and execute any amendment or modification of that certain Covenant Running with the Land recorded in Official Records Book 27543, Page 637 of the Public Records of Miami-Dade County, Florida;

(f) execute on behalf of Miami-Dade County any and all consents, agreements, easements, applications or other documents, needed to comply with applicable regulatory procedures and secure permits or other approvals needed to accomplish the construction of any and all improvements in and refurbishments of the Demised Premises;

(g) execute any and all documents on behalf of Landlord necessary or convenient to the foregoing approvals, consents, appointments and agreements;

(h) execute on behalf of Miami-Dade County any Bifurcated Leases and any other agreements or instruments necessary to effectuate the bifurcation of this Lease as contemplated herein without the need for Board approval; and

(i) amend this Lease to correct any typographical or non-material errors or to address revisions or supplements to this Lease that may arise if Tenant undertakes a "for sale" condominium regime in connection with any portion of the Demised Premises (including any particular Phase).

The County Mayor or County Mayor's designee may only exercise the authority granted in this section consistent with the Project as outlined in this Lease and/or the Development Agreement, provided that (i) such exercise of authority shall be at no cost to Landlord other than its cost to review the proposed amendments, agreements, documents and other instruments or materials, and shall not impose additional obligations or liabilities or potential obligations or liabilities on Landlord beyond those set forth in this Lease or in the Development Agreement, and (ii) the form and provisions of such amendments, agreements, documents and other instruments or materials shall be acceptable to Landlord in its reasonable discretion.

Section 4.19. **Additional Work**. Landlord and Tenant hereby acknowledge, that if both parties hereto agree, that Landlord may contract for certain work or services to be provided by Tenant in the Station, appurtenance structures and/or structures or facilities in the adjacent Metrorail right-of-way, including but not limited to, construction and maintenance items. Such work shall be at the cost of Landlord and, if the parties hereto agree, may be paid in the form of Rent credit.

Section 4.20. **Adjustment of Demised Premises**. Tenant shall have the right from time to time, following Completion of Construction of any Improvements located within the air rights or subsurface rights portion of the Demised Premises located above and below the Station Land, to adjust and replace the description of such portions of the Demised Premises with actual legal descriptions of the Improvements prepared by a Florida licensed surveyor, which legal descriptions may include airspace or subsurface areas outside the actual location of Improvements, *inter alia*, to simplify the preparation of such legal descriptions given potential variations in the size and features of the Improvements, to accommodate potential settling of the Improvements, and to accommodate construction variations resulting from restoration and reconstruction after casualty. Tenant shall have the right from time to time to record notice in the Public Records of Miami-Dade County, Florida, of the actual location and legal description of such Improvements upon final determination thereof in accordance with this paragraph. Prior to recording, Tenant shall provide a copy of each proposed notice to Landlord for comment (which must be reasonable) as to form, and Landlord shall have a period of ten (10) days within which to provide such comments or request a reasonable period of additional time to provide such comments, failing which same shall be deemed approved. Following recordation of such notice(s), the Demised Premises shall be deemed modified as provided therein for purposes of this Lease.

ARTICLE 5

Payment of Taxes, Assessments

Section 5.1. **Tenant's Obligations for Impositions**. Tenant shall pay or cause to be paid, prior to their becoming delinquent, all Impositions, which at any time during the Term of

this Lease have been, or which may become, a lien on the Demised Premises or any part thereof; provided, however, that:

(a) If, by law, any Imposition (for which Tenant is liable hereunder) may be paid in installments (whether or not interest shall accrue on the unpaid balance of such Imposition), Tenant may, at its option, pay the same in installments, including any accrued interest on the unpaid balance of such Imposition, provided that Tenant shall pay those installments which are to become due and payable after the expiration of the Term of this Lease, but which relate to a fiscal period fully included in the Term of this Lease; and

(b) Any Imposition for which Tenant is liable hereunder relating to a fiscal period, a part of which period is included within the Term of this Lease and a part of which is included in a period of time after the expiration or termination of the Term of this Lease, shall be adjusted between Landlord and Tenant as of the expiration or termination of the Term of this Lease so that Tenant shall pay only that portion of such Imposition which is applicable to the period of time prior to expiration or termination of the Term of this Lease, and Landlord shall pay the remainder thereof if it is otherwise obligated to do so;

(c) Any Imposition relating to the period prior to the Commencement Date shall be the sole responsibility and obligation of Landlord;

(d) If Landlord transfers its interest in any portion of the Demised Premises and by virtue of such transfer, the Demised Premises becomes subject to ad valorem taxes which were not applicable to the Demised Premises or any portion thereof (such as the Land) prior to such transfer, or if prior to or as a result of such transfer, the Demised Premises had become or becomes subject to ad valorem taxes which are not an Imposition, then from and after such transfer the new owner of the Demised Premises, and not Tenant, shall be liable for and shall pay such taxes; and

(e) Upon the request of Tenant, Landlord shall cooperate with Tenant from time to time as needed for Tenant to receive (i) any sales tax exemptions provided under any applicable Laws and Ordinances, (ii) any ad valorem tax exemption applicable to real property owned by a County under any applicable Laws and Ordinances, and (iii) any benefits to which Tenant may be entitled, including but not limited to any entitlements as a result of the Project being in an enterprise zone, empowerment zone and/or rapid transit zone.

Section 5.2. Contesting Impositions.

(a) Tenant shall have the right to contest the amount or validity, in whole or in part, of any Imposition, for which Tenant is or is claimed to be liable, by appropriate proceedings diligently conducted in good faith but only after payment of such Imposition, unless such payment or payment thereof under protest would operate as a bar to such contest or interfere materially with the prosecution thereof, in which event,

notwithstanding the provisions of Section 5.1 herein, Tenant may postpone or defer payment of such Imposition if:

(i) Neither the Demised Premises nor any part thereof would by reason of such postponement or deferment be in danger of being forfeited or lost; and

(ii) Upon the termination of any such proceedings, Tenant shall pay the amount of such Imposition or part thereof, if any, as finally determined in such proceedings, together with any costs, fees, including counsel fees, interest, penalties and any other liability in connection therewith.

(b) Landlord shall not be required to join in any proceedings referred to in this Section 5.2 unless the provisions of any Laws and Ordinances, at the time in effect, shall require that Landlord is a necessary party to such proceedings, in which event Landlord shall participate in such proceedings at Tenant's cost.

ARTICLE 6

Surrender

Section 6.1. **Surrender of Demised Premises**. Tenant, on the last day of the Term, or upon any earlier termination of this Lease, shall surrender and deliver up the Demised Premises to the possession and use of Landlord without delay and, subject to the provisions of Article 16 and Article 19 herein, with the Buildings and Improvements in their then "as is" condition and subject to reasonable wear and tear, acts of God, casualties and other events in the nature of an Unavoidable Delay excepted.

Section 6.2. **Removal of Personal Property or Fixtures**. Where furnished by or at the expense of Tenant, Sublessee, or any Space Lessee, or secured by a lien held by either the owner or a lender financing same, signs, furniture, furnishings, movable trade fixtures, business equipment and alterations and/or other similar items may be removed by Tenant, or, if approved by Tenant, by such Sublessee, Space Lessee or lien holder at, or prior to, the termination or expiration of this Lease; provided however, that if the removal thereof will damage a Building or necessitate changes in or repairs to a Building, Tenant shall repair or restore (or cause to be repaired or restored) the Building to a condition substantially similar to its condition immediately preceding the removal of such furniture, furnishings, movable trade fixtures and business equipment, or pay or cause to be paid to Landlord the reasonable cost of repairing any damage arising from such removal.

Section 6.3. **Rights to Personal Property After Termination or Surrender**. Any personal property of Tenant which shall remain in the Demised Premises after the fifteenth (15th) day following the termination or expiration of this Lease and the removal of Tenant from the Building, may, at the option of Landlord, be deemed to have been abandoned by Tenant and, unless any interest therein is claimed by a Lender, said personal property may be retained by Landlord as its property or be disposed of, without accountability, in such manner as Landlord may see fit.

Section 6.4. **Survival**. The provisions of this Article 6 shall survive any termination or expiration of this Lease.

ARTICLE 7

Insurance and Indemnification

Section 7.1. **Insurance**. Landlord and Tenant hereby agree that the terms and provisions governing the insurance required pursuant to this Lease are contained in Schedule 7 hereto, which is hereby incorporated herein by reference.

Section 7.2. **Indemnification**.

(a) Subject to the terms of Section 7.3, Tenant shall indemnify and hold harmless Landlord and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including reasonable attorneys' fees and costs of defense, which Landlord or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature (herein, "claims") arising out of, relating to or resulting from the performance of this Lease by Tenant or its employees, agents, officers, partners, members, principals or contractors; provided, however, that this indemnity shall not extend to or cover any claims, losses or damages arising out of the negligence or willful misconduct of Landlord or its officers, employees, agents, contractors or instrumentalities or any liability of Landlord to third parties existing at or before the Commencement Date. Tenant shall pay all claims, losses and damages in connection with any matters indemnified hereunder, and shall investigate and defend all claims, suits or actions of any kind or nature in the name of Landlord, where applicable, with respect to such matters, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. Subject to the terms of Section 7.3, Tenant expressly understands and agrees that any insurance protection required by this Lease or otherwise provided by Tenant shall in no way limit the responsibility to indemnify, keep and save harmless and defend Landlord or its officers, employees, agents and instrumentalities as herein provided.

(b) Except as provided in Section 768.28 of the Florida Statutes, Landlord shall indemnify and hold harmless Tenant and its employees, agents, officers, partners, members and principals from any and all liability, losses or damages, including reasonable attorneys' fees and costs of defense, which Tenant or its employees, agents, officers, partners, members or principals may incur as a result of claims arising out of, relating to or resulting from the performance of this Lease by Landlord or its employees, agents, officers, contractors or instrumentalities; provided, however, that this indemnity shall not extend to or cover any claims, losses or damages arising out of the negligence or willful misconduct of Tenant or its employees, agents, officers, partners, members, principals or contractors. Landlord shall pay all claims, losses and damages in connection with any matters indemnified hereunder, and shall investigate and defend all claims, suits or actions of any kind or nature in the name of Tenant, where applicable, with respect to such matters, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. Landlord expressly understands

and agrees that any insurance protection required by this Lease or otherwise provided by Landlord shall in no way limit the responsibility to indemnify, keep and save harmless and defend Tenant or its employees, agents, officers, partners, members and principals as herein provided.

Section 7.3. **Waiver of Subrogation**. Tenant waives all rights to recover against Landlord, its employees, agents, officers, contractors or instrumentalities, for any claims, losses or damages arising from any cause covered by property insurance required to be carried by Tenant hereunder. Tenant shall cause its insurer(s) to issue appropriate waiver of subrogation rights endorsements to all such policies of insurance carried by Tenant with respect to the Demised Premises. Landlord waives all rights to recover against Tenant, its employees, agents, officers, partners, members, principals or contractors, for any claims, losses or damages arising from any cause covered by property insurance (irrespective of whether the insurance is carried by Tenant or Landlord). Landlord shall cause its insurer(s) to issue appropriate waiver of subrogation rights endorsements in favor of Tenant to all such policies of insurance carried by Landlord in connection with the Station, System and/or the Demised Premises. Any self-insurance program of Landlord shall be deemed to include a full waiver of subrogation consistent with this Section.

ARTICLE 8

Operation

Section 8.1. **Control of Demised Premises**. Landlord hereby agrees that, subject to any express limitations imposed by the terms of this Lease, Tenant shall be free to perform and exercise its rights under this Lease and shall have exclusive control and authority to develop, direct, operate, lease and manage the Demised Premises, including with respect to the Project and all Phases thereof, and the rental or sale of the Buildings and Improvements. Without limiting the foregoing, Tenant is hereby granted the exclusive right to bifurcate this Lease as contemplated in Section 17.2 and to enter into any Sublease, Space Lease, license or similar grant for any part or all of the Buildings and/or Improvements. Tenant covenants and agrees to use reasonable efforts to operate the Demised Premises consistent with prudent business practices in order for the Gross Revenue generated by the Demised Premises to be reasonably comparable to that generated in comparable facilities in Miami-Dade County which are subject to similar uses and restrictions, adjusted for the location of the Demised Premises relative to such other facilities; provided, however, that nothing contained herein shall limit or restrict Tenant's right to limit access to or close all or any portion of the Demised Premises on a temporary basis (i) when necessary to perform repairs or address events of Unavoidable Delay, (ii) to address appropriate security measures, (iii) in the case of an emergency, or (iv) for other reasonable closures that are necessary in Tenant's reasonable judgment and approved by Landlord.

Section 8.2. **Non-Interference**. Landlord and Tenant hereby mutually agree not to interfere with the free flow of pedestrian or vehicular traffic to and from the Public Areas and to and from the Station. They further agree that, except for those structures reasonably necessary for security and safety purposes, no fence, or any other structure of any kind (except as may be specifically permitted or maintained under the provisions of this Lease, indicated on approved Construction Plans or otherwise mutually agreed upon in writing) shall be placed, kept,

permitted or maintained in such fashion as to materially and adversely interfere with pedestrian or vehicular traffic to and from the Public Areas and to and from the Station. The foregoing shall not prohibit Tenant from closing the Buildings and denying access to the public at such times and in such manner as deemed necessary by Tenant during the development or construction of any portion of the Buildings, the repair and maintenance of the Demised Premises or during the operation of the Demised Premises (including without limitation under the circumstances set forth in Section 8.1), provided such closing does not materially and adversely interfere with (a) the public's reasonable access to the Station, or (b) Landlord's customary operation of the System, unless Tenant obtains Landlord's prior written consent to the extent required by Section 4.12.

Section 8.3. **Repair and Relocation of Utilities**. Landlord and Tenant hereby agree to maintain and repair, and each party is given the right to replace, relocate, and remove, as necessary, utility facilities within the Demised Premises required for the development and construction of each Phase of the Project, or for the operation of the Demised Premises or of the System and all existing and future improvements, provided:

(a) Such activity does not unreasonably interfere with the other party's operations;

(b) All costs of such activities are promptly paid by the party causing such activity to be undertaken;

(c) Each of the utility facilities and the Demised Premises are thereafter restored to their former state and impacts to any Improvements are addressed and corrected; and

(d) Each party complies with the provisions of all Permits and licenses which have been issued and are affected by such repair and relocation.

Landlord agrees to cooperate with Tenant in relocating existing utility lines and facilities on or adjacent to the Demised Premises which need to be relocated to develop or improve the Project, including reasonable use of existing easements benefiting the Land and adjoining rights of way to the Land, and the location and stubbing of utility connections leading to the Demised Premises in a manner consistent with Tenant's Construction Plans. Such relocation of existing utilities shall be at the sole expense of Tenant.

Section 8.4. **Rights to Erect Signs; Revenues Therefrom**.

(a) Landlord hereby agrees that, to the extent permitted by law, Tenant shall have the exclusive right, during the Term of this Lease, without Landlord's consent, to place, erect, maintain and operate, or cause, allow and control the placement, erection, maintenance and operation of any signs or advertisements in accordance with subparagraph (b) below, in or on the Demised Premises. Tenant shall be responsible for obtaining any and all Permits and licenses which may be required from time to time by any governmental authority for such signs and advertisements, and Landlord agrees to

execute any consents reasonably necessary or required by any governmental authority as part of Tenant's application for such Permits or licenses.

(b) The following types of signs and advertising shall be allowed, to the extent allowed by law, in the area described in subparagraph (a) above:

(i) Signs or advertisements identifying the Buildings and Improvements to the Demised Premises and in particular office, hotel, residential, retail, and/or commercial uses therein or otherwise customary for mixed-use developments, and any "branding" graphics developed by Tenant in connection with the Project, as well as signs indicating security features or rules and regulations as may pertain to any Improvements;

(ii) Signs or advertisements offering all or any portion of the Demised Premises for sale or rent; and

(iii) Signs or advertisements advertising or identifying any product, company, or service operating in the Demised Premises, or otherwise related thereto, including without limitation signage requested or desired by a Lender or any other Person providing financing or any developer, contractor, subcontractor, supplier or joint venture participating in the Project or any portion thereof.

(c) Tenant shall have the right to remove any signs which, from time to time, may have become obsolete, unfit for use or which are no longer useful, necessary or profitable in the conduct of Tenant's business, or in the occupancy and enjoyment of the Demised Premises by Tenant, or any Sublessees or Space Lessees.

(d) As used in this Lease, "sign(s)" shall be deemed to include any display of characters, letters, illustrations, logos or any ornamentation designed or used as an advertisement or to indicate direction, irrespective of whether the same be temporary or permanent, electrical, illuminated, stationary or otherwise.

(e) Tenant shall be entitled but not required to rent or collect a fee for the display or erection of signs and advertisements; provided, however that such rent or fees, if any, shall be a part of Gross Revenue for purposes of this Lease.

Section 8.5. **Landlord's Signs Upon Demised Premises.** System-wide informational graphics shall be allowed to be placed within the Demised Premises at the sole expense of Landlord and at locations and in sizes mutually agreed upon by Landlord and Tenant. Any such signage shall have a neat and consistent look from a graphic design perspective with other Project-wide signage system unless otherwise agreed by Tenant.

Section 8.6. **Tenants' Signs in Station.** Tenant shall be permitted to place directional signs within the Station at the sole expense of Tenant and at locations and in sizes mutually agreed to by Landlord and Tenant.

ARTICLE 9

Repairs and Maintenance of the Premises

Section 9.1. **Tenant Repairs and Maintenance.** Throughout the Term of this Lease, Tenant, at its sole cost and expense, shall keep the Demised Premises in good order and condition, and make all necessary repairs thereto. The term "repairs" shall include all replacements, renewals, alterations, additions and betterments deemed necessary by Tenant. All repairs made by Tenant shall be at least substantially similar in quality and class to the original work, ordinary wear and tear and loss by fire or other casualty excepted. Subject to Article 16, Tenant shall keep and maintain all portions of the Demised Premises and all Improvements in reasonable order and operating condition, reasonably free of dirt, rubbish, graffiti, and unlawful obstructions. Landlord, at its option, and after thirty (30) days written notice to Tenant, may perform any maintenance or repairs required of Tenant hereunder which have not been performed by Tenant following the notice described above, and may seek reimbursement for reasonable cost and expenses thereof from Tenant. Tenant shall have no obligation with respect to the maintenance and repair of the Station or System.

Section 9.2. **Landlord Repairs and Maintenance.** Landlord shall, at its sole cost and expense, except for matters that are the express responsibility of Tenant under the Development Agreement, (a) keep and maintain in good order and condition the Station and Station Land, as improved from time to time, together with its site and any other improvement constructed thereon, (b) make all necessary repairs thereto, (c) maintain the Station, Station Land and related improvements in reasonable order and operating condition, reasonably free of dirt, rubbish, graffiti and unlawful obstructions and in a manner that is consistent with the level of service provided at other stations throughout the System, and (d) ensure that there is no material or net decrease in the levels of maintenance and security allocated to the Station, Station Land and related improvements after the Commencement Date. The term "repairs" shall include all replacements, alterations, additions and betterments deemed necessary by Landlord or as required by applicable Laws and Ordinances. All repairs made by Landlord shall be substantially similar in quality and class to the original work, ordinary wear and tear and loss by fire or other casualty excepted. Tenant, at its option, and after thirty (30) days written notice to Landlord, may perform any maintenance or repairs required of Landlord hereunder which have not been performed by Landlord following the notice described above, and Tenant shall be entitled to receive from Landlord all of its reasonable costs and expenses incurred in connection therewith. Landlord, except as otherwise provided in this Lease, shall have no obligation with respect to the maintenance and repair of the Demised Premises.

Section 9.3. **Maintenance of Station Parking Spaces.** Pursuant to the Development Agreement, Tenant has agreed to replace certain of DTPW's existing parking spaces with the Station Parking Spaces and to improve certain of the Public Areas as part of the Station Improvements. Tenant shall be responsible for maintaining and repairing the Station Parking Spaces, Public Areas located within the Demised Premises and certain other portions of the Station Improvements if, as and to the extent expressly provided in the Development Agreement, but shall have no responsibility for, *inter alia*, maintenance and repair of parking spaces installed or refurbished by Tenant but not located within the Demised Premises as provided in the Development Agreement. The Development Agreement shall govern the

maintenance and repair responsibilities of the Parties with respect to the Station Improvements located outside the Demised Premises. With regard to the Station Parking Spaces, Landlord shall contribute and pay to Tenant its pro rata share of all costs and expenses incurred by Tenant in connection with the ownership, operation, maintenance, repair and/or replacement of the parking facilities in which such Station Parking Spaces are located, including without limitation the cost of maintenance and service agreements, Impositions, insurance premiums, utility costs, assessments pursuant to the Master Covenants and/or any Parcel Declaration, and other customary expenses of comparable parking facilities. Landlord shall pay such contribution as and when billed therefor by Tenant, which shall be in a lump sum payment or on a monthly, quarterly or other periodic basis as mutually agreed to by Tenant and Landlord, as such improvements are substantially completed and/or available for use (which may be on a phased basis). The use of the Station Parking Spaces may be shared upon mutual agreement of the Parties. Tenant shall maintain records showing its actual receipts and expenditures with respect to the ownership, operation, maintenance, repair and/or replacement of the Station Parking Spaces, which shall be available for inspection from time to time (but no more than once per year) by Landlord during business hours, on a date and at a time mutually agreed to by the Parties, to verify such expenditures. Any inspection of Tenant's records applicable to any calendar year shall be conducted by Landlord in the next succeeding calendar year (or shall be deemed waived). At the request of either party, in conjunction with the plan approval process for the Phase that includes the Station Parking Spaces (or at any time thereafter), Landlord and Tenant shall enter into a separate agreement with respect to the use and maintenance of the Station Parking Spaces, and the payment of the costs associated therewith, the terms and provisions of which shall be consistent with and supersede this Section (to the extent such agreement and this Section address the same subject matter). The Parties shall negotiate such agreement in good faith and with reasonable diligence, with the common objective of finalizing such agreement within sixty (60) following the initial draft thereof. Following substantial completion of the Station Parking Spaces, at Tenant's request, Landlord and Tenant shall enter into (i) an amendment to this Lease releasing the Station Parking Spaces from the Demised Premises, or (ii) a sublease pursuant to which Tenant shall sublease to Landlord, and Landlord shall sublease from Tenant, all of the Station Parking Spaces, in each case pursuant to an amendment or sublease (as applicable) in form and content mutually acceptable to the Parties, provided that Tenant shall remain responsible for the maintenance of the Station Parking Spaces and Landlord shall continue to pay its pro rata share of the cost thereof as provided herein or in any separate agreement governing the use, maintenance and cost sharing arrangement for the Station Parking Agreement (notwithstanding such release or sublease). If the Phase that includes the Station Parking Spaces is released from this Lease (through a partial assignment and bifurcation of this Lease or otherwise), the provisions of this Section relating to the Station Parking Spaces shall no longer apply.

ARTICLE 10

Compliance with Laws and Ordinances

Section 10.1. **Compliance by Tenant**. Throughout the Term of this Lease, Tenant, at Tenant's sole cost and expense, shall promptly comply in all material respects with all Laws and Ordinances applicable to the Demised Premises or the Improvements, provided such Laws and Ordinances apply to similar properties located in Miami-Dade County or the City of Miami as

the Demised Premises generally, and is not specific to the Demised Premises or similar leases such as this Lease. To the extent that Tenant's compliance shall require the cooperation and participation of Landlord, Landlord agrees to use its best efforts to cooperate and participate in accordance with the Joint Use Policy for Joint Development Projects, as set forth in County Commission Resolution R-1443A-81, adopted September 28, 1981.

Section 10.2. **Contest by Tenant**. Tenant shall have the right, after prior written notice to Landlord, to contest the validity or application of any Law or Ordinance by appropriate legal proceedings diligently conducted in good faith, in the name of Tenant without cost or expense to Landlord, except as may be required in Landlord's capacity as a party adverse to Tenant in such contest. If counsel is required, the same shall be selected and paid by Tenant, except to the extent that Landlord is an adverse party to Tenant, in which case Tenant shall have no obligation to pay for Landlord's counsel. Landlord hereby agrees to execute and deliver any necessary papers, affidavits, forms or other such documents necessary for Tenant to confirm or acquire status to contest the validity or application of any Laws and Ordinances, which instrument shall be subject to the reasonable approval of counsel for Landlord, which approval shall not be unreasonably withheld or delayed. Landlord shall not be required to join in any such contest unless its joinder is required for a contest to be valid.

ARTICLE 11

Changes and Alterations to Buildings by Tenant

Section 11.1. **Tenant's Right**. Tenant, with Landlord's approval, shall have the right at any time and from time to time during the Term of this Lease, at its sole cost and expense, to expand, rebuild, alter and/or reconstruct the Buildings and other Improvements and to raze the Buildings provided any such razing shall be preliminary to and in connection with the rebuilding of a new Building or Buildings and provided further that unless waived by Landlord:

(a) the method, schedule and Plans and Specifications for such razing and rebuilding of a new Building or Buildings are submitted to Landlord for its reasonable approval at least one hundred eighty (180) days prior to the commencement of any razing, unless action is required to comply with Laws and Ordinances (such as building and safety codes) or to address emergency circumstances, in which case Tenant will provide Landlord with prior notice that is reasonable under the circumstances;

(b) the rebuilding, alteration, reconstruction or razing does not violate any other provisions of this Lease;

(c) the rebuilding, alteration, reconstruction or razing does not at any time change or adversely affect the Station entrance, or any access thereto, except as may be required by Laws and Ordinances or agreed to by Landlord; and

(d) Tenant shall obtain all approvals, Permits and authorizations required under applicable Laws and Ordinances.

Section 11.2. **No Approval Required**. Nothing contained in Section 11.1 is intended to apply to any normal and periodic maintenance, operation, repair or replacement of the

Buildings, any alterations, repairs, replacements or restorations made pursuant to Article 16, or any non-material alterations made to the Buildings or other Improvements. In addition, Landlord's approval shall not be required for the following changes and alterations to the Buildings and/or Improvements, anything to the contrary herein notwithstanding:

(a) Any modifications, construction, replacements or repairs in the nature of "tenant work" or "tenant improvements", as such terms are customarily used;

(b) Any interior reconfigurations of any of the Buildings or Improvements;

(c) Any additions, modifications, replacements or repairs to signage permitted under Section 8.4;

(d) Any additions, improvements, modifications, replacements or repairs permitted under any other provision of this Lease without Landlord's approval.

ARTICLE 12

Discharge of Obligations

Section 12.1. **Tenant's Duty**. During the Term of this Lease, except for Leasehold Mortgages, Subleasehold Mortgages, Mezzanine Financing or as otherwise allowed under this Lease, Tenant will discharge or cause to be discharged any and all obligations incurred by Tenant which give rise to any liens on the Demised Premises, it being understood and agreed that Tenant shall have the right to withhold any payment (or to transfer any such lien to a bond in accordance with applicable Florida law) so long as it is in good faith disputing liability therefor or the amount thereof, provided (a) such contest of liability or amount operates as a stay of all sale, entry, foreclosure, or other collection proceedings in regard to such obligations, or disputed payments are escrowed while the parties negotiate the dispute, and (b) such action does not subject Landlord to any expense or liability (or Tenant covers the cost thereof). In the event Tenant withholds any payment as described herein, it shall give written notice to Landlord of such action and the basis therefor.

Section 12.2. **Landlord's Duty**. During the Term of this Lease, Landlord will discharge any and all obligations incurred by Landlord which give rise to any liens on the Station or the Demised Premises, it being understood and agreed that Landlord shall have the right to withhold any payment so long as it is in good faith disputing liability therefor or the amount thereof, provided such contest of liability or amount operates as a stay of all sale, entry, foreclosure, or other collection proceedings in regard to such obligations, and such action does not subject Tenant to any expense or liability. In the event Landlord withholds any payment as described herein, it shall give written notice to Tenant of such action and the basis therefor.

ARTICLE 13

Use of Premises

Section 13.1. **Use of Demised Premises by Tenant**.

(a) Tenant shall not knowingly permit the Demised Premises to be used for the following:

(i) any unlawful or illegal business, use or purpose, or for any business, use or purpose which is extra-hazardous or constitutes a legal nuisance of any kind (public or private); or

(ii) any purpose which violates the approvals for the Project of applicable government authorities.

(b) No covenant, agreement, lease, Sublease, Space Lease, Leasehold Mortgage, conveyance or other instrument shall be effected or executed by Tenant, or any of its successors or assigns, whereby the Demised Premises or any portion thereof is restricted by Tenant, or any successor in interest, upon the basis of race, color, religion, sexual orientation, sex or national origin in the sale, lease, use or occupancy thereof. Tenant shall comply with all applicable state and local laws, in effect from time to time, prohibiting discrimination or segregation by reason of race, color, religion, sexual orientation, sex, or national origin in the sale, lease or occupancy of the Demised Premises.

(c) Except as otherwise specified, Tenant may use the Demised Premises for any lawful purpose or use authorized by this Lease and allowed under the Laws and Ordinances establishing the zoning for the Demised Premises (provided Tenant otherwise complies with the terms and conditions hereof).

Section 13.2. **Dangerous Liquids and Materials**. Tenant shall not knowingly permit its Sublessees or other person or entity in contractual privity with Tenant to carry flammable or combustible liquids into or onto the Demised Premises during or following completion of construction except as such substances are used in the ordinary course of business, and shall prohibit the storage or manufacture of any flammable or combustible liquid or dangerous or explosive materials in or on the Demised Premises, provided that this restriction shall not apply to prevent the following:

(a) the entry and parking of motor vehicles carrying flammable or combustible liquids solely for the purpose of their own propulsion,

(b) the maintaining of retail inventories for sale to retail customers of motor oils and similar types of products,

(c) chemicals, fertilizers and other products customary for landscaping projects comparable to the Project (or any portion thereof),

(d) the use of air coolant, normal cleaning and maintenance liquids and substances and/or other supplies customarily used in comparable Buildings, Improvements or projects (or any portion thereof), or

(e) their use in construction of Buildings or Improvements on the Demised Premises.

Section 13.3. **Tenant's Duty and Landlord's Right of Enforcement Against Tenant and Successor and Assignee**. Tenant, promptly upon learning of the occurrence of actions prohibited by Section 13.1 and Section 13.2; shall take reasonable steps to terminate same, including the bringing of a suit in Circuit Court, if necessary, but not the taking or defending of any appeal therefrom. In the event Tenant does not promptly take steps to terminate a prohibited action, Landlord may seek appropriate injunctive relief against the party or parties actually engaged in the prohibited action in the Circuit Court of Miami-Dade County without being required to prove or establish that Landlord has inadequate remedies at law. The provisions of this Section shall be deemed automatically included in all Leasehold Mortgages and any other conveyances, transfers and assignments under this Lease, and any transferee who accepts such Leasehold Mortgage or any other conveyance, transfer or assignment hereunder shall be deemed by such acceptance to adopt, ratify, confirm and consent to the provisions of Section 13.1, 13.2 and 13.3 and to Landlord's rights to obtain the injunctive relief specified therein.

Section 13.4. **Designation of Buildings by Name**. Tenant shall have the right and privilege of designating name(s) by which the Buildings, the Project or any Phase thereof shall be known to the general public.

ARTICLE 14

Entry on Premises by Landlord

Section 14.1. **Inspection by Landlord of Demised Premises**. Landlord and its authorized representatives, upon reasonable advance notice and in the presence of a representative of Tenant, shall have the right to enter the Demised Premises at reasonable times during normal business hours for the purpose of inspecting the same to insure itself of compliance with the provisions of this Lease.

Section 14.2. **Limitations on Inspection**. Landlord, in its exercise of the right of entry granted to it in Section 14.1 herein, shall (a) not unreasonably disturb the occupancy of Tenant, Sublessees or Space Lessees nor disturb their business activities; and (b) with respect to any hotel, residential, office and/or other Sublessee or Space Lessee, shall comply with all Laws and Ordinances governing or applicable to Landlord with respect to such uses and premises.

ARTICLE 15

Limitation of Liability

Section 15.1. **Limitation of Liability of Landlord**. Landlord shall not be liable to Tenant for any incidental or consequential loss or damage whatsoever arising from the rights of Landlord hereunder. Landlord has disclosed to Tenant that certain particles and sediments result from the normal operation of the System and that damage resulting from such particles and sediments as a result of the normal operation of the System shall be deemed "incidental", provided that Landlord maintains the System and Station in accordance with the terms of this Lease and the Development Agreement.

Section 15.2. **Limitation of Liability of Tenant**. Tenant shall not be liable to Landlord for any incidental or consequential loss or damage whatsoever arising from rights of Tenant hereunder.

ARTICLE 16

Damage and Destruction

Section 16.1. **Tenant's Duty to Restore**. If, at any time during the Term of this Lease, the Demised Premises or any part thereof shall be damaged or destroyed by fire or other casualty covered within the insurance designation of fire and extended coverage as same is customarily written in the State of Florida, Tenant, at its sole cost and expense, if so requested by Landlord or elected by Tenant, and provided that the insurance proceeds related to such casualty are made available to Tenant in a sufficient net amount for use in connection therewith, shall repair, alter, restore, replace or rebuild the same as nearly as reasonably possible to its value, conditions and character which existed immediately prior to such damage or destruction, subject to such changes or alterations as Tenant may elect to make in conformity with the provisions of this Lease and modern construction techniques and methods. Provided Tenant otherwise complies with the terms of this Lease, Tenant may construct Buildings and Improvements which are larger, smaller or different in design, function or use and which represent a use comparable to prior use or compatible with uses of property in the immediate geographical area, to the extent such construction and improvement are allowed by Article 4 or Article 11 of this Lease and by applicable Laws and Ordinances. Such repairs, alterations, restoration, replacements or rebuilding, including such changes and alterations as aforementioned and including temporary repairs for the protection of other property pending the completion of any thereof, are sometimes referred to in this Article 16 as the "Work." However, (a) in the event insurance proceeds related to such casualty are not made available to Tenant for use in connection therewith, or are deemed insufficient by Tenant, and Tenant elects not to rebuild, or (b) in the event Tenant elects to demolish any of the damaged Buildings and Improvements without reconstruction, Tenant shall promptly remove all debris and place the site in a safe condition (using any available insurance proceeds for such purpose), and Landlord and Tenant shall each have the right to terminate this Lease as to such Phase or Phases which suffered the casualty, whereupon this Lease shall terminate as to such Phase(s) and Minimum Rent shall be partially abated on an equitable basis based on the relationship of the Gross Revenue generated by such Phase(s) to all Gross Revenue generated from the Demised Premises. If this Lease is terminated with respect to any Phase prior to Completion of Construction of such Phase, Penalty Rent (if applicable) for such Phase shall cease as of the date of such termination.

Section 16.2. **Landlord's Duty to Repair and Rebuild Station**. If, at any time during the Term of this Lease, the Station (or any part thereof) or any improvements to the Station Land shall be damaged or destroyed by fire or other casualty covered within the insurance designation of fire and extended coverage as same is customarily written in the State of Florida (irrespective of whether Landlord actually carries such insurance), then, except as otherwise expressly provided in the Development Agreement (and subject to the terms thereof), Landlord, at its sole cost and expense, shall repair or rebuild a station of a design, size and capacity as is required by Landlord's transit needs at the time of such repair or rebuilding;

subject, however, to the terms of Section 3.10, which, *inter alia*, provides for Rent reductions and Tenant termination rights under certain circumstances.

Section 16.3. **Interrelationship of Lease Sections**. Except as otherwise provided in this Article 16, the conditions under which any Work is to be performed and the method of proceeding with and performing the same shall be governed by all the provisions of Article 4 and Article 11 herein, depending on the nature of the Work in question.

Section 16.4. **Loss Payees of Tenant-Maintained Property Insurance**. With respect to all policies of property insurance required to be maintained by Tenant in accordance with Schedule 7 attached,

(a) Landlord shall be named as an additional insured as its interest may appear, and

(b) the loss thereunder shall be payable to Tenant, Landlord and to any Lender under a standard mortgage endorsement, provided that the rights of Landlord shall be subject and subordinate to the rights of any Lender thereunder. Tenant shall have the sole right and authority to adjust and/or settle any insurance claims, subject to the rights of any Lender. Tenant shall be entitled to use the proceeds of any fire or other casualty insurance for any loss which shall occur during the Term of this Lease for repair or rebuilding. If all the insurance proceeds are in fact made available to Tenant and such insurance proceeds received by Tenant or any Lender are insufficient to pay the entire cost of the Work, but Tenant has nevertheless elected to restore the Improvements, Tenant shall supply the amount of such deficiency, which in the year of payment or in the year immediately prior to or following the payment, at Tenant's option, shall act to reduce Gross Revenue by a like amount. Any proceeds remaining after completion of the Work under this Article shall be paid to Tenant, subject to the rights of any Lender.

Section 16.5. **Repairs Affecting Station or Demised Premises**. Before beginning any repairs or rebuilding, or letting any contracts in connection therewith, required by any damage to or destruction of the Demised Premises which adversely affects the Station entrance, any damage to or destruction of the Station which adversely affects the entrance to the Demised Premises, Tenant or Landlord, as the case may be, shall submit for the other's approval (which approval shall not be unreasonably withheld, conditioned or delayed), Construction Plans for such repairs or rebuilding. Any such repairs and rebuilding shall be completed free and clear of liens subject to the provisions of Article 12 herein, except to the extent they are subject to Leasehold Mortgages or Subleasehold Mortgages.

Section 16.6. **Abatement of Rent**. Except as otherwise set forth in this Lease, Tenant shall not be entitled to abatement, allowance, reduction or suspension of any Rent or other payments due to Landlord under this Lease unless caused by casualty loss or by the negligence or acts or omissions of Landlord and which loss causes disruption of Tenant's business, in either of which events Minimum Rent (and Penalty Rent, if applicable) attributable to such partially or totally destroyed portions of the Demised Premises shall be abated, beginning on the date of such casualty and continuing for the period necessary to reconstruct the Demised Premises rendered untenantable; provided that:

(a) the proper documentation is submitted to the County Mayor or the County Mayor's designee (acting on behalf of Landlord) or the DTPW Director in connection with the relevant Work, and

(b) any proceeds of business interruption insurance received by Tenant are included in the calculation of Gross Revenue.

Except as otherwise provided in this Lease, no such damage or destruction shall release Tenant of or from any other obligation imposed upon Tenant under this Lease.

Section 16.7. Termination of Lease for Certain Destruction Occurring During Last Five Years of Lease Term. Notwithstanding anything to the contrary contained herein, in the event that the Demised Premises or any part thereof shall be damaged or destroyed by fire or other casualty during the last five (5) years of the Term of this Lease or the last five (5) years of any renewal Term and the estimated cost for repair and restoration exceeds an amount equal to five percent (5%) of the then-current Fair Market Value of the Project or any affected Phase (as determined by an appraisal secured by Tenant and/or Landlord), then Tenant shall have the right to terminate this Lease and its obligations hereunder (in whole or in part, as to the affected Phase, as applicable) by giving written notice to Landlord within six (6) months after such damage or destruction. In such event, (a) this Lease shall terminate (in whole or in part, as to the affected Phase, as applicable) fifteen (15) days following Landlord's receipt of notice of casualty, and (b) the obligations of Tenant to pay Rent under this Lease shall be cease as of the date of termination, provided that if this Lease is terminated in part only with respect to any Phase(s), Minimum Rent shall be partially abated on an equitable basis based on the relationship of the Gross Revenue generated by such Phase(s) to all Gross Revenue generated from the Demised Premises (and the Rent abatement provisions under Section 16.6 shall apply to the other Phases, if applicable). In the event of any termination hereunder, the property insurance proceeds for the damaged Buildings and business interruption insurance proceeds shall be paid to Landlord and Lenders as their respective interests may appear, subject to the provisions of Section 16.4 (which provide that Landlord's rights are subject and subordinate to the rights of any Lender).

ARTICLE 17

Transfers and Assignment, Lease Bifurcation, Integrated Developments, Subleasing, Estoppel Certificates and Other Interests in Demised Premises

Section 17.1. Right to Transfer Leasehold. Provided no Event of Default by Tenant exists under this Lease, Tenant shall have the right and privilege to sell, assign or otherwise transfer all or any portion of its rights under this Lease from time to time, to such other firms, corporations, general or limited partnerships, limited liability companies, unincorporated associations, joint ventures, estates, trusts, any Federal, State, County or Municipal government bureau, department or agency thereof, or any other entities or Persons as Tenant shall select, upon notice to Landlord (but without Landlord's consent); provided, however, that if Tenant requests Landlord to release Tenant from its obligations under this Lease in connection with any transfer, Tenant shall obtain the written consent of Landlord, through the County Mayor or the County Mayor's designee, both as to the proposed transfer and the proposed transferee, but only

if the proposed transferee is not a Permitted Transferee; it being expressly agreed that Tenant may also effectuate a transfer to a Permitted Transferee upon notice to Landlord (but without Landlord's consent). The following provisions shall apply to transfers hereunder (as the context dictates):

(a) With respect to a transfer (i) in which Tenant will remain liable under this Lease with respect to the portion of the Demised Premises transferred, or (ii) to a Permitted Transferee, Tenant shall provide written notice to Landlord of such transfer, which notice shall be accompanied by copies of the proposed assignment and/or transfer documents (including the Bifurcated Lease, if applicable). With respect to any other transfer, Tenant shall provide written notice to Landlord of such proposed transfer, which notice shall include a request that Tenant be released from liability and be accompanied by copies of the proposed assignment and/or transfer documents (including the Bifurcated Lease, if applicable), the latest financial statement (audited, if available) of the proposed transferee and a summary of the proposed transferee's prior experience in developing, managing and/or operating real estate developments (as applicable) similar to the portion of the Project that is the subject of the transfer. The assignment and/or transfer documents (including the Bifurcated Lease, if applicable) shall specify the allocation, if any, of the Minimum Rent, Penalty Rent, Participation Rent and any other payments under this Lease to be paid to Landlord by the transferee. With respect to any transfer that requires Landlord's consent hereunder, Landlord shall not unreasonably withhold, condition or delay its consent to such transfer and the release of Tenant from liability hereunder where the proposed transferee has been demonstrated to have sufficient financial strength, a sound business reputation and demonstrated managerial and operational capacity for real estate development and the transfer complies with all applicable Laws and Ordinances. Landlord shall grant or deny such consent within thirty (30) days following receipt of Tenant's request (failing which Landlord shall be deemed to have consented to such transfer).

(b) With respect to any transfer to a Permitted Transferee or if Landlord consents (or is deemed to have consented) to a transferee when required hereunder (each an "Approved Transferee"), the original Tenant or then applicable transferor (as the case may be) shall be released of and from all obligations under this Lease accruing after the effective date of such transfer, but only as to the portion of the Demised Premises so transferred. Such release shall be automatic and without the need for an instrument of release; however, Landlord shall execute and deliver a written release if requested by Tenant promptly following such request. Landlord shall also execute any other assignment and/or transfer documents as may be reasonably requested by Tenant to confirm Landlord's consent to and/or acknowledgement of any transfer hereunder, provided that the terms of such documents comply with the requirements hereof.

(c) Landlord agrees that a Permitted Transferee and any Approved Transferee will be permitted to utilize a subsidiary entity to execute the applicable assignment and/or transfer documents hereunder (including the Bifurcated Lease, if applicable), provided such entity has sufficient financial strength to perform its obligations with respect to the portion of the Demised Premises transferred. Any such subsidiary entity shall be deemed a Permitted Transferee for purposes hereof.

(d) Any transfer of all or any part of Tenant's interest in the Lease and the Demised Premises shall be made expressly subject to the terms, covenants and conditions of this Lease, and such assignee or transferee shall expressly assume all of the obligations of Tenant under this Lease applicable to that portion of the Demised Premises being sold, assigned or transferred, and agree to be subject to all conditions and restrictions to which Tenant is subject, but only for matters accruing while such assignee or transferee holds, and only related to, the sold, assigned or transferred interest. However, nothing in this subsection or elsewhere in this Lease shall abrogate (i) Landlord's right to payment of all rent and other amounts due Landlord which accrued prior to the effective date of such transfer, and (ii) the obligation for the development, use and operation of every part of the Demised Premises to be in compliance with the requirements of Section 4.1 herein.

(e) In connection with any transfer, Tenant shall notify Landlord in writing of the name and address of the transferee and the post office address of the place to which all notices required by this Lease are to be sent.

(f) Each transferee of Tenant (and all succeeding and successor transferees) shall succeed to all rights and obligations of Tenant under this Lease with respect to the portion of the Demised Premises so transferred, including the right to mortgage, and further assign, sublease or transfer; subject, however, to all duties and obligations of Tenant with respect to such portion of the Demised Premises, and to the terms of the document of assignment or transfer (including the Bifurcated Lease, if applicable), in and pertaining to the then remaining Term of this Lease.

(g) Once a sale, assignment or transfer has been made with respect to any portion of the Demised Premises, if Tenant has been released or is deemed released from the rights and obligations of Tenant under this Lease pertaining to the transferred portion of the Demised Premises, then the transferee and Landlord may thereafter modify, amend or change the Lease with respect to such portion of the Demised Premises without Tenant's consent; subject, however, to the provisions of the document of assignment or transfer and provided that (i) the rights of Tenant (or anyone claiming by, through or under Tenant) as to the remainder of the Demised Premises are not diminished or abrogated, and (ii) such modification, amendment or change shall not affect any other part of the Demised Premises or the lease thereof.

(h) Except as may otherwise be specifically provided in Section 17.1, upon a transfer to a Permitted Transferee or Landlord's consent to any other transfer by any transferor, such transferor shall be released and discharged from all of its duties and obligations hereunder which pertain to the portion of the Demised Premises transferred for the then unexpired term of the Lease, including without limitation the payment of Rent (of any kind) and Impositions which are not then due and payable; it being the intention of the Parties that (i) the transferee shall be liable for the payment of Rent and Impositions becoming due and payable and all other obligations of Tenant under this Lease applicable to the portion of the Demised Premises transferred from and after the date of such transfer (until a subsequent transfer occurs), and (ii) there shall be no obligation on the part of any transferor for the payment of any Rent or Impositions which shall become due and payable or any other obligations of Tenant under this Lease with

respect to the portion of the Demised Premises transferred subsequent to the date of such transfer.

(i) For purposes of this Article and Article 18, the words "sale," "assignment," or "transfer" (and derivations thereof) shall be deemed to have similar meanings and may be used interchangeably unless the context indicates otherwise. If Tenant is a corporation, limited liability company, unincorporated association, general or limited partnership, or joint venture, the transfer or assignment of (a) any stock of Tenant in the case where Tenant is a corporation, (b) partnership interest in Tenant, in the case where Tenant is a general or limited partnership, (c) members interest in Tenant, in the case where Tenant is a limited liability company, or (d) other ownership interest in Tenant, in the case where Tenant is another type of entity, in which the aggregate is in excess of fifty percent (50%) of the ownership of such corporation, limited or general partnership, limited liability company or another type of entity, shall be deemed an assignment within the meaning and provisions of this Section. "In the aggregate", means the sum of all stock or other interests transferred over the entire period of this Lease. Transfers among the original holders and/or their relatives and/or Affiliated Persons of stock, partnership interests, member interest or other beneficial interests as of the Effective Date, or such later date as Landlord shall consent to a transfer pursuant to this Section 17.1, are expressly excluded.

(j) This Section shall not apply to any sale, assignment or transfer that results from a foreclosure, a deed or assignment in lieu of foreclosure or the exercise of any other remedies under any Leasehold Mortgage, Subleasehold Mortgage or any Mezzanine Financing, all of which shall be governed by Article 18 hereof (and not this Article).

Section 17.2. **Bifurcation of Lease**. Tenant, at Tenant's option, may effectuate a transfer of a portion of its rights hereunder pursuant to Section 17.1 through a partial assignment and bifurcation of this Lease from time to time to facilitate the development and operation of the various components of the Project in Phases, subject to the terms and conditions hereof. Accordingly, if Tenant desires to partially assign and bifurcate this Lease in connection with a transfer of any Phase of the Project, Tenant shall so notify Landlord of such election simultaneously with Tenant's notice of such transfer pursuant to Section 17.1(a), and the following provisions shall apply to such transfer:

(a) Tenant, Landlord and the Permitted Transferee or Approved Transferee (as applicable), shall promptly (and, in any event within thirty (30) days following Tenant's request) enter into, execute and deliver (i) a partial assignment, bifurcation and partial termination of this Lease in substantially the form attached hereto as Schedule 17.2(a)(i), and (ii) a new lease with the Permitted Transferee or Approved Transferee (as applicable) with respect to the bifurcated Phase of the Project (each a "Bifurcated Lease") in substantially the form attached hereto as Schedule 17.2(a)(ii).

(b) Any Permitted Transferee or Approved Transferee of Tenant's interest in this Lease shall be obligated to comply with the terms and provisions of the Bifurcated

Lease and shall be subject to the remedies and rights available to the Landlord under the Bifurcated Lease in the event such transferee fails to perform its obligations thereunder.

(c) Each Bifurcated Lease shall specify the allocation of the Minimum Rent, Penalty Rent, Participation Rent and any other payments under this Lease to be paid to Landlord thereunder, provided that (i) the sum of the Minimum Rent allocated under the Bifurcated Leases and this Lease (in the event any portion of the Project is developed under this Lease without bifurcation) shall equal the total Minimum Rent required by this Lease, (ii) Penalty Rent under a Bifurcated Lease for any Phase of the Project shall be equal to the Penalty Rent set forth in Schedule 3.3 applicable to such Phase, and (iii) Participation Rent under a Bifurcated Lease shall be reduced by the amount of Minimum Rent per annum paid under such Bifurcated Lease (in the same manner as Minimum Rent reduces Participation Rent under this Lease); however, during any period of time that Minimum Rent is paid or payable under this Lease and Participation Rent is paid under any Bifurcated Lease for all or any portion of the same period of time, Tenant shall be entitled to a credit against Minimum Rent due and payable under this Lease equal to the aggregate amount of such Participation Rent, which credit shall be applied to and reduce each installment of Minimum Rent coming due under this Lease until fully credited. Except for the rent specifically set forth in this Lease (adjusted as provided in this paragraph), Landlord shall not be entitled to (and shall not impose or attempt to impose) any other rent, consideration or payments from Tenant or any Permitted Transferee or Approved Transferee under or with respect to a Bifurcated Lease.

(d) The Minimum Rent due and payable by Tenant under this Lease shall be adjusted and reduced, on a dollar for dollar basis, by the aggregate amount of Minimum Rent due and payable under the Bifurcated Leases. The bifurcation documents executed by the Parties pursuant to Section 17.2(a) shall amend this Lease to confirm such adjustment and reduction in Minimum Rent.

(e) Notwithstanding anything contained in this Lease, upon the execution of a Bifurcated Lease:

(i) Tenant shall not be obligated to perform any obligation under this Lease to the extent such obligation pertains to, or is to be performed on, any the portion of the Demised Premises leased pursuant to such Bifurcated Lease, and shall be automatically released from any and all such obligations (including, without limitation, any obligation to (x) pay any rent allocated to such Bifurcated Lease, (y) develop the Phase of the Project governed by the Bifurcated Lease, and (z) maintain insurance for such Phase or portion of the Demised Premises);

(ii) No action or omission of, or default by, a tenant (or anyone acting by, through or under a tenant) under a Bifurcated Lease, including, without limitation, any failure to develop the applicable Phase of the Project, shall in any event constitute or give rise to a default, or any liability of Tenant under this Lease or deprive Tenant of any of its rights under this Lease, including without limitation the right to develop the remainder of the Project on the balance of the Demised Premises in accordance with this Lease; and

(iii) Neither Tenant nor any assignee or successor thereof shall in any event be prohibited from developing any portion of the Project (or be in default hereunder, or have any liability), as a result of any failure of any tenant (or anyone acting by, through or under a tenant) under any Bifurcated Lease to develop the applicable Phase of the Project.

Each Bifurcated Lease shall include provisions similar to the above confirming that (1) the tenant under such Bifurcated Lease shall not be obligated to perform any obligation under this Lease or any other Bifurcated Lease, (2) no action or omission of, or default by, Tenant under this Lease or any other tenant under any other Bifurcated Lease, shall constitute a default under such Bifurcated Lease, and (3) neither the tenant under such Bifurcated Lease nor any assignee nor successor thereof shall be prohibited from developing the Phase of the Project covered by the Bifurcated Lease as a result of any failure by Tenant under this Lease or any other tenant under any other Bifurcated Lease to develop the portion of the Project located on its portion of the Demised Premises; it being the intention of the parties that this Lease and each Bifurcated Lease shall not be cross-defaulted in any way.

(f) Each tenant under a Bifurcated Lease shall have the right to (i) further assign the Bifurcated Lease, and (ii) enter into subleases, licenses, concession agreements, management agreements, operating agreements and other arrangements for the purpose of implementing any use, operation or activity permitted under this Lease, in accordance with the terms thereof.

Section 17.3. **Master Covenants for Integrated Project**. Although the Demised Premises may be leased pursuant to this Lease and/or one or more Bifurcated Leases, the Project will be an integrated mixed-use transit oriented development, to be used for the purposes contemplated by this Lease and developed (or redeveloped) from time to time pursuant to the terms of this Lease and/or the Bifurcated Leases (as applicable). To promote the integrated and mixed use nature of the Project, and to ensure that the common or shared components of the overall Project are maintained and benefit the Phases and other portions of the Project intended to be served thereby, each Phase of the Project may be subject to and benefited by the Master Covenants as follows:

(a) The Project may include certain common or shared components (such as, without limitation, walkways, promenades, driveways, parking facilities, park areas, project-wide lighting and signage, and other shared components, areas and facilities) located on more than one Phase of the Project. Pursuant to the Master Covenants, such common or shared components, areas and facilities will be (i) available for use by each Phase and other portions of the Demised Premises intended to be served thereby, and (ii) will be administered by a master association, property owner's association and/or other entity created for such purpose as more particularly provided in the Master Covenants.

(b) Landlord agrees to recognize and not disturb the rights of Tenant, any tenant under a Bifurcated Lease, any Permitted Transferee or Approved Transferee (and its or their respective Sublessees and other subtenants (including Space Lessees),

licensees, employees, customers, guests, invitees and/or other permitted users) to the common or shared components, areas or facilities under the Master Covenants irrespective of whether this Lease or any Bifurcated Lease controlling such components, areas or facilities may have terminated or expired. Landlord agrees from time to time, promptly upon request of Tenant, any tenant under a Bifurcated Lease and/or any such transferee, to enter into an agreement in recordable form confirming such recognition and non-disturbance agreement, which agreement shall be on such other customary and reasonable terms as may be mutually acceptable to the parties. In addition, in the event this Lease or any Bifurcated Lease is terminated with respect to any Phase of the Project that is encumbered by the Master Covenants, Landlord shall have the right, at its option (and for the benefit of itself and its tenants, subtenants, licensees, employees, customers, guests, invitees and/or other permitted users), to ratify and confirm that the Master Covenants encumber and apply to such Phase notwithstanding the termination of this Lease or such Bifurcated Lease, whereupon such Phase shall continue to be burdened by and enjoy the benefits of the common or shared components, areas or facilities under the Master Covenants, subject to the terms and conditions thereof (including without limitation the continuing obligation to pay assessments for the privilege of using such facilities). Any subsequent lease(s) or other agreements of any kind or nature whatsoever affecting the common or shared components, areas and facilities encumbered by the Master Covenants shall be subject to the terms, conditions and provisions of the Master Covenants.

(c) The Master Covenants may be recorded against and encumber any Phase of the Project at any time following Commencement of Construction of such Phase, but shall not be recorded against any Phase where construction has not yet commenced without the prior approval of Landlord.

(d) The form and substance of the Master Covenants shall be subject to the prior approval of Landlord, which shall not be unreasonably withheld, conditioned or delayed, provided that Landlord's comments or objections to the terms and conditions of the Master Covenants shall be limited to the provisions thereof that impact the Station or the System or will remain binding on Landlord notwithstanding the termination of this Lease or any Bifurcated Lease. If Landlord does not approve or disapprove the form of the Master Covenants in writing within thirty (30) days following Landlord's receipt of the initial draft of the Master Covenants (or fifteen (15) days following any revised draft, as applicable), the Master Covenants shall be deemed approved. Landlord shall provide specific reasons in writing to Tenant for any disapproval of the Master Covenants simultaneously with any written notice of disapproval given by Landlord hereunder. Amendments to the Master Covenants which are material and which, if same were in the original Master Covenants, would have required Landlord approval, shall be subject to the same approval (and deemed approval) process as the original Master Covenants. The parties shall use commercially reasonable efforts to finalize the form of the Master Covenants within a period of sixty (60) days following the initial draft.

Section 17.4. **Parcel Development Regimes**. In addition to the integrated nature of the Phases governed by the Master Covenants, each Phase of the Project may also be developed as a mixed use development with infrastructure and other common or shared areas or facilities

serving the various components within such Phase. For example, a Phase of the Project may be developed (without creating an obligation to do so) with a vertical subdivision consisting of a multi-level podium containing parking, retail and other commercial uses, together with improvements constructed above such podium (e.g. hotel, office and/or residential towers), or a single building with a hotel, office, retail and/or other components). Accordingly, each tenant under a Bifurcated Lease shall have the right to submit all or a portion of the leasehold estate under its Bifurcated Lease to a "collective ownership" structure (i.e., a Parcel Development Regime where the Demised Premises under such Bifurcated Lease are divided into more than one subparts or components), (i) comprised of two (2) or more Parcel Components, (ii) pursuant to a Parcel Declaration, and (iii) governed by a Parcel Manager. If all or a portion of the leasehold estate under any Bifurcated Lease is submitted to a Parcel Development Regime as contemplated above, the following provisions shall apply with respect to such Parcel Development Regime:

(a) The Parcel Declaration for such Parcel Development Regime will set forth the covenants, conditions and restrictions governing the common or shared components of the Parcel Development Regime in a manner analogous to the Master Covenants governing the common or shared components among the Phases within the Project. Likewise, the Parcel Manager will be the entity established to govern such shared components within the Parcel Development Regime in a manner analogous to the master association, property owner's association and/or other entity charged with responsibility for the common or shared components of the Project under the Master Covenants.

(b) Although the leasehold estate (or portions thereof) under a Bifurcated Lease may be submitted to a Parcel Development Regime containing two or more Parcel Components, the leasehold estate shall nonetheless be deemed a single leased parcel for purposes of such Bifurcated Lease and the tenant for purposes of the obligations of "tenant" under such Bifurcated Lease (at the tenant's option) may be the Parcel Manager; however, each tenant or Sublessee with respect to a Parcel Component will be entitled to all of the benefits of the tenant under the Bifurcated Lease, but shall be required to comply with the obligations of the tenant under the Bifurcated Lease with respect to its Parcel Component only.

(c) The provisions of this Lease shall not prohibit the tenant under a Bifurcated Lease, at its option, from assigning, without the consent of Landlord, (i) such Bifurcated Lease to the Parcel Manager for the Parcel Development Regime, and/or (ii) all of its obligations under such Bifurcated Lease to such Parcel Manager. The Parcel Manager created or established for the Parcel Development Regime shall be deemed a Permitted Transferee for purposes of this Lease, irrespective of whether the Parcel Manager is an Affiliate of Tenant. Upon the creation of a Parcel Development Regime and assignment of a Bifurcated Lease (or the tenant's obligations thereunder) to the Parcel Manager governing the Parcel Development Regime, Landlord agrees that Tenant and any tenant under such Bifurcated Lease shall be automatically released from all liability for any obligations under such Bifurcated Lease.

(d) Landlord agrees to recognize and not disturb the rights of any tenant or Sublessee of a Parcel Component (and its or their respective subtenants (including Space

Lessees), licensees, employees, customers, guests, invitees and/or other permitted users) to the common or shared components, areas or facilities under the Parcel Declaration irrespective of whether any applicable Bifurcated Lease or Sublease controlling such components, areas or facilities may have terminated or expired. Landlord agrees from time to time, promptly upon request of any tenant or Sublessee under the applicable Bifurcated Lease or Sublease to enter into an agreement in recordable form confirming such recognition and non-disturbance agreement, which agreement shall be on such other customary and reasonable terms as may be mutually acceptable to the parties (and, in any event, may be incorporated into any other recognition and non-disturbance provided to such tenant or Sublessee under this Lease or the Bifurcated Lease, such as the non-disturbance agreement provided pursuant to Section 17.5). In addition, in the event of a termination of any Bifurcated Lease for any Phase that has been submitted to a Parcel Development Regime, Landlord shall have the right, at its option (and for the benefit of itself and its tenants, subtenants, licensees, employees, customers, guests, invitees and/or other permitted users), to ratify and confirm that the Parcel Declaration continues to encumber and apply to such Phase notwithstanding the termination of such Bifurcated Lease, whereupon such Phase shall continue to be burdened by and enjoy the benefits of the common or shared components, areas or facilities under the Parcel Declaration, subject to the terms and conditions thereof (including without limitation the continuing obligation to pay assessments for the privilege to use such facilities). Any subsequent Sublease(s), Space Leases or other agreements of any kind or nature whatsoever affecting any common or shared components, areas and facilities encumbered by the Parcel Declaration shall be subject to the terms, conditions and provisions of the Parcel Declaration.

(e) Each Parcel Declaration may be recorded against and encumber a Phase of the Project at any time following Commencement of Construction of such Phase, but shall not be recorded against any Phase where construction has not yet commenced without the prior approval of Landlord.

(f) The form and substance of each Parcel Declaration shall be subject to the prior approval of Landlord, which shall not be unreasonably withheld, conditioned or delayed, provided that Landlord's comments or objections to the terms and conditions of such Parcel Declaration shall be limited to the provisions thereof that impact the Station or the System or will remain binding on and must be recognized by Landlord notwithstanding the termination of the rights of any tenant or Sublessee of a Parcel Component within the Parcel Development Regime. If Landlord does not approve or disapprove the form of Parcel Declaration in writing within thirty (30) days following Landlord's receipt of the initial draft thereof (or fifteen (15) days following any revised draft, as applicable), the Parcel Declaration shall be deemed approved. Landlord shall provide specific reasons in writing to Tenant and any tenant under the applicable Bifurcated Lease for any disapproval of the Parcel Declaration simultaneously with any written notice of disapproval given by Landlord hereunder. Amendments to the Parcel Declaration which are material and which, if same were in the original Parcel Declaration, would have required Landlord approval, shall be subject to the same approval (and deemed approval) process as the original Parcel Declaration. The parties

shall use commercially reasonable efforts to finalize the form of each Parcel Declaration within a period of sixty (60) days following the initial draft.

(g) In the event that the subleasehold estate under a Sublease of a portion of the Demised Premises under this Lease or a Bifurcated Lease is submitted to a Parcel Development Regime, the terms and provisions of this Section 17.4 shall apply equally to such Sublease with the intent that (i) any Sublessee under such Sublease (and its subtenants (including Space Lessees), licensees, employees, customers, guests, invitees and/or other permitted users) shall have the same rights as a tenant under a Bifurcated Lease (and its subtenants (including Space Lessees), licensees, employees, customers, guests, invitees and/or other permitted users) with respect to such Parcel Development Regime, and (ii) Landlord shall recognize all such rights and comply with its obligations hereunder with respect to such Sublease (in the same manner as required herein with respect to a Bifurcated Lease), notwithstanding the termination of this Lease or any Bifurcated Lease.

(h) Notwithstanding any other provision of this Article 17 to the contrary, prior to submitting any portion of the Demised Premises to a Parcel Development Regime, Tenant shall demonstrate to Landlord's reasonable satisfaction that the creation of the Parcel Development Regime and forms of ownership proposed thereunder will not result in Rent payable with respect to the submitted Demised Premises that is less favorable to Landlord than the Rent that would be payable if such Demised Premises were not submitted to the Parcel Development Regime. Landlord's approval of the form of Parcel Declaration may be conditioned upon Tenant's compliance with this paragraph.

Section 17.5. Rights to Sublease and Non-Disturbance to Sublessees and/or Space Lessees. Tenant shall have the right to enter into and/or consent to a Sublease or Space Lease without any approval or consent of Landlord; however, notwithstanding any other provisions of this Lease, no Sublease or Space Lease shall relieve Tenant of any obligations under the terms of this Lease, unless a release is granted in accordance with Section 17.1. Additionally, each Sublease or Space Lease must be for a use compatible with the standards and requirements set forth in Section 4.1 herein. Landlord agrees to grant recognition and non-disturbance agreements for Space Lessees or Sublessees which provide that, in the event of a termination of this Lease which applies to the portion of the Demised Premises covered by such Space Lessee's or Sublessee's Space Lease or Sublease (as applicable), such Space Lessee or Sublessee will not be disturbed and will be allowed to continue peacefully in possession under the terms and conditions of its Space Lease or Sublease, provided that the following conditions are met:

(a) with respect to any Space Lease, such Space Lease is on market terms;

(b) with respect to any Sublease, such Sublease shall include an equitable allocation of Minimum Rent and Penalty Rent (e.g., with respect to a Sublease of an entire Phase, Penalty Rent shall be equal to the Penalty Rent set forth in Schedule 3.3 applicable to such Phase; however, if a portion of a Phase is leased pursuant to a Sublease, then such Penalty Rent shall be equitably allocated to such Sublease), Participation Rent under such Sublease shall be consistent with the requirements of this Lease relative to the Gross Revenue generated from the subleased premises, and the

rights and obligations of the sublessor and Sublessee under the Sublease shall be consistent with the other terms and conditions of this Lease or the Bifurcated Lease applicable to the subleased premises;

(c) the Space Lessee or Sublessee shall not be in default of the terms and conditions of its Space Lease or Sublease (as applicable) beyond applicable notice and cure periods; and

(d) the Space Lessee or Sublessee shall agree to attorn to Landlord.

Tenant shall provide written notice to Landlord specifying the name and address of any Sublessee or Space Lessee that requires a recognition and non-disturbance agreement under this Section, which notice shall include a copy of the applicable Sublease or Space Lease. Landlord agrees that it will grant such assurances to such Space Lessees or Sublessees so long as they remain in compliance with the terms of their Space Leases or Subleases, and provided further that any such Space Leases or Subleases do not extend beyond the expiration of the term of this Lease. To effectuate the intent of this Section, Landlord agrees to enter into recognition and non-disturbance agreements such form as may be reasonably acceptable to Landlord, Tenant and the Sublessee or Space Lessee (as applicable), within thirty (30) days following written request. Any and all Subleases of the Demised Premises may include lender protection provisions consistent with the provisions of this Lease that benefit Lenders, including without limitation Article 18 and 20 hereof.

Section 17.6. **Estoppel Certificates from Landlord**. Upon request of Tenant or any Lender, Landlord agrees to give such requesting party an estoppel certificate in accordance with Section 23.2 herein.

Section 17.7. **Waiver of Landlord Lien**. In order to enable Tenant and its Sublessees and Space Lessees to secure financing for the purchase of fixtures, equipment and/or any other item of personalty of any kind now or hereafter located on or in the Demised Premises, whether by security agreement and financing statement, mortgage or other form of security instrument, Landlord hereby waives and will from time to time, upon request, execute and deliver an acknowledgment that it has waived its "landlord's" or other statutory or common law or contractual liens securing payment of rent or performance of Tenant's other covenants under this Lease as to such fixtures, equipment or other items personalty (and does not have rights to a lien against such property).

Section 17.8. **Transfer of Interest by Landlord**. If Miami-Dade County or any successor to its interest hereunder ceases to have any interest in the Demised Premises or if there is any sale or transfer of Landlord's interest in the Demised Premises, the seller or transferor shall be entirely freed and relieved of all agreements, covenants and obligations of Landlord hereunder to be performed after the date of such sale or transfer provided that the purchaser, successor or transferee of Landlord's interest in the Demised Premises assumes in writing all such agreements, covenants and obligations of Landlord. Nothing herein shall be construed to relieve Landlord from any liability or damages arising from actions or omissions occurring or agreements, covenants and obligations required to be performed prior to the date of any such assignment, transfer or sale of Landlord's interest hereunder. Notwithstanding the foregoing and

without limiting the previous sentence, Miami-Dade County shall remain liable for the representations and warranties of Section 25.1.

Section 17.9. **Separate Tax Parcels**. Upon request, Landlord shall cooperate with Tenant and tenants under Bifurcated Leases in efforts to have the County Property Appraiser issue separate tax folio numbers to (a) each Phase of the Project leased pursuant to this Lease and/or such Bifurcated Leases, and (b) each Parcel Component in a Parcel Development Regime. To the extent that Tenant's rights under this Lease or any tenant's rights under a Bifurcated Lease are further partially assigned or subleased, Landlord also agrees to cooperate with Tenant, each tenant under a Bifurcated Lease and any applicable Sublessee in efforts to have the County Property Appraiser issue separate tax folio numbers to such assigned or subleased portion of the Demised Premises.

ARTICLE 18

Financing and Rights of Lenders

Section 18.1. **Right to Mortgage Leasehold**. Notwithstanding any provision in Section 17.1 to the contrary, Tenant and each Sublessee shall have the right from time to time, and without the prior consent of Landlord, to mortgage and otherwise encumber their rights under this Lease, any Sublease and the leasehold estate, in whole or in part (with respect to the Demised Premises or any Phase or any part thereof), by a Leasehold or Subleasehold Mortgage or Mortgages to any Mortgagee. Such Mortgages shall be expressly subject to the terms, covenants and conditions of this Lease (and the Sublease, if applicable), and the right, title and interest of Landlord herein and in the fee estate in the Demised Premises, but subject at all times to the rights granted in this Article 18 and elsewhere in this Lease to Mortgagees. The granting of a Mortgage or Mortgages against all or part of the leasehold estate in the Demised Premises shall not operate to make the Mortgagee(s) thereunder liable for performance of any of the covenants or obligations of Tenant or Sublessee under this Lease or a Sublease, except in the case of a Mortgagee who owns or is in possession and control of all or a portion of the Demised Premises, and then only for the applicable portion of the Demised Premises, and during its period of ownership or possession and control, but Landlord shall always have the right to enforce the Lease obligations against such portion of the Demised Premises, including such obligations accruing prior to such period of ownership or possession and control, subject to the terms hereof, except, in each instance, as otherwise provided herein or in any subordination and recognition agreement between Landlord and such Mortgagee. The amount of any such Mortgage may be increased whether by an additional mortgage and agreement consolidating the liens of such Mortgages or by amendment to the existing Mortgage, and any such Mortgage may be amended, restated, replaced, extended, increased, refinanced, consolidated or renewed from time to time, all without the consent of Landlord. Such Mortgage(s) may, *inter alia*, contain a provision for an assignment of any rents, revenues, monies or other payments due to Tenant or Sublessee as a landlord (but not from Tenant or Sublessee to Landlord) and a provision therein that the Mortgagee(s) in any action to foreclose a Mortgage shall be entitled to the appointment of a receiver. Any transfer (a) resulting from the foreclosure of a Mortgage or any conveyance, assignment or other transfer in lieu of foreclosure of a Mortgage or other appropriate proceedings in the nature thereof, (b) made to the purchaser at foreclosure of a Mortgage or to the grantee of a conveyance, assignment or transfer in lieu of foreclosure of a Mortgage (including Mortgagee,

any nominee of Mortgagee or a third party buyer), or (c) made by Mortgagee or its nominee to a third party following the enforcement by Mortgagee of its Mortgage, shall not require the consent of Landlord (under Article 17 or otherwise) and shall not constitute a breach of any provision or a default under this Lease.

Section 18.2. **Right to Pledge Equity Interests**. Notwithstanding any provision in Section 17.1 to the contrary, Tenant, each Sublessee and the direct and indirect owners of equity interests in Tenant and each Sublessee, shall have the right from time to time, and without the prior consent of Landlord, to pledge and otherwise encumber any of its respective direct or indirect equity or ownership interests (whether stock, partnership interest, beneficial interest in a trust, membership interest or other interest of an ownership or equity nature) (herein, "equity interests" or "ownership interests") to secure a loan made by a Mezzanine Financing Source. The granting of such pledge or other security shall not operate to make the Mezzanine Financing Source thereunder liable for performance of any of the covenants or obligations of Tenant or such Sublessee under this Lease or a Sublease. The amount of any such Mezzanine Financing may be increased, and such Mezzanine Financing may be modified, amended, restated, replaced, extended, increased, refinanced, consolidated or renewed from time to time, all without the consent of Landlord. Any transfer of any direct or indirect ownership interest in Tenant or any Sublessee from the foreclosure by any Mezzanine Financing Source of a pledge of ownership interests in Tenant or such Sublessee or other appropriate proceedings in the nature thereof, or any transfer made to the purchaser at a foreclosure of such pledge of ownership interests, or any conveyance, assignment or transfer in lieu of such foreclosure (including any transfer to the Mezzanine Financing Source, any nominee of Mezzanine Financing Source or a third party buyer), or any change of control or other transfer of any direct or indirect ownership interest in Tenant or such Sublessee to the Mezzanine Financing Source or its nominee resulting from the exercise by the Mezzanine Financing Source of any other rights or remedies under any Mezzanine Financing documents, including without limitation any pledge or other security agreements or any partnership agreement, operating agreement or other organizational documents, shall not require the consent of Landlord (under Article 17 or otherwise) and shall not constitute a breach of any provision or a default under this Lease.

Section 18.3. **Notice to Landlord of Lender's Interest**. Written notice of each Mortgage shall be delivered to Landlord specifying the name and address of the Mortgagee to which notices shall be sent and Landlord shall be furnished a copy of each such recorded Mortgage. Landlord shall also receive notice of the name and address of any Mezzanine Financing Source who desires notice and the benefit of the rights of Mezzanine Financing Sources under this Lease. For the benefit of any Lender entitled to notice as hereinafter provided in this Article 18, Landlord agrees, subject to all the terms of this Lease, without the consent of such Lender, not to accept or consent to a surrender, cancellation or termination of this Lease, or enter into any material amendment or modification to this Lease, at any time (a) with respect to a Mortgage, during any period that such Mortgage shall remain a lien on Tenant's or a Sublessee's leasehold estate (as applicable), and (b) with respect to Mezzanine Financing, during any period that the Mezzanine Financing Source holds an equity interest (directly or indirectly), or is secured by a pledge of ownership interests, in Tenant or any Sublessee (as applicable). No Lender shall be bound by any material amendment or modification of this Lease made without its prior written consent as hereinabove provided, and no sale or transfer of Landlord's fee simple interest in the Land or any portion thereof to Tenant shall terminate this Lease by merger

or otherwise so long as the lien of any Mortgage remains undischarged. The foregoing is not meant to prohibit a sale of fee title to the Land and Demised Premises to Tenant; however, the Parties acknowledge that this Lease does not include and Tenant does not have any option to purchase, right of first refusal, right of first offer or similar option to acquire title to the Land or Landlord's remainder interest in the Demised Premises by virtue of this Lease. Landlord also agrees to abide by any subsequent written notice from Tenant or any Sublessee and any Lender jointly notifying Landlord that such Lender's consent is also required to effectuate any other modification, change, waiver, consent, approval or other matter relative to this Lease. Upon Landlord's request, Tenant shall from time to time confirm and update the names and addresses of the Lenders entitled to the Lender protections set forth in this Article 18 and Article 20 of this Lease based on Tenant's then current records.

Section 18.4. **Notices to Lender(s).** No notice of default under Section 20.1 or notice of failure to cure a default under Section 20.2(a) shall be deemed to have been given by Landlord to Tenant unless and until a copy has been given to each Lender who shall have notified Landlord of its respective interests pursuant to Section 18.3. Landlord agrees to accept performance and compliance by any such Lender of and with any of the terms of this Lease with the same force and effect as though kept, observed or performed by Tenant, provided such act or performance is timely under Section 18.5, Section 20.2 or Section 20.3. Nothing contained herein shall be construed as imposing any obligation upon any such Lender to so perform or comply on behalf of Tenant.

Section 18.5. **Lease Termination and New Lease.**

(a) In addition to any rights any Lender may have by virtue of Article 20 herein, if this Lease shall terminate prior to the expiration of its term (whether pursuant to the terms of this Lease, the rejection of this Lease in a bankruptcy or insolvency proceeding or otherwise), Landlord shall give written notification thereof to each Lender, and Landlord shall, upon written request of the applicable Lender (with Landlord to follow the request of any Leasehold Mortgagee prior to Mezzanine Financing Sources) to Landlord given within sixty (60) days following such termination, enter into a new lease of the Demised Premises with the Leasehold Mortgagee (or its nominee) or Tenant (as owned or controlled by the Mezzanine Financing Source), as tenant, for the remainder of the term of this Lease, on the same terms and conditions, and with the same priority over any encumbrances created at any time by Landlord, its successors and assigns, which Tenant has or had by virtue of this Lease. Landlord's obligation to enter into such new lease of the Demised Premises with Leasehold Mortgagee or Tenant (as owned or controlled by the Mezzanine Financing Source) shall be conditioned upon, on the date the new lease is executed, (i) Landlord receiving payment of all Rent due hereunder through the date of such new lease, (ii) all other monetary defaults hereunder having been cured, (iii) all non-monetary defaults susceptible to cure having been cured (or Leasehold Mortgagee or Tenant (as owned or controlled by the Mezzanine Financing Source), as applicable, as tenant, proceeding promptly with such cure and pursuing such cure to completion with reasonable diligence, and (iv) Landlord receiving all reasonable expenses, costs and fees, including attorneys' fees, incurred by Landlord in preparing for the termination of this Lease and in acquiring possession of the Demised Premises, and in the preparation of such new lease. Such new lease shall have priority over encumbrances

created by Landlord by virtue of the notice created by this Lease to any transferee of Landlord or any person receiving an encumbrance from Landlord, which priority shall be self-operative and shall not require any future act by Landlord. Any new lease hereunder shall contain the same clauses subject to which the demise of the Demised Premises hereunder is made, and shall be at the Rent and other payments for the Demised Premises due Landlord and upon all of the terms as are herein contained.

(b) Nothing herein contained shall be deemed to impose any obligation on the part of Landlord to deliver physical possession of the Demised Premises to the Leasehold Mortgagee (or its nominee) or Tenant (as owned or controlled by the Mezzanine Financing Source) until the new lease has been executed by all pertinent parties. Landlord agrees, however, that Landlord will, at the request, cost and expense of the Leasehold Mortgagee, cooperate in the prosecution of judicial proceedings to evict the then defaulting Tenant or any other occupants of the Demised Premises.

(c) If, upon the termination of this Lease, Tenant, but for such termination, would have been entitled to receive any credit or other amount pursuant to the provisions of this Lease, then Landlord agrees that the same shall be paid to the tenant under a new lease, in the same manner and to the same extent as it would have been paid or applied the same to or for the benefit of Tenant as if this Lease had not terminated; subject however to Landlord's right to offset any damages accrued as a result of said termination.

(d) Nothing contained in this Lease shall require any Leasehold Mortgagee (or its nominee) or any Mezzanine Financing Source (or its nominee), as a condition to its exercise of its right to enter into a new lease, to cure any default of Tenant not reasonably susceptible of being cured by such parties, in order to comply with the provisions of this Section 18.5.

(e) The provisions of this Section 18.5 shall survive any termination of this Lease. Leasehold Mortgagees and Mezzanine Financing Sources shall be deemed to be third party beneficiaries of this Section.

Section 18.6. Lease Termination and New Sublease.

(a) If any Sublease shall terminate prior to the expiration of its term and this Lease has also terminated, Landlord shall give written notification thereof to any Subleasehold Mortgagee and Mezzanine Financing Source that provided Mezzanine Financing to the Sublessee under such Sublease (even if such Subleasehold Mortgagee and/or Mezzanine Financing Source failed to timely exercise its cure rights for a default under such Sublease), and Landlord shall, upon written request of the applicable Lender (with Landlord to follow the request of the Subleasehold Mortgagee prior to such Mezzanine Financing Sources) to Landlord given within sixty (60) days following such termination, enter into a new lease or sublease of the subleased portion of the Demised Premises (herein, the "subleased premises") with such Subleasehold Mortgagee (or its nominee) or Sublessee (as owned or controlled by such Mezzanine Financing Source), as sublessee, for the remainder of the term of such Sublease, on the same terms and conditions as set forth in such Sublease (with appropriate modifications to reflect that the

lease is a direct lease rather than a sublease, if applicable). Landlord's obligation to enter into such new lease or sublease of the subleased premises with Subleasehold Mortgagee or Sublessee (as owned or controlled by such Mezzanine Financing Source) shall be conditioned upon the new lessee/sublessee committing to cure all monetary defaults under the Sublease and all non-monetary defaults under the Sublease that are susceptible of cure within a reasonable period of time under the circumstances, and to reimburse Landlord's reasonable expenses in the preparation of such new lease or sublease. Any new lease or sublease(s) hereunder shall contain the same clauses subject to which the demise under the Sublease is made, and shall be at the rent and other payments for the subleased premises and upon the terms as are therein contained (except as otherwise expressly provided herein).

(b) Nothing herein contained shall be deemed to impose any obligation on the part of Landlord to deliver physical possession of the subleased premises to the Subleasehold Mortgagee (or its nominee) or Sublessee (as owned or controlled by the applicable Mezzanine Financing Source) until the new lease or sublease has been executed by all pertinent parties. Landlord agrees, however, that Landlord will, at the request, cost and expense of the Subleasehold Mortgagee, cooperate in the prosecution of judicial proceedings to evict the then defaulting Sublessee or any other occupants of the subleased premises.

(c) Nothing contained herein shall require any Subleasehold Mortgagee (or its nominee) or any applicable Mezzanine Financing Source (or its nominee), as a condition to its exercise of its right to enter into a new lease or sublease, to cure any default of a Sublessee not reasonably susceptible of being cured by such parties, in order to comply with the provisions of this Section 18.6.

(d) The provisions of this Section 18.6 shall survive any termination of this Lease and any applicable Sublease. Subleasehold Mortgagees and Mezzanine Financing Sources shall be deemed to be third party beneficiaries of this Section.

Section 18.7. **Other Subleases and Space Leases**. Upon the execution and delivery of a new lease or sublease pursuant to Section 18.5 and Section 18.6, all Subleases or Space Leases which theretofore may have been assigned to Landlord or have reverted to Landlord upon termination of this Lease or Sublease or have been entered into by Landlord such Sections, shall be assigned and transferred, without recourse against Landlord, by Landlord to the tenant or sublessees under any such new lease or sublease (as appropriate). Between the date of termination of this Lease and the date of execution and delivery of the new lease or sublease, if any Lender shall have requested such new lease or sublease as provided for in Section 18.5 and Section 18.6, Landlord will not cancel or modify any Sublease or Space Lease (subleased or sub-subleased under this Lease or a Sublease, as applicable) or accept any cancellation, termination or surrender thereof (unless such termination shall be effective as a matter of law on the termination of this Lease) without the consent of Lender, except for default as permitted thereunder.

Section 18.8. **No Subordination or Mortgaging of Landlord's Fee Title**. There shall be no subordination of Landlord's fee simple interest in the Land to the lien of any

Mortgage financing nor shall Landlord be required to join in such mortgage financing. No Mortgagee or other Lender may impose any lien upon Landlord's fee simple interest in the Land; it being acknowledged and agreed that Landlord retains the sole right to encumber such interest during the Term.

Section 18.9. **Fee Mortgages**. This Lease, the leasehold estate created hereby and all Mortgages, including all amendments, renewals, and extensions thereto or thereof, shall be prior and superior to all fee mortgages encumbering Landlord's fee estate in the Demised Premises, including Landlord's reversionary interest in the Demised Premises, and the rights of the holders of all such fee mortgages. Tenant shall not be obligated to provide any documentation to the holder of any fee mortgage which in any way prejudices Tenant's rights under this Lease in Tenant's sole but reasonable discretion. Any inconsistency between any such fee mortgage and this Lease shall be resolved in favor of this Lease. Each Lender shall be deemed a third party beneficiary of this Section 18.9.

Section 18.10. **No Personal Liability**. Notwithstanding anything to the contrary in this Lease, no Lender or any Person acting for, on behalf of or at the direction of any Lender shall have any personal liability under this Lease or any Sublease (or a new lease or sublease), even if such Person exercises any Lender's cure rights, except to the extent that such Person assumes in writing any of Tenant's obligations under this Lease or a new lease or any Sublessee's obligations under a Sublease or new lease or sublease.

Section 18.11. **Priority of Multiple Security Interests**. If more than one Lender of a particular type (Leasehold or Subleasehold Mortgagees, and as to Subleasehold Mortgagees, as to a particular encumbered Sublease) desires to exercise any mortgagee protection under this Lease, then the party against whom such mortgagee protection is to be exercised shall be required to recognize either: (a) the Lender that desires to exercise such mortgagee protection and whose Mortgage is most senior (as against other Mortgages of like type); or (b) such other Lender of a particular type (all Leasehold Mortgagees or all Subleasehold Mortgagees, as applicable), who all of the Lenders of such type have designated (in writing) to be the Lender to exercise such mortgagee protection. Priority of Mortgages shall be conclusively evidenced by (in order of precedence of application): (i) written agreement (or joint written instructions) by all Lenders of a particular type (Leasehold Mortgagees or Subleasehold Mortgagees, as applicable); or (ii) a report or certificate of a title insurance company licensed to do business in the State of Florida. Landlord shall not be obligated to determine the relative priorities of any Mortgages. For any mortgagee protection that by its nature or under this Lease only one Leasehold Mortgagee or Subleasehold Mortgagee can exercise (such as the right to a new lease or sublease), pending the determination of priority, any time period that applies to Leasehold Mortgagees' or Subleasehold Mortgagees' (as applicable) exercise of such mortgagee protection shall be tolled. Notwithstanding the foregoing, unless expressly acknowledged and agreed by the Leasehold Mortgagee in a written agreement (or written instructions), all Leasehold Mortgages shall be prior and superior to all Subleasehold Mortgages and Leasehold Mortgagee's rights to exercise any mortgagee protection under this Lease (including, without limitation, the rights under this Article 18) shall be prior and superior to the rights of any Subleasehold Mortgagees and Sublessees to exercise same. Finally, all rights and benefits afforded to a Mezzanine Financing Source under this Lease shall also be afforded to any other Mezzanine Financing Sources who are not holding the first lien on the membership interests in Tenant or a

Sublessee, provided that all of the rights of such Mezzanine Financing Sources shall be subject to and subordinate to the holders of more senior Mezzanine Financing. Priority of Mezzanine Financing shall be conclusively evidenced by (in order of precedence of application): (x) written agreement (or joint written instructions) by all Mezzanine Financing Sources; or (y) an appropriate financing statement search under Article 9 of the Uniform Commercial Code (or any successor thereto) or other reasonable evidence of priority for such financing in the State of Florida. Landlord shall not be responsible for establishing the priority of the Mezzanine Financing.

Section 18.12. Further Assurances. Upon written request from Tenant, any Sublessee, any Leasehold Mortgagee (prospective or current), any Subleasehold Mortgagee (prospective or current) or any Mezzanine Financing Source (prospective or current), Landlord shall promptly, under documentation reasonably satisfactory to the requesting party: (a) agree directly with the applicable Leasehold Mortgagee that it may exercise against Landlord all Leasehold Mortgagee's rights in this Lease; (b) agree directly with the applicable Subleasehold Mortgagee that it may exercise against Landlord all Subleasehold Mortgagee's rights in this Lease and the applicable Sublease; (c) agree directly with the applicable Mezzanine Financing Source that it may exercise against Landlord all Mezzanine Financing Source's rights in this Lease and any applicable Sublease; and (d) amend this Lease and/or provide other assurances as any current or prospective Lender reasonably requests, provided such amendment does not adversely affect Landlord, including reduction of any payment due Landlord or increase of any liability or obligation of Landlord.

Section 18.13. Third Party Beneficiary. All Lenders that have notified Landlord under Section 18.3 shall be deemed to be third party beneficiaries of this Article.

ARTICLE 19

Eminent Domain

Section 19.1. Taking of Entire Premises. If at any time during the Term of this Lease the power of eminent domain shall be exercised by any federal or state sovereign or their proper delegates, by condemnation proceeding (a "Taking"), to acquire the entire Demised Premises, such Taking shall be deemed to have caused this Lease to terminate and expire on the date of such Taking. Tenant's right to recover a portion of the award for a Taking, as hereinafter provided, is limited to the Fair Market Value of the Buildings and other Improvements, plus the value of Tenant's interest in the unexpired term of the leasehold estate created pursuant to this Lease (including all renewal terms), and in no event shall Tenant be entitled to compensation for any fee interest in the Land. Notwithstanding anything herein contained to the contrary, Landlord shall be entitled to receive from the condemning authority not less than the appraised value of the Land, subject to the Lease, and as if vacant and assuming no improvements existed on the Demised Premises, at the time of Taking. The balance of the award (if any) for any Taking shall be shared by Landlord and Tenant on a 50-50 basis, unless Landlord is the condemning authority or the beneficiary of a Taking, in which event Tenant shall receive the entire remaining balance of the award. For the purpose of this Article 19, the date of Taking shall be deemed to be either the date on which actual possession of the Demised Premises or a portion thereof, as the case may be, is acquired by any lawful power or authority pursuant to the

Taking or the date on which title vests therein, whichever is earlier. All Rent and other payments required to be paid by Tenant under this Lease shall be paid up to the date of such Taking. Tenant and Landlord shall, in all other respects, keep, observe and perform all the terms of this Lease up to the date of such Taking.

Section 19.2. **Proceeds of Taking**. In the event following any such Taking as aforesaid, this Lease is terminated, or in the event following a Taking of less than the whole of the Demised Premises this Lease is terminated as provided for in Section 19.3 herein, the proceeds of any such Taking (whole or partial) shall be distributed as described in Section 19.1. If the value of the respective interests of Landlord and Tenant shall be determined according to the foregoing provisions of this Article 19 in the proceeding pursuant to which the Demised Premises shall have been taken, the values so determined shall be conclusive upon Landlord and Tenant. If such values shall not have been separately determined in such proceeding, such values shall be fixed by agreement between Landlord and Tenant, or if they are unable to agree, by an apportionment hearing within the condemnation proceeding so that the allocation between the parties is fair and equitable. Lenders shall be entitled to participate in any proceedings in connection with a Taking, and to receive directly from the Taking authority any sums to which they are found to be entitled.

Section 19.3. **Partial Taking; Termination of Lease**. If, in the event of a Taking of less than the entire Demised Premises, the remaining portion of the Demised Premises not so taken cannot be developed as contemplated herein or adequately restored, repaired or reconstructed so as to constitute a complete architectural unit of substantially the same usefulness, design, construction, and commercial feasibility as immediately before such Taking (as applicable), then Tenant shall have the right, to be exercised by written notice to Landlord within one hundred twenty (120) days after the date of Taking, to terminate this Lease on a date to be specified in said notice, which date shall not be earlier than the date of such Taking, in which case Tenant shall pay and shall satisfy all Rents and other payments due and accrued hereunder up to the date of such termination and shall perform all of the obligations of Tenant hereunder to such date, and thereupon this Lease and the Term herein demised shall cease and terminate. Upon such termination Tenant's interest under this Lease in the remainder of the Demised Premises not taken shall be sold in accordance with applicable Laws and Ordinances, and the proceeds of the sale shall be combined with the award given for the partial Taking with the entire amount then being distributed as if a total Taking had occurred. Landlord shall have the option to purchase Tenant's interest under this Lease in the remainder of the Demised Premises at its Fair Market Value for a period of sixty (60) days after the determination of Fair Market Value, which value shall be determined by a mutually acceptable appraiser (or if no one appraiser is agreed upon by the parties, by an appraiser, chosen by two appraisers, one of which will be appointed by each party), within one hundred and fifty (150) days from the date the Lease was terminated. The Fair Market Value specified in the preceding sentence shall be limited to the Fair Market Value of the Buildings and other Improvements, which Fair Market Value shall include the value of Tenant's interest in the unexpired term of the leasehold estate created pursuant to this Lease (including all renewal terms), and in no event shall such value include any fee simple interest in the Land. All appraisal costs shall be split equally between Landlord and Tenant. If Landlord fails to purchase, the remainder may be sold.

Section 19.4. **Partial Taking; Continuation of Lease**. If following a partial Taking this Lease is not terminated as hereinabove provided, then this Lease shall terminate as to the portion of the Demised Premises taken in such condemnation proceedings; and, as to that portion of the Demised Premises not taken Tenant shall proceed at its own cost and expense either to develop and construct the Improvements as contemplated herein or to make an adequate restoration, repair or reconstruction or to rebuild a new Building upon the Phase or other remaining portion of the Demised Premises affected by the Taking (as applicable). In such event, Tenant's share of the award shall be determined in accordance with Section 19.1 herein based on the Phase or other portion of the Demised Premises so taken. Such award to Tenant shall be used by Tenant for its development, construction, reconstruction, repair or rebuilding. Any excess award after such development, construction, reconstruction, repair or rebuilding, may be retained by Tenant. If the part of the award so paid to Tenant is insufficient to pay for such development, construction, restoration, repair or reconstruction, Tenant shall pay the remaining cost thereof, and shall fully pay for all such development, construction, restoration, repair and reconstruction, and complete the same to an architecturally complete structure or improvement free from mechanics' or materialmen's liens and shall at all times save Landlord free and harmless from any and all such liens. In the event the partial Taking results in making it impossible or unfeasible to develop, construct, reconstruct, restore, repair or rebuild a Building or new Building on such Phase, Tenant's share of the award shall be determined in accordance with Section 19.1 herein with respect to the Phase of the Project affected by the Taking. In such event, if Tenant elects not to terminate this Lease, then the Minimum Rent and any Penalty Rent, if applicable, shall be partially abated on an equitable basis to be agreed to by Tenant and Landlord, failing which such Rent shall abate in the same manner as partial Rent abatements under Article 16.

Section 19.5. **Temporary Taking**. If the whole or any part of the Demised Premises or of Tenant's interest under this Lease be taken or condemned by any competent authority for its or their temporary use or occupancy not exceeding one year, Tenant may elect to terminate the remaining Term as to the Project or the portion or Phase thereof so taken, failing which this Lease shall not terminate by reason thereof, and Tenant shall continue to pay, in the manner and at the times herein specified, the full amounts of the Rent and all other charges payable by Tenant hereunder and, except only to the extent that Tenant may be prevented from so doing pursuant to the terms of the order of the condemning authority, to perform and observe all of the other terms, covenants, conditions and all obligations hereof upon the part of Tenant to be performed and observed, as though such Taking had not occurred. In the event of any such temporary Taking, Tenant shall be entitled to receive the entire amount of any award made for such temporary Taking (attributable to the period within the Term of this Lease), other than any portion of Minimum Rent which was abated by Landlord pursuant to this Lease (if any), which amount Landlord shall be entitled to claim from the Taking authority, whether paid by way of damages, rent or otherwise. All such proceeds paid to Tenant pursuant to this Section shall be considered as Gross Revenue as defined in Section 3.6. Tenant covenants that, upon the termination of any such period of temporary Taking, prior to the expiration of the Term of this Lease, it will, at its sole cost and expense, restore the Demised Premises, as nearly as may be reasonably possible, to the condition in which the same were immediately prior to such Taking, provided that the Taking authority compensates Tenant for such restoration.

Section 19.6. **Additional Takings**. In case of a second, or any additional partial Taking or Takings from time to time, the provisions hereinabove contained shall apply to each such partial Taking. In the event any federal or state sovereign or their proper delegates with the power of eminent domain appropriates or condemns all or a portion of the Demised Premises, and Landlord is a beneficiary of such Taking, the award shall be divided in accordance with the provisions of this Article 19. In either event, in accordance with the provisions hereof, Tenant shall restore, repair, or reconstruct any portion of the Demised Premises not taken; provided that if the award so paid to Tenant shall be insufficient to fully pay for such restoration, repair or reconstruction, Tenant shall have the option of:

(a) Repairing at its expense, in which event the provisions of Section 19.4 herein shall control, or

(b) Terminating the Lease (in whole or in part as to the affected Phase or portion of the Demised Premises) in which event the provisions of Section 19.3 (as to the termination of this Lease) or Section 19.4 (as to a partial termination of this Lease), as applicable, herein shall control.

Section 19.7. **Inverse Condemnation or Other Damages**. In the event of damage to the value of the Demised Premises by reason of change of grade, access rights, street alignments or any other governmental or quasi-governmental act (not involving Landlord) which constitutes an inverse condemnation of any portion of the Demised Premises creating a right to full compensation for such portion, then Landlord and Tenant shall each be entitled to claim and receive from the net payment or award made on account thereof, the compensation for their respective estates and interests as set forth in Section 19.1.

Section 19.8. **Involuntary Conversion**. In the event any Taking or other like proceeding or threat or imminence thereof shall occur as provided for hereinabove or otherwise, Landlord and Tenant agree to cooperate with each other in order to provide proper evidence of communication of the proceeding or threat or imminence thereof (including evidence of like Takings under Section 19.7) to the Internal Revenue Service for purposes of determining whether property has been voluntarily or involuntarily converted within the meaning of the Internal Revenue Code.

Section 19.9. **Condemnation of Fee Interest**. Notwithstanding anything in Article 19 to the contrary, Landlord hereby covenants and agrees with Tenant that (i) it will not agree to any Taking by any party without the consent of Tenant which may be withheld in Tenant's sole discretion, (ii) it will contest such Taking, and (iii) it will, as part of its defense against a Taking, avail itself of the defense, if available, that one entity with condemnation powers cannot condemn the property of another entity with similar powers. If, notwithstanding the foregoing efforts by Landlord, Landlord is unable to prevent or preclude any Taking, then Landlord will cooperate with Tenant and in good faith and with reasonable diligence to minimize the effect of the Taking on Tenant's ability to develop, construct, reconstruct, restore, repair or rebuild the Project or any Phase as contemplated in this Lease.

ARTICLE 20

Default by Tenant or Landlord

Section 20.1. **Events of Default of Tenant**. The following acts shall be considered events of default of Tenant (herein deemed "Events of Default of Tenant"):

(a) Tenant provides knowingly fraudulent calculations of Participation Rent;

(b) Tenant fails to pay on time any Rent or other monies due and payable to Landlord under this Lease when and as the same shall become due and payable, and such default shall continue for a period of thirty (30) days after written notice thereof from Landlord to Tenant, with copies thereof to each Lender who shall have notified Landlord of its name, address and interest prior to such notice; or

(c) Tenant fails to keep, observe and/or perform any of the other terms contained in this Lease that are the responsibility of Tenant, excepting the obligation to pay Rent or other monies due Landlord, and such default shall continue for a period of sixty (60) days after written notice thereof from Landlord to Tenant setting forth with reasonable specificity the nature of the alleged breach, with copies thereof to each Lender who shall have notified Landlord of its name, address and interest prior to such notice; or in the case of such default or contingency which cannot with due diligence and in good faith be cured within sixty (60) days, Tenant fails within said sixty (60) day period to proceed promptly and with due diligence and in good faith to pursue curing said default.

Section 20.2. **Failure to Cure Default by Tenant**.

(a) If an Event of Default by Tenant shall occur, Landlord, at any time after the periods set forth in Section 20.1(b) or (c) and provided Tenant has failed to cure such Event of Default within such applicable period, shall give written notice to Tenant and to any Lender who has notified Landlord in accordance with Section 18.3, specifying such Event(s) of Default by Tenant and stating that this Lease and the term hereby demised shall expire and terminate on the date specified in such notice, which shall be at least (i) thirty (30) days after the giving of such notice with respect to an Event of Default relating to any Phase where Commencement of Construction has not occurred, and (ii) six (6) months after the giving of such notice with respect to an Event of Default relating to any Phase where Commencement of Construction has occurred, during which time Tenant and/or any Lender shall have the right to cure such default. Upon the date specified in such notice, if the Event of Default has not been cured, then, subject, however, to the provisions of Section 18.5, Section 18.6 and Section 20.3 herein, this Lease and the Term hereby demised and all rights of Tenant under this Lease, shall expire and terminate; provided, however, that if the Event of Default is specific to a single or specific Phase or Phases of the Project, and the Event of Default has not been cured within the applicable notice and cure periods hereunder, this Lease shall terminate as to the affected Phase or Phases only and any other Phase where Commencement of Construction has not occurred, but not with respect to any other Phases or portion of the Demised Premises; it being agreed that this Lease and Landlord's obligations hereunder

shall remain in full force and effect with respect to such other Phases or portions of the Demised Premises.

(b) If an Event of Default of Tenant shall occur and the rights of Lenders shall not have been exercised as provided within this Lease, then Landlord, at any time after the periods for exercise of rights as set forth under Section 20.1, 20.2 and 20.3 herein, shall have the following rights and remedies which are cumulative:

(i) Intentionally deleted;

(ii) to restrain, by injunction, the commission of or attempt or threatened commission of an Event of Default and to obtain a decree specifically compelling performance of any such term or provision of the Lease; and

(iii) to terminate any and all obligations that Landlord may have under this Lease, in which event Landlord shall be released and relieved from any and all liability under this Lease; provided, however, that (x) if the Event of Default is specific to a single or specific Phase or Phases of the Project, and the Event of Default has not been cured within the applicable notice and cure periods hereunder, Landlord's obligations under this Lease shall terminate as to the affected Phase or Phases only and any other Phase where Commencement of Construction has not occurred, but not with respect to any other Phases or portion of the Demised Premises (it being agreed that this Lease and Landlord's obligations hereunder shall remain in full force and effect with respect to such other Phases or portions of the Demised Premises), and (y) the remedy under this provision may be exercised only in conjunction with a termination or partial termination of this Lease in accordance with this Section 20.2.

Section 20.3. **Lender Right to Cure Tenant Default**. For so long as any Mortgage encumbers the Demised Premises, or, as applicable, a Mezzanine Financing Source holds an equity interest (directly or indirectly), or is secured by a pledge of ownership interests, in Tenant or a Sublessee:

(a) Notwithstanding the time allowed for Tenant to cure an Event of Default under Section 20.2(a), Lender shall have the right, but not the obligation, for an additional period of thirty (30) days following the expiration of Tenant's cure periods under Section 20.2(a), to cure any monetary or non-monetary Event of Default of Tenant, but if such non-monetary Event of Default cannot be cured within such 30-day period, then Lender shall have up to ninety (90) days to cure, provided that it has commenced such cure within the initial thirty (30) day period and thereafter pursues such cure with reasonable diligence, subject to further extension of such cure periods as provided in clauses (b) and (c) below.

(b) Notwithstanding the provisions of this Lease to the contrary, no Event of Default by Tenant will be deemed to exist as to a Mortgagee (and Landlord shall not be permitted to terminate this Lease due to an Event of Default of Tenant) as long as such Mortgagee, in good faith, either promptly (i) commences to cure such Event of Default

and prosecute the same to completion in accordance with Section 20.3(a) above, or (ii) if the nature of any non-monetary Event of Default is such that possession of or title to the Demised Premises is reasonably necessary to cure the Event of Default, or the Event of Default is of the type that cannot commercially reasonably be cured by Mortgagee (e.g., Tenant bankruptcy), files a complaint for foreclosure and thereafter prosecutes the foreclosure action in good faith and with reasonable diligence, subject to any stays, moratoriums or injunctions applicable thereto, and as promptly as practicable after obtaining possession or title, as reasonably necessary, commences promptly to cure such Event of Default and prosecutes the same to completion in good faith and with reasonable diligence; provided, however, that during the period in which any foreclosure proceedings are pending, all of the other obligations of Tenant under this Lease, to the extent they are susceptible of being performed by Mortgagee (e.g., the payment of Rent), are being duly performed. Upon Mortgagee curing all Events of Default hereunder that are susceptible of cure, any Events of Default that cannot commercially reasonably be cured by Mortgagee shall be permanently waived, including, any interest, penalties and late fees or charges due to Landlord as a result of such Events of Default.

(c) Notwithstanding the provisions of this Lease to the contrary, no Event of Default by Tenant will be deemed to exist as to a secured Mezzanine Financing Source (and Landlord shall not be permitted to terminate this Lease due to an Event of Default of Tenant) as long as such Mezzanine Financing Source, in good faith, either promptly (i) commences to cure such Event of Default and prosecute the same to completion in accordance with Section 20.3(a) above, or (ii) if the nature of any non-monetary Event of Default is such that possession of or title to the ownership interests in Tenant is reasonably necessary to cure the Event of Default or if the Event of Default is of the type that cannot commercially reasonably be cured by the Mezzanine Financing Source (e.g., Tenant bankruptcy), takes all reasonable steps necessary to foreclose the pledge of such ownership interests and prosecutes such action in good faith and with reasonable diligence, subject to any stays, moratoriums or injunctions applicable thereto, and as promptly as practicable after obtaining such possession or title, as reasonably necessary, commences promptly to cure such Event of Default and prosecutes the same to completion in good faith and with reasonable diligence; provided, however, that during the period in which such action is being taken, all of the other obligations of Tenant under this Lease, to the extent they are susceptible of being performed by the Mezzanine Financing Source (e.g., the payment of Rent), are being duly performed. Upon the Mezzanine Financing Source curing all Events of Default hereunder that are susceptible of cure, any Events of Default that cannot commercially reasonably be cured by Mezzanine Financing Source shall be permanently waived, including, any interest, penalties and late fees or charges due to Landlord as a result of such Events of Default.

(d) Any penalties, interest and late payment fees or charges due to Landlord pursuant to this Lease as a result of any Event of Default by Tenant shall not commence to accrue and be due from any Mortgagee or Mezzanine Financing Source who has commenced and is proceeding to cure any such Events of Defaults (other than any defaults not susceptible of being cured by Mortgagee or Mezzanine Financing Source, which shall be subject to the last sentence of clauses (b) or (c) above, as applicable) until the expiration of the applicable cure, grace or other periods provided to the Mortgagee or

Mezzanine Financing Source to cure such Events of Defaults in this Article and Article 18.

Section 20.4. **Surrender of Demised Premises**. Upon any expiration or termination of the Term in accordance with the terms and conditions of this Lease, Tenant and all Sublessees and Space Lessees shall quit and peacefully surrender the Demised Premises to Landlord, except as provided under any non-disturbance agreement provided by Landlord to any Sublessee or Space Lessees.

Section 20.5. **Rights of Landlord After Termination**. Landlord shall in no way be responsible or liable for any failure to relet the Demised Premises or any part thereof, or for any failure to collect any rent due for any such reletting, provided that Landlord acts reasonably and in good faith to mitigate its damages.

Section 20.6. **No Waiver by Landlord**. No failure by Landlord to insist upon the strict performance of any of the terms of this Lease or to exercise any right or remedy consequent upon a breach thereof, and no acceptance by Landlord of full or partial Rent during the continuance of any such breach, shall constitute a waiver of any such breach or of any of the terms of this Lease. None of the terms of this Lease to be kept, observed or performed by Tenant, and no breach thereof, shall be waived, altered or modified except by a written instrument executed by Landlord. No waiver of any breach shall affect or alter this Lease, but each of the terms of this Lease shall continue in full force and effect with respect to any other then existing or subsequent breach thereof. No waiver of any default of Tenant hereunder shall be implied from any omission by Landlord to take any action on account of such default, and no express waiver shall affect any default other than the default specified in the express waiver and then only for the time and to the extent therein stated. One or more waivers by Landlord shall not be construed as a waiver of a subsequent breach of the same covenant, term or conditions.

Section 20.7. **Events of Default of Landlord**. The provisions of Section 20.8 shall apply if any of the following "Events of Default of Landlord" shall happen: if Landlord fails to keep, observe and/or perform any of the duties or obligations imposed upon Landlord pursuant to the terms of this Lease and such default shall continue for a period of thirty (30) days after written notice thereof from Tenant to Landlord setting forth with reasonable specificity the nature of the alleged breach; or, in the case of any such default or contingency which cannot, with due diligence and in good faith, be cured within thirty (30) days, Landlord fails within said thirty (30) day period to proceed promptly after such notice and with due diligence and in good faith to cure said Event of Default.

Section 20.8. **Failure to Cure Default by Landlord**. If an Event of Default of Landlord shall occur, Tenant, at any time after the period set forth in Section 20.7 shall have the following rights and remedies which are cumulative:

(a) In addition to any and all other remedies, in law or in equity, that Tenant may have against Landlord, Tenant shall be entitled to sue Landlord for all damages (as limited by Section 15.1 above), costs and expenses arising from Landlord's committing an Event of Default hereunder and to recover all such damages, costs and expenses, including reasonable attorneys' fees at both trial and appellate levels.

(b) To restrain, by injunction, the commission of or attempt or threatened commission of an Event of Default of Landlord and to obtain a decree specifically compelling performance of any such term or provision of the Lease.

(c) To terminate any and all obligations that Tenant may have under this Lease with respect to the Project as a whole or any particular Phase(s), in which event Tenant shall be released and relieved from any and all liability under this Lease as a whole or with respect to such particular Phase(s) and shall surrender possession of the Demised Premises or applicable portion thereof to Landlord.

Section 20.9. **No Waiver by Tenant**. Failure by Tenant to insist upon the strict performance of any of the terms of this Lease or to exercise any right or remedy upon a breach thereof, shall not constitute a waiver of any such breach or of any of the terms of this Lease. None of the terms of this Lease to be kept, observed or performed by Landlord, and no breach thereof, shall be waived, altered or modified except by written instrument executed by Tenant. No waiver of any default of Landlord hereunder shall be implied from any omission by Tenant to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default specified in the express waiver and then only for the time and to the extent therein stated. One or more waivers by Tenant shall not be construed as a waiver of a subsequent breach of the same covenant, term or condition.

ARTICLE 21

Notices

Section 21.1. **Addresses**. All notices, demands or requests by Landlord to Tenant shall be in writing and shall be deemed to have been properly served or given, if addressed to Tenant as follows:

Tenant: Adler 13th Floor Douglas Station, LP
c/o Adler Group
1400 NW 107th Avenue, 5th Floor
Miami, Florida 33172
Attn: Michael M. Adler

With a copy to: Adler 13th Floor Douglas Station, LP
c/o 13th Floor Investments
848 Brickell Avenue, PH1
Miami, Florida 33131
Attn: Arnaud Karsenti

and to such other address and to the attention of such other party as Tenant may, from time to time, designate by written notice to Landlord. If Tenant at any time during the term hereof changes its office address as herein stated, Tenant will promptly give notice of same in writing to Landlord. The Leasehold Mortgagee, Sublessee, Subleasehold Mortgagee or Mezzanine Financing Source shall be deemed to have been properly served or given notice if such notice is in writing addressed to such party at the address furnished pursuant to the provisions of

Section 17.5 and Section 18.3 above. All notices, demands or requests by Tenant or by a Leasehold Mortgagee, Sublessee, Subleasehold Mortgagee or Mezzanine Financing Source to Landlord shall be in writing and shall be deemed to have been properly served or given if addressed to the DTPW's Director, or DTPW's Designated Representative, 701 N.W. 1st Court, 17th Floor, Miami, Florida, 33136 and to Department of Transportation and Public Works, Assistant Director of Engineering, Planning and Development, 701 N.W. 1st Court, 17th Floor, Miami, Florida, 33136, and to such other addresses and to the attention of such other parties as Landlord may, from time to time, designate by written notice to Tenant. If Landlord at any time during the term hereof changes its office address as herein stated, Landlord will promptly give notice of same in writing to Tenant and any then-existing Leasehold Mortgage, Sublessee, Subleasehold Mortgagee and Mezzanine Financing Source.

Section 21.2. **Method of Transmitting Notice**. All such notices, demands or requests (a "Notice") shall be sent by: (i) United States registered or certified mail, return receipt requested, (ii) hand delivery, (iii) nationally recognized overnight courier, or (iv) electronic transmission, provided the electronic transmission confirms receipt of the transmission and the original of the Notice is sent by one of the foregoing means of transmitting Notice within twenty-four (24) hours of the electronic transmission. All postage or other charges incurred for transmitting of Notices shall be paid by the party sending same. Such Notices shall be deemed served or given on (i) the date received, (ii) the date delivery of such Notice was refused or unclaimed, or (iii) the date noted on the return receipt or delivery receipt as the date delivery thereof was determined impossible to accomplish because of an unnoticed change of address.

ARTICLE 22

Quiet Enjoyment

Tenant, upon paying all Rents as provided for and performing in accordance with the terms, agreements, and provisions of this Lease, shall peaceably and quietly have, hold and enjoy the Demised Premises during the term of this Lease without interruption, disturbance, hindrance or molestation by Landlord or by anyone claiming by, through or under Landlord.

ARTICLE 23

Certificates by Landlord and Tenant

Section 23.1. **Tenant Certificates**. Tenant agrees at any time and from time to time, upon not less than twenty (20) days' prior written notice by Landlord, to execute, acknowledge and deliver to Landlord a statement in writing (a) setting forth the rents, payments and other monies then payable under the Lease, if then known; (b) certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that the Lease is in full force and effect as modified and stating the modification), and if this Lease is not in full force and effect the certificate shall so state the reasons why; (c) certifying that this Lease as modified represents the entire agreement between the parties as to this leasing or, if it does not, the certificate shall so state why; (d) stating the dates to which the rents, payments and other monies have been paid; (e) stating the dates on which the Term commenced and is scheduled to terminate; and (f) stating (to the best of Tenant's knowledge) whether or not Landlord is in default in keeping, observing

or performing any of the terms of this Lease; and, if in default, specifying each such default (limited to those defaults of which Tenant has knowledge). It is intended that any such statement delivered pursuant to this Section 23.1 may be relied upon by Landlord or any prospective assignee, transferee or purchaser of the fee, but reliance on such certificate shall not extend to any default of Landlord as to which Tenant shall have no actual knowledge.

Section 23.2. **Landlord Certificates**. Landlord agrees at any time and from time to time, upon not less than twenty (20) days' prior written notice by Tenant or by a Leasehold Mortgagee, Sublessee, Subleasehold Mortgagee or Mezzanine Financing Source to furnish a statement in writing, in substantially the form attached hereto as Schedule 23.2 (a) setting forth the rents, payments and other monies then payable under the Lease, if then known; (b) certifying that this Lease is unmodified and in full force and effect (or if there shall have been modifications that the Lease is in full force and effect as modified and stating the modifications); and if this Lease is not in full force and effect the certificate shall so state the reasons why; (c) certifying that this Lease as modified represents the entire agreement between the parties as to this leasing or, if it does not, the certificate shall so state why; (d) stating the dates to which rents, payments and other monies have been paid; (e) stating the dates on which the Term commenced and is scheduled to terminate; and (f) stating whether or not (to the best of Landlord's knowledge) Tenant is in default in keeping, observing and performing any of the terms of this Lease, and, if Tenant shall be in default, specifying each such default of which Landlord may have knowledge. It is intended that any such statement delivered pursuant to this Section 23.2 may be relied upon by any prospective assignee, transferee or purchaser of Tenant's interest in this Lease, any prospective Sublessee or any Leasehold Mortgagee, Subleasehold Mortgagee, Mezzanine Financing Source or any assignee thereof, but reliance on such certificate may not extend to any default of Tenant as to which Landlord shall have had no actual knowledge.

ARTICLE 24

Construction of Terms and Miscellaneous

Section 24.1. **Severability**. If any provisions of this Lease or the application thereof to any person or situation shall, to any extent, be held invalid or unenforceable, the remainder of this Lease, and the application of such provisions to persons or situations other than those as to which it shall have been held invalid or unenforceable, shall not be affected thereby, and shall continue valid and be enforced to the fullest extent permitted by law.

Section 24.2. **Captions**. The Article headings and captions of this Lease and the Table of Contents preceding this Lease are for convenience and reference only and in no way define, limit or describe the scope or intent of this Lease nor in any way affect this Lease. All references to Sections and Articles mean the Sections and Articles in this Lease unless another agreement is expressly referenced.

Section 24.3. **Relationship of Parties**. This Lease does not create the relationship of principal and agent or of mortgagee and mortgagor or of partnership or of joint venture or of any association between Landlord and Tenant, the sole relationship between Landlord and Tenant being that of Landlord and Tenant or lessor and lessee.

Section 24.4. **Recording**. A Memorandum of this Lease in the form attached hereto as Schedule 24.4, or at Tenant's behest, a full copy hereof, shall be recorded among the Public Records of Miami-Dade County, Florida, at the sole cost of Tenant, to give record notice of the existence of this Lease and all or certain terms set forth herein.

Section 24.5. **Construction**. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine or neuter, singular or plural, as the identity of the party or parties may require. The parties hereby acknowledge and agree that each was properly represented by counsel and this Lease was negotiated and drafted at arms' length so that the judicial rule of construction to the effect that a legal document shall be construed against the drafters shall be inapplicable to this Lease which has been drafted by counsel for both Landlord and Tenant.

Section 24.6. **Consents**. Whenever in this Lease the consent or approval of Landlord or Tenant is required, such consent or approval shall be made by the County Mayor or County Mayor's designee (on behalf of Landlord) and any duly authorized officer or representative of Tenant (on behalf of Tenant) and:

(a) shall not be unreasonably or arbitrarily withheld, conditioned, or delayed unless specifically provided to the contrary, and shall not require a fee from the party requesting same;

(b) shall not be effective unless it is in writing; and

(c) shall apply only to the specific act or transaction so approved or consented to and shall not relieve Tenant or Landlord, as applicable, of the obligation of obtaining the other's prior written consent or approval to any future similar act or transaction.

Section 24.7. **Entire Agreement**. This Lease contains the entire agreement between the parties hereto and shall not be modified or amended in any manner except by an instrument in writing executed by the parties hereto, provided that amendments extending the time for performance of any obligation of Tenant by no more than twelve (12) months, and any extensions of the Review Period by no more than six (6) months in the aggregate, may be executed or granted by the County Mayor or the County Mayor's designee on behalf of Landlord.

Section 24.8. **Successors and Assigns**. The terms herein contained shall bind and inure to the benefit of Landlord, its successors and assigns, and Tenant, its successors and assigns (including Leasehold Mortgagees, Sublessees, and Space Lessees as appropriate and applicable), except as may be otherwise provided herein.

Section 24.9. **Station and System Plans**. Landlord agrees, at the request of Tenant, to make available to Tenant for inspection all plans, specifications, working drawings and engineering data in the possession of Landlord, or available to it, relating to the Station, the System and other facilities of Landlord in Miami-Dade County, it being understood and agreed that Tenant will reimburse Landlord for any duplication costs incurred in connection therewith and Landlord assumes no responsibility or liability for the information obtained pursuant to this Section.

Section 24.10. **Holidays**. It is hereby agreed and declared that whenever the day on which a payment due under the terms of this Lease, or the last day on which a response is due to a notice, or the last day of the period for performance or a cure period, falls on a day which is a legal holiday in Miami-Dade County, Florida, or on a Saturday or Sunday, such due date, date for performance or cure period expiration date shall be postponed to the next following business day. Any mention in this Lease of a period of days for performance shall mean calendar days.

Section 24.11. **Schedules/Exhibits**. Each Schedule and Exhibit referred to in this Lease has been initialed by the parties and forms an essential part of this Lease. The Schedules and Exhibits, even if not physically attached, shall be treated as if they were part of the Lease.

Section 24.12. **Brokers**. Landlord and Tenant hereby represent and agree that no real estate broker or other person is entitled to claim a commission as a result of the execution and delivery of this Lease.

Section 24.13. **Protest Payments**. If at any time a dispute shall arise as to any amount or sum of money to be paid by Tenant to Landlord under the provisions of this Lease, in addition to the rights set forth in Article 20 herein, Tenant shall have the right to make payment "under protest" and such payment shall not be regarded as a voluntary payment, and there shall survive the right on the part of Tenant to seek the recovery of such sum, and if it should be adjudged that there was no legal obligation on Tenant to pay such sum or any part thereof, Tenant shall be entitled to recover such sum or so much thereof as it was not legally required to pay under the provisions of this Lease; and if at any time a dispute shall arise between the parties hereto as to any work to be performed by either of them under the provisions of this Lease, the party against whom the obligation to perform the work is asserted may perform such work and pay the cost thereof "under protest" and the performance of such work shall in no event be regarded as a voluntary performance and there shall survive the right upon the part of said Tenant and/or Landlord to seek the recovery of the cost of such work, and if it shall be adjudged that there was no legal obligation on the part of said Tenant and/or Landlord to perform the same or any part thereof, said Tenant and/or Landlord shall be entitled to recover the cost of such work or the cost of so much thereof as Tenant or Landlord was not legally required to perform under the provisions of this Lease.

Section 24.14. **Radon**. In accordance with Florida law, the following disclosure is hereby made:

RADON GAS: Radon gas is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risk to persons who are exposed over time. Levels of radon that exceed Federal and State Guidelines have been found in

buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit.

Section 24.15. Energy-Efficiency Rating Disclosure. In accordance with Florida law, the following disclosure is hereby made:

Tenant may have the Property's energy efficiency rating determined. Tenant acknowledges that it has received from Landlord a copy of The Florida Building Energy-Efficiency Rating System Brochure as provided by the State of Florida Department of Community Affairs.

Section 24.16. Governing Law. This Lease shall be governed by and construed in accordance with the laws of the State of Florida.

Section 24.17. Counterparts. This Lease may be executed in two or more counterparts, each of which shall constitute an original but all of which, when taken together, shall constitute one and the same agreement.

Section 24.18. Attorneys' Fees. In the event of any litigation or other legal proceeding between the Parties arising under this Lease, the non-prevailing party shall be responsible for all costs and expenses of the prevailing party, including attorneys' fees and court costs, at both trial and appellate levels.

Section 24.19. Waiver of Jury Trial. The Parties hereby knowingly, irrevocably, voluntarily and intentionally waive any right either may have to a trial by jury in respect of any action, proceeding or counterclaim based on this Lease, or arising out of, under or in connection with this Lease or any amendment or modification of this Lease, or any other agreement executed by and between the parties in connection with this Lease, or any course of conduct, course of dealing, statements (whether verbal or written) or actions of any Party hereto. This waiver of jury trial provision is a material inducement for Landlord and Tenant entering into this Lease.

Section 24.20. Provisions not Merged With Deed. None of the provisions of this Lease, nor the separate estates of Tenant and Landlord, are intended to or shall, in any event, be merged, including by reason of any transfer, whether by operation or law or otherwise, (i) transferring Tenant's leasehold estate in the Demised Premises or its interest in the Project or any part thereof from Tenant to Landlord, or (ii) transferring title to the Demised Premises or any part thereof from Landlord to Tenant, and any such transfer shall not be deemed to affect or impair the provisions and covenants of this Lease. No such merger of estates shall occur unless and until all parties having any interest in this Lease, the leasehold estate created hereby, or the Project (or portion thereof), including all applicable Leasehold Mortgagees, shall join in the execution of a written instrument effecting such merger.

Section 24.21. Exculpation. It is the intent and agreement of the Parties hereto that only the Parties as entities shall be responsible in any way for their respective obligations hereunder, except as otherwise expressly provided herein. In that regard, no officer, director, partner, trustee, representative, investor, official, representative, employee, agent, or attorney of any of the Parties to this Lease shall be personally liable for the performance of any obligation

hereunder or for any other claim made hereunder or in any way in connection with this Lease, or any other matters contemplated herein, and any and all such personal liability, either at common law or in equity or by constitution or statute or other Laws and Ordinances are expressly waived and released as a condition of, and as a consideration for, the execution of this Lease.

Section 24.22. Documents Incorporated and Order of Precedence. Landlord and Tenant acknowledge that Miami-Dade County issued a Request for Proposals for Joint Development at the Douglas Road Metrorail Station, that Tenant submitted the Proposal in response to that Request for Proposals and that the Request for Proposals and Tenant's Proposal was the basis for award of this Lease and upon which Landlord has relied. The Request for Proposals and Tenant's Proposal are incorporated herein by this reference. If there is a conflict between or among the provisions of this Lease, the Request for Proposals and the Proposal, the order of precedence is as follows: (i) the terms of this Lease; (ii) the Proposal, (iii) the Request for Proposals for Joint Development at the Douglas Road Metrorail Station, RFP No. 00133.

Section 24.23. Vendor Registration. Tenant shall be a registered vendor with the County for the duration of the Lease.

ARTICLE 25

Representations and Warranties

Section 25.1. Landlord's Representations and Warranties. Landlord hereby represents and warrants to Tenant that:

(a) It has full power and authority to enter into this Lease and perform in accordance with its terms and provisions and that the parties signing this Lease on behalf of Landlord have the authority to bind Landlord and to enter into this transaction and Landlord has taken all requisite action and steps to legally authorize it to execute, deliver and perform pursuant to this Lease.

(b) Landlord is the fee simple owner of the Demised Premises and Landlord will deliver the leasehold hereunder and exclusive possession of the Land and Demised Premises to Tenant free and clear of any and all tenancies and occupancies of every nature whatsoever, whether by Miami-Dade County or otherwise, and also free and clear of any violations by Miami-Dade County of Laws and Ordinances, except as may be agreed by Tenant in writing, and subject only to the rights reserved herein to Landlord.

(c) Throughout the term of this Lease, Landlord will endeavor to continue transit service to and from the Station on a daily basis. The parties acknowledge that service disruptions occur occasionally and such disruptions shall not be considered termination of service under this Lease. If the Station is damaged or destroyed and as a result trains cannot stop thereat, the foregoing sentence shall not apply during the period of repair and rebuilding done in accordance with Section 16.2.

(d) Tenant acknowledges that in accordance with Florida Statutes Section 125.411(3) (1990) Landlord does not warrant the title or represent any state of facts concerning the title to the Demised Premises, except as specifically stated in this Lease.

Section 25.2. **Tenant's Representations and Warranties**. Tenant hereby represents and warrants to Landlord that it has full power and authority to enter into this Lease and perform in accordance with its terms and provisions and that the parties signing this Lease on behalf of Tenant have the authority to bind Tenant and to enter into this transaction and Tenant has taken all requisite action and steps to legally authorize it to execute, deliver and perform pursuant to this Lease.

ARTICLE 26

Compliance With Federal Regulations

Tenant shall comply with the following statutes, rules, regulations and orders (as amended from time to time) to the extent that these are made applicable by virtue of the grant to Landlord under the Urban Mass Transportation Act of capital grant for the Metrorail System, including but not limited to:

(a) requirements found in Title VI of the Civil Rights Act of 1964;

(b) requirements found in 49 CFR Part 23.7 regarding nondiscrimination based on race, color, national origin or sex;

(c) requirements found in 49 CFR Parts 27.7 and 27.9 regarding non-discrimination based on disability and complying with the Americans With Disabilities Act with regard to any improvements constructed; and

(d) the Federal Transit Administration Master Agreement, Section 3, Subparagraphs (a)(1), (a)(2), and (b) thereof relating to conflicts of interests and debarment.

ARTICLE 27

Dispute Resolution

Section 27.1. **Arbitration**. Any dispute between Landlord and Tenant relating to the matters addressed in Article 4, whether a condition or event constitutes an Unavoidable Delay or which otherwise is expressly stated to be resolved in arbitration pursuant to the terms of this Lease, shall be referred to and exclusively and finally settled by binding arbitration, conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association (or similar successor rules thereto), and shall not be subject to judicial review. The place of arbitration shall be Miami, Florida. In the event that any party calls for a determination in arbitration pursuant to the terms of this Lease, the Parties shall have a period of ten (10) days from the date of such request to mutually agree on one arbitrator who, at a minimum, must be an attorney with at least fifteen (15) years of experience practicing real estate construction law (with

significant experience in development projects and related litigation) in Miami-Dade County, Florida. If the parties fail to agree, each Party shall have an additional ten (10) days to select an individual meeting the same minimum qualifications set forth above, and the two (2) arbitrators selected shall select an arbitrator to be the arbitrator for the dispute in question. If any party fails to make its respective selection of an arbitrator within the additional 10-day period provided for above, then the remaining party's selection shall select the arbitrator. The arbitrator shall decide the issues submitted to him/her in accordance with (a) the language, commercial purpose and restrictions contained in this Lease (including exhibits hereto, if any) and (b) what is just and equitable under the circumstances, provided that all substantive issues shall be determined under the laws of the State of Florida. With respect to any arbitration proceeding hereunder, the following provisions shall apply: (i) the parties shall cooperate with one another in the production and discovery of requested documents, and in the submission and presentation of arguments to the arbitrator at the earliest practicable date; (ii) the arbitrator conducting any arbitration shall be bound by the provisions of this Lease and shall not have the power to add to, subtract from or otherwise modify such provisions; and (iii) each party shall be responsible for its own costs and expenses incurred in the arbitration, including attorneys' fees, but the costs of the presiding arbitrator and the arbitration itself shall be shared equally by the Parties. Arbitration of any dispute hereunder shall be conducted on an expedited basis under the "Expedited Procedures" of the Commercial Arbitration Rules to the fullest extent possible.

Section 27.2. **Economic Unavoidable Delay**. If a dispute arises between the Parties as to whether a condition or event constitutes an Economic Unavoidable Delay and/or the duration of the Economic Unavoidable Delay, the Parties shall have a period of ten (10) days from the request of either Party to mutually agree on one expert who, at a minimum, must have at least fifteen (15) years of relevant experience in the subject matter that forms the basis of the claim for Economic Unavoidable Delay, to resolve such dispute. If the Parties fail to agree, each Party shall have an additional ten (10) days to select an individual meeting the same minimum qualifications set forth above, and the two (2) experts selected shall select a third expert who, together with the two (2) experts selected by the Parties, shall resolve the dispute in question. If any Party fails to make its respective selection of an expert within the additional 10-day period provided for above, then the remaining party's selection shall select the additional expert and the two (2) experts shall resolve the dispute in question. Once the expert(s) have been selected in accordance with this provision, the expert(s) shall render a decision on the dispute within a period of thirty (30) days.

Section 27.3. **Other Disputes**. Except to the extent this Lease expressly provides that certain matters are to be resolved by arbitration or another form of dispute resolution, and except as the Parties may otherwise mutually agree, disputes between the Parties under this Lease shall be resolved by litigation.

IN WITNESS WHEREOF, Landlord has caused this Lease to be executed in its name by the County Mayor; as authorized by the Board, and Tenant has caused this Lease to be executed by its duly authorized representative all on the day and year first hereinabove written.

LANDLORD

Signed in the presence of the following witnesses:

Print Name: _____

Print Name: _____

ATTEST:

By: _____
Harvey Ruvin, Clerk

Approved as to form and legal sufficiency
Name: Alexander S. Bokor
Title: Assistant Co. Atty

MIAMI-DADE COUNTY, a political subdivision of the State of Florida

BY ITS BOARD OF COUNTY COMMISSIONERS

By: _____
Carlos A. Gimenez, County Mayor

TENANT

Signed in the presence of the following witnesses:

Print Name: Jonathan Raffe

Print Name: Nicole Shiman

ADLER 13TH FLOOR DOUGLAS STATION, LP, a Florida limited partnership

BY: Adler 13th Floor Douglas Station GP, LLC, a Florida limited liability company, its general partner

By: _____
Name: Michael M. Adler
Title: Chairman and Vice President

By: _____
Name: Arnaud Karsenti
Title: Vice President

STATE OF FLORIDA)
) SS:
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this 1st day of April, 2016 by Michael M. Adler, as Chairman and Vice President and Arnaud Karsenti as Vice President, of Adler 13th Floor Douglas Station GP, LLC, a Florida limited liability company and the general partner of ADLER 13TH FLOOR DOUGLAS STATION, LP, a Florida limited partnership.

Personally Known X OR Produced Identification ____

Type of Identification Produced: _____

Adam Mait
Notary Public, State of Florida at Large

Print or Stamp Name:
Commission No.:
My Commission Expires:

ADAM MAIT
MY COMMISSION # FF 033908
EXPIRES: April 1, 2017
Bonded Thru Budget Notary Services

EXHIBIT A

Description of Overall Land

Lot 1 and Lot 2 of DOUGLAS ROAD STATION, according to the Plat thereof recorded in Plat Book 158 at Page 32 of the Public Records of Miami-Dade County, Florida.

TOGETHER WITH

All of Tract B of DOUGLAS ROAD STATION VINTAGE, according to the Plat thereof recorded in Plat Book 169 at Page 33 of the Public Records of Miami-Dade County, Florida.

EXHIBIT A-1

Description of Land

Tract A and Tract B of DOUGLAS ROAD STATION VINTAGE, according to the Plat thereof recorded in Plat Book 169, at Page 33, of the Public Records of Miami-Dade County, Florida.

EXHIBIT A-2

Description of Station Land

All of the Plat of DOUGLAS ROAD STATION, according to the Plat thereof recorded in Plat Book 158 at Page 32 of the Public Records of Miami-Dade County, Florida.

LESS AND EXCEPT

Tract A and Tract B of DOUGLAS ROAD STATION VINTAGE, according to the Plat thereof recorded in Plat Book 169 at Page 33 of the Public Records of Miami-Dade County, Florida.

EXHIBIT B

Form of Development Agreement

(see attached)

SCHEDULE 1.3

Confirmation of Date(s) Certificate

TO: _____

FROM: _____

DATE: _____

RE: Agreement of Lease dated _____ ___, 2016 (the "**Lease**") between **MIAMI-DADE COUNTY**, a political subdivision of the State of Florida, through the Department of Transportation and Public Works ("**Landlord**"), and ADLER 13TH FLOOR DOUGLAS STATION, LP, a Florida limited partnership ("**Tenant**"), with respect to certain land and improvements located in the City of Miami, Miami-Dade County.

Ladies and Gentlemen:

We refer to the captioned Lease and the terms thereof. Capitalized terms used in this certificate have the meanings given to them in the Lease. In accordance with Section 1.3 of the Lease, we wish to advise and/or confirm as follows:

1. The Effective Date of the Lease is _____ ____, 20___.

2. The Commencement Date of the Lease is _____ ___, 20___.

3. The Term of the Lease ends on _____ ____, 2_____, subject to extension as set forth in the Lease.

4. As of execution hereof, the Lease has not been modified and is in full force and effect and, to Landlord's knowledge, that Tenant has performed all obligations on its part under the Lease, there exists no breach, condition, state of facts or event that constitutes, or with the passing of time or the giving of notice, or both, would constitute a default by either Landlord or Tenant under the Lease.

[Signatures appear on the following page]

LANDLORD:

MIAMI-DADE COUNTY, a political subdivision of the State of Florida

ATTEST:

BY ITS BOARD OF COUNTY COMMISSIONERS

By: _____
Harvey Ruvin, Clerk

By: _____
Carlos A. Gimenez, County Mayor

_____
Approved as to form and legal sufficiency
Name: _____
Title: _____

TENANT:

ADLER 13TH FLOOR DOUGLAS STATION, LP, a Florida limited partnership

BY: Adler 13th Floor Douglas Station GP, LLC, a Florida limited liability company, its general partner

By: _____
Name: _____
Title: _____

SCHEDULE 3.1

Minimum Rent Schedule

3.1 MINIMUM RENT SCHEDULE

Growth Rate	3%

* Growing at the lesser of CPI or 3%

Year	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
Minimum Rent	1,500,000				375,000	386,250	397,838	409,773	422,066	434,728	447,770	461,203	475,039	489,290	503,969

* The schedule above utilizes 3% as the illustrative growth rate; actual minimum rent growth to be calculated based on the lesser of CPI or 3%.

SCHEDULE 3.2

Phased Development Schedule

3.2: PHASED DEVELOPMENT SCHEDULE

Type	Phase	Units	Floor Area
Residential	I	320	325,590
Retail	I		40,644
Hotel	I	150	109,230
Residential	II	304	295,760
Retail	II		16,194
Residential	III	304	304,855
Retail	III		8,661
Residential	IV	42	40,320
Retail	IV		10,494
Residential		**970**	**966,525**
Retail			**75,994**
Hotel		**150**	**109,230**
GRAND TOTAL		**1,120**	**1,151,750**

** These figures represent estimates based on the submitted RFP-00133. The exact number of units, floor area allocation, and uses are subject to change as part of the development process.*

SCHEDULE 3.3

Penalty Rent Schedule

3.3: PENALTY RENT SCHEDULE

Phase 1	Milestone	Penalty Rent
Commencement of Construction	3 Years from Effective Date	100,000
Commencement of Construction Default	4 Years from Effective Date	100,000
First Temporary Certificate of Occupancy	3 Years from Construction Commencement	100,000
Final CO on all Phase 1 Development	5 Years from Construction Commencement	100,000

Phase 2	Milestone	Penalty Rent
Commencement of Construction	6 Years from Effective Date	125,000
Commencement of Construction Default	7 Years from Effective Date	125,000
First Temporary Certificate of Occupancy	3 Years from Construction Commencement	125,000
Final CO on all Phase 2 Development	5 Years from Construction Commencement	125,000

Phase 3	Time	Penalty Rent
Commencement of Construction	9 Years from Effective Date	150,000
Commencement of Construction Default	10 Years from Effective Date	150,000
First Temporary Certificate of Occupancy	3 Years from Construction Commencement	150,000
Final CO on all Phase 3 Development	5 Years from Construction Commencement	150,000

Phase 4	Time	Penalty Rent
Commencement of Construction	11 Years from Effective Date	175,000
Commencement of Construction Default	12 Years from Effective Date	175,000
First Temporary Certificate of Occupancy	3 Years from Construction Commencement	175,000
Final CO on all Phase 4 Development	5 Years from Construction Commencement	175,000

Entire Program	Time	Penalty Rent
Complete Development of the Project	15 Years from Effective Date	200,000

SCHEDULE 7

Insurance Requirements

[To be attached to this Lease once provided by the County's Risk Management Department and approved by Tenant]

SCHEDULE 17.2(a)(i)

Form of Partial Assignment, Bifurcation and Partial Termination of Lease

This instrument prepared by,
and after recording return to:

Nancy B. Lash, Esq.
Greenberg Traurig, P.A.
333 S.E. 2nd Avenue, Suite 4400
Miami, Florida 33131

PARTIAL ASSIGNMENT, ASSUMPTION AND
BIFURCATION OF AGREEMENT OF LEASE

THIS PARTIAL ASSIGNMENT, ASSUMPTION AND BIFURCATION OF AGREEMENT OF LEASE (this "Agreement") is made as of the _____ day of _____ _____, 20__ (the "Effective Date") by and among (i) MIAMI-DADE COUNTY, a political subdivision of the State of Florida, through Department of Transportation and Public Works ("Landlord"), (ii) ADLER 13TH FLOOR DOUGLAS STATION, LP, a Florida limited partnership ("Tenant"), and (iii) [_____, a _____ _____] ("Assignee").

WITNESSETH:

WHEREAS, Landlord, as landlord, and Tenant, as tenant, entered into that certain Agreement of Lease (Douglas Road Metrorail Station) dated as of [_____], 20[__] (as heretofore and hereafter assigned and amended from time to time, the "Master Ground Lease"), a memorandum of which was recorded on [_____], 20[__] in Official Records Book [_____], at Page [_____], of the Public Records of Miami-Dade County, Florida;

WHEREAS, Tenant desires to partially assign to Assignee its interest in and to the Master Ground Lease solely with respect to the real property more particularly described on Exhibit A attached hereto (the "Bifurcated Parcel"), and Assignee desires to accept and assume Tenant's interest in and to the Master Ground Lease solely with respect to the Bifurcated Parcel;

WHEREAS, Assignee is a [Permitted Transferee OR Approved Transferee];

WHEREAS, pursuant to Section 17.2 of the Master Ground Lease, Landlord, Tenant and Assignee have agreed to bifurcate the Master Ground Lease into two (2) leases by (i) partially terminating the Master Ground Lease solely as to the Bifurcated Parcel and (ii) Assignee and

///

Landlord entering into a Bifurcated Lease solely as to the Bifurcated Parcel in substantially the form attached to the Master Ground Lease as Schedule 17.2(a)(ii) (the "Bifurcated Lease").

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 hereby agree as follows:

1. Defined Terms; Incorporation of Recitals. Capitalized terms used but not otherwise defined in this Agreement have the respective meanings given to them in the Master Ground Lease. The preamble and recitals set forth above are hereby incorporated into this Agreement by this reference in their entirety.

2. Assignment. Tenant hereby remises, releases, quitclaims, transfers, conveys and assigns (absolutely and not as security or upon any condition) to Assignee, all right, title and interest of Tenant in, to and under the Master Ground Lease solely with respect to the Bifurcated Parcel. This assignment includes only Tenant's leasehold estate in and to the Bifurcated Parcel arising under and by virtue of the Master Ground Lease, and Tenant's right, title and interest in and to any and all improvements located on the Bifurcated Parcel. Accordingly, Tenant and Assignee acknowledge and agree that Tenant retains all right, title and interest in and to the Master Ground Lease (and the leasehold estate arising thereunder) except only as it relates to the Bifurcated Parcel.

3. Assumption. Assignee hereby assumes, effective as of the Effective Date, all of the Tenant's duties and obligations under the Master Ground Lease solely with respect to the Bifurcated Parcel and only to the extent that any such duty or obligation arises under the Master Ground Lease from and after the Effective Date. Assignee covenants and agrees with Landlord and Tenant to be bound by all of the terms, covenants, agreements provisions and conditions of the Master Ground Lease to be performed or observed by the "Tenant" under the Master Ground Lease solely with respect to the Bifurcated Parcel from and after the Effective Date.

4. Mutual Indemnification. Assignee hereby indemnifies and agrees to defend (with counsel reasonably satisfactory to Tenant) and hold harmless Tenant from and against any and all liabilities, obligations, claims, costs and expenses (including but not limited to reasonable attorneys' fees and costs at trial court and all appellate levels and in any post-judgment proceedings) suffered or incurred by Tenant by reason of Assignee's failure to perform any obligations under the Master Ground Lease assumed by Assignee hereunder. Tenant hereby indemnifies and agrees to defend (with counsel reasonably satisfactory to Assignee) and hold harmless Assignee from and against any and all liabilities, obligations, claims, costs and expenses (including but not limited to reasonable attorneys' fees and costs at trial court and all appellate levels and in any post-judgment proceedings) suffered or incurred by Assignee by reason of Tenant's failure to perform any of the obligations of Tenant under the Master Ground Lease with respect to the Bifurcated Parcel, which obligations were to be met by Tenant prior to the Effective Date.

5. Bifurcated Lease. Landlord and Assignee hereby agree to simultaneously herewith execute and deliver the Bifurcated Lease, a memorandum of which shall be recorded in the Public Records of Miami-Dade County, Florida.

6. Partial Termination and Release; No Cross Default. The Master Ground Lease is hereby partially terminated solely as to the Bifurcated Parcel and the Bifurcated Parcel shall no longer be subject to, and is hereby released from, the terms and provisions of the Master Ground Lease. Notwithstanding anything contained in the Master Ground Lease, effective as of the Effective Date:

a. Tenant shall not be obligated to perform any obligation under the Master Ground Lease to the extent such obligation pertains to, or is to be performed on, the Bifurcated Parcel, and shall be automatically released from any and all such obligations (including, without limitation, any obligation to (x) pay any rent allocated to the Bifurcated Parcel, (y) develop the Phase of the Project governed by the Bifurcated Lease, and (z) maintain insurance for the Bifurcated Parcel);

b. No action or omission of, or default by, Assignee (or anyone acting by, through or under Assignee) under the Bifurcated Lease, including, without limitation, any failure to develop the Phase of the Project governed by the Bifurcated Lease, shall in any event constitute or give rise to a default, or any liability of Tenant under the Master Ground Lease or deprive Tenant of any of its rights under the Master Ground Lease, including without limitation the right to develop the remainder of the Project on the balance of the Demised Premises in accordance with the Master Ground Lease; and

c. Neither Tenant nor any assignee or successor thereof shall in any event be prohibited from developing any portion of the Project (or be in default under the Master Ground Lease, or have any liability), as a result of any failure of Assignee (or anyone acting by, through or under Assignee) under the Bifurcated Lease to develop the Phase of the Project governed by the Bifurcated Lease (notwithstanding that such failure may cause the Project to be developed other than in accordance with the Master Ground Lease).

Landlord acknowledges and agrees that a default under the Master Ground Lease shall not constitute a default under the Bifurcated Lease, and a default under the Bifurcated Lease shall not constitute a default under the Master Ground Lease; it being the intention of the parties that the Master Ground Lease and the Bifurcated Lease shall not be cross-defaulted. However, nothing set forth herein shall release Tenant from its obligations under the Master Ground Lease except as expressly provided herein

7. Minimum Rent. As contemplated by Section 17.2 of the Master Ground Lease, the Minimum Rent due and payable by Tenant under the Master Ground Lease is hereby adjusted and reduced, on a dollar for dollar basis, by the aggregate amount of Minimum Rent due and payable under the Bifurcated Lease. Accordingly, Minimum Rent under the Master Ground Lease is hereby adjusted and reduced by _____ and No/100 Dollars ($_____) per annum to _____ and No/100 Dollars ($_____) per annum, subject to increases as provided in the Master Ground Lease. All references to Minimum Rent in the Master Ground Lease shall be deemed modified accordingly.

8. Continuing Effect. The Master Ground Lease shall hereinafter continue to affect the Land less and except the Bifurcated Parcel (and any other parcels previously released from

the terms of the Master Ground Lease), and the Bifurcated Lease shall hereinafter affect the Bifurcated Parcel. The terms "Land", "Demised Premises", "Improvements", and "Buildings" under the Master Ground Lease are hereby deemed modified so as to exclude the portion of the Property, Demised Premises, Improvements, and Buildings located on or comprising the Bifurcated Parcel. The term "Lease", as used in the Master Ground Lease, is hereby deemed modified to refer to the Master Ground Lease, as modified hereby.

9. Authority to Execute. Landlord hereby represents and warrants to Tenant and Assignee that the individual(s) signing this Agreement on behalf of Landlord have full power and authority to execute and deliver this Agreement and bind Landlord. Tenant hereby represents and warrants to Landlord and Assignee that the individual(s) signing this Agreement on behalf of Tenant have full power and authority to execute and deliver this Agreement and bind Tenant. Assignee hereby represents and warrants to Landlord and Tenant that the individual(s) signing this Agreement on behalf of Assignee have full power and authority to execute and deliver this Agreement and bind Assignee.

10. Estoppel. The Master Ground Lease is presently in full force and effect, and has not been modified, amended, supplemented, altered, assigned or transferred (in whole or in part) since the date thereof, except for any amendments identified herein and any partial assignments and/or bifurcation(s) of the Master Ground Lease prior to the Effective Date, and except as contemplated in this Agreement.

11. Miscellaneous. This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and assigns. This Agreement shall be construed according to the laws of the State of Florida. This Agreement cannot be changed except by an agreement in writing, dated subsequent to the Effective Date, signed by the party against whom enforcement of the change is sought. In case any one or more of the covenants, agreements, terms or provisions contained in this Agreement shall be invalid, illegal or unenforceable in any respect, the validity of the remaining covenants, agreements, terms or provisions contained herein shall be in no way affected or prejudiced thereby. This Agreement may be executed in any number of counterparts, each of such counterparts shall for all purposes be deemed to be an original, and all such counterparts shall together constitute but one and the same Agreement. The headings of the articles, sections, paragraphs and subdivisions of this Agreement are for convenience of reference only, are not to be considered a part hereof, and shall not limit or expand or otherwise affect any of the terms hereof.

12. Condition. This Agreement is conditioned upon and shall not be effective unless Landlord and Assignee enter into the Bifurcated Lease. In the event Landlord and Assignee fail to execute and deliver the Bifurcated Lease, this Agreement shall be deemed void *ab initio* and no party hereto shall have any further rights or obligations hereunder. Upon the satisfaction of the condition set forth in the preceding sentence, this Agreement shall be recorded in the Public Records of Miami-Dade County, Florida, and the Master Ground Lease shall be deemed permanently bifurcated and split into two (2) separate and independent leases as contemplated herein and in the Master Ground Lease.

[Remainder of Page Intentionally Blank]

IN WITNESS WHEREOF, Landlord, Tenant, and Assignee, intending to be legally bound hereby, have executed and delivered this Agreement as of the Effective Date.

ATTEST:

By: _____
Harvey Ruvin, Clerk

_____
Approved as to form and legal sufficiency
Name: _____
Title: _____

LANDLORD:

MIAMI-DADE COUNTY, a political subdivision of the State of Florida

By: _____
Name: _____
Title: _____

Signed, sealed and delivered
in the presence of:

_____
Print Name:

_____
Print Name:

TENANT:

ADLER 13TH FLOOR DOUGLAS STATION, LP, a Florida limited partnership

By: Adler 13th Floor Douglas Station GP, LLC, a Florida limited liability company, its general partner

By: _____
Name: _____
Title: _____

ASSIGNEE:

[_____, a ____
_____]

_____
Print Name:

_____
Print Name:

By: _____
Its: _____

115

STATE OF FLORIDA)
) SS:
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this ____ day of _____, 2015, by _____, as _____ of Adler 13th Floor Douglas Station GP, LLC, a Florida limited liability company, the general partner of Adler 13th Floor Douglas Station, LP, a Florida limited partnership, on behalf of the company and limited partnership. He/She is personally known to me or produced _____ as identification.

_____
Print or Stamp Name: _____
Notary Public, State of Florida at Large
Commission No.: _____
My Commission Expires: _____

STATE OF [_____])
) SS:
COUNTY OF [_____])

The foregoing instrument was acknowledged before me this ____ day of _____, 20__, by _____, as _____ of [*insert name of Assignee, a* _____], on behalf of the [_____]. He/She is personally known to me or produced _____ as identification.

_____
Print or Stamp Name: _____
Notary Public, State of [_____] at Large
Commission No.: _____
My Commission Expires: _____

EXHIBIT A

Legal Description of Bifurcated Parcel

SCHEDULE 17.2(a)(ii)

Form of Bifurcated Lease

[SEE ATTACHED]

SCHEDULE 23.2

Landlord's Estoppel Certificate

(Note: This form subject to amendments based on the requirements of Tenant, Tenant's successors and/or assigns, and any prospective Sublessee or Lender)

_____
_____
_____
_____

RE: Agreement of Lease dated _____, 2016 (the "**Lease**") by and between **MIAMI-DADE COUNTY**, a political subdivision of the State of Florida, through the Department of Transportation and Public Works ("**Landlord**"), and ADLER 13TH FLOOR DOUGLAS STATION, LP, a Florida limited partnership ("**Tenant**"), with respect to certain land and improvements located in the City of Miami, Miami-Dade County.

Ladies and Gentlemen:

The undersigned Landlord hereby acknowledges receipt of notice that the above-referenced Lease, which leases to Tenant certain premises described therein (the "**Premises**"), [is being assigned to you by Tenant] [as security for a loan to be made by you to the Tenant, which loan will be secured by _____] [in connection with your acquisition of Tenant's interest in the Lease.] Capitalized terms used herein without definition have the meaning given to them in the Lease.

In connection therewith, the undersigned Landlord hereby certifies to you and agrees with you as follows:

1. The Lease is valid and is in full force and effect and is binding and enforceable against Landlord.

2. To the best of Landlord's knowledge, Tenant is not in default under the Lease and there exist no facts that could constitute a basis for any such default upon the lapse of time or the giving of notice or both. There exist no offsets, counterclaims, or defenses of Landlord under the Lease against Tenant, and there exist no events that would constitute a basis for any such offset, counterclaim, or defense against Tenant upon the lapse of time or the giving of notice or both.

3. The Lease (a true, correct and complete copy of which, including all riders, exhibits, modifications and amendments to the Lease (if any), is attached as ***Exhibit A*** hereto) constitutes the entire agreement between Landlord and the Tenant. The Lease has not been modified, supplemented or amended in any way other than as follows: _____.

4. The Commencement Date of the Lease was _____ ___, 2_____. The term of the Lease commenced on the Commencement Date and consists of an initial term of thirty (30) years with two (2) additional renewal terms of thirty (30) years each. The Term (as previously extended) ends on _____ ____, 2_____. The Term is subject to [further] extension as provided in the Lease, so long as such extensions do not extend beyond the date that is twenty-five (25) years following the last day of the initial 90-year Term (measured from the Commencement Date).

5. [An upfront payment of Minimum Rent in the amount of $_____ was made on _____ ____, 20___ [is due by _____ ___, 20___], which represents payments of Minimum Rent for the first four (4) Lease Years.] [Rent payments are being made on a current basis and have been made through the month of _____.] Tenant [will pay for the fifth (5th) Lease Year] [currently pays] Minimum Rent equal to $_____ per annum, subject to annual adjustment as set forth in the Lease.

6. Tenant [will pay from and after the fifth (5th) Lease Year] [currently pays] Participation Rent equal to 3.00% of annual Gross Revenue, provided such amount is reduced by the amount of annual Minimum Rent paid by Tenant. The amount of Participation Rent paid for the immediately preceding Lease Year was equal to $_____.

7. The amount of Penalty Rent due and payable is equal to [$_____] [N/A]. As of the date hereof, Tenant has paid Penalty Rent in the aggregate amount of [$_____] [N/A].

8. To the best of Landlord's knowledge, the Lease has not been assigned or transferred or sublet to anyone in whole or in part, except as indicated in **Exhibit A** attached hereto.

9. This certificate is made for the benefit of (and may be relied upon by) Tenant, you and your successors and assigns, and shall be binding upon Landlord and its successors and assigns. To the extent not delivered to same, this certificate may be relied upon by any prospective assignee, transferee or purchaser of Tenant's interest in the Lease, any prospective Sublessee or any Lender or any assignee thereof. The person signing this certificate on behalf of Landlord has been, and is, duly authorized to do so and has been, and is, duly authorized to bind Landlord to the terms hereof.

[Signature page follows]

This certificate has been executed as of the ____ day of _____, 20___.

LANDLORD:

MIAMI-DADE COUNTY, a political subdivision of the State of Florida

BY ITS BOARD OF COUNTY COMMISSIONERS

By: _____
_____, County Mayor

ATTEST:

By: _____
_____, Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

By:_____
Name:_____
Title:_____

EXHIBIT A

[See Attached]

SCHEDULE 24.4

Memorandum of Lease

This instrument prepared by
(and after recording return to):

Name: Nancy B. Lash, Esq.
Address: Greenberg Traurig, P.A.
333 SE 2nd Avenue, Suite 4400
Miami, Florida 33131

MEMORANDUM OF AGREEMENT OF LEASE
(Douglas Road Metrorail Station)

THIS MEMORANDUM OF AGREEMENT OF LEASE is made as of this ____ day of _____, 2016, by and between MIAMI-DADE COUNTY, a political subdivision of the State of Florida, through the Department of Transportation and Public Works (the "County"), whose address is 701 N.W. 1st Court, Miami, Florida 33136, Attn: Department of Transportation and Public Works Director, and ADLER 13TH FLOOR DOUGLAS STATION, LP, a Florida limited partnership ("Tenant"), whose address is 1400 NW 107th Avenue, 5th Floor, Miami, Florida 33172, Attn: Michael Adler.

WITNESSETH:

For and in consideration of Ten and NO/100 Dollars ($10.00) and other valuable consideration paid, the County does demise and let unto Tenant, and Tenant does lease and take from the County, upon the terms and conditions and subject to the limitations more particularly set forth in that certain Agreement of Lease by and between the County and Tenant dated as of _____ __, 2016 (the "Lease"), the land, improvements, air rights and subsurface rights located in the City of Miami, in Miami-Dade County, Florida, in an area adjacent to the Douglas Road Metrorail Station, and legally described on Exhibit A hereto and by this reference made a part hereof (the "Demised Premises"). The County remains the legal and equitable owner of the land underlying the Demised Premises and retains all of the benefits and burdens of ownership in said land as more particularly provided in the Lease. Capitalized terms used in this Memorandum without definition have the meanings given to them in the Lease.

The County, in consideration of the rents and covenants set forth in the Lease, hereby demises and leases to Tenant, and Tenant hereby takes and hires from the County, the Demised Premises,

TO HAVE AND TO HOLD the Demised Premises for a term of ninety (90) years, consisting of an initial term of thirty (30) years with two (2) additional renewal terms of thirty (30) years each, commencing on the Commencement Date (as defined in the Lease) and ending on the date that is ninety (90) years thereafter, subject to extensions as provided in the Lease, provided that such extensions shall not extend beyond the date that is twenty-five (25) years following the last day of the initial 90-year term (measured from the Commencement Date).

The Lease contains restrictions on the cessation or the material reduction of the operation of the Station or the System by the County, all as more particularly described in the Lease.

This instrument is executed and is to be recorded against the Demised Premises for the purpose of giving notice of the Lease hereinbefore defined and certain restrictions contained therein, but shall not be deemed or construed to change the terms of the Lease, which shall govern in the case of a conflict.

[Signatures begin on following page]

EXECUTED as of the day and year first above written.

Signed in the presence of:

Print Name: _____

Print Name: _____

MIAMI-DADE COUNTY, a political subdivision of the State of Florida

BY ITS BOARD OF COUNTY COMMISSIONERS

By: _____
Carlos A. Gimenez, County Mayor

ATTEST:

By: _____
Harvey Ruvin, Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

By: _____
Name: Alexander S. Bokor
Title: Assistant County Attorney

Signed in the presence of:

Print Name: Jonathan Raiffe

Print Name: Nicole Shiman

ADLER 13TH FLOOR DOUGLAS STATION, LP, a Florida limited partnership

BY: Adler 13th Floor Douglas Station GP, LLC, Florida limited liability company, its general partner

By: _____
Name: Michael M. Adler
Title: Chairman and Vice President

By: _____
Name: Arnaud Karsenti
Title: Vice President

STATE OF FLORIDA)
) SS:
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this 1st day of April, 2016 by Michael M. Adler, as Chairman and Vice President and Arnaud Karsenti as Vice President, of Adler 13th Floor Douglas Station GP, LLC, a Florida limited liability company, the general partner of Adler 13th Floor Douglas Station, LP, a Florida limited partnership, on behalf of the company and limited partnership. He/She is personally known to me or produced _____ as identification.

Notary: Adam Mait
Print Name: Adam J. Mait
My Commission expires: 4/1/17

[NOTARIAL SEAL]

ADAM MAIT
MY COMMISSION # FF 003908
EXPIRES: April 1, 2017
Bonded Thru Budget Notary Services

EXHIBIT A

LEGAL DESCRIPTION OF DEMISED PREMISES

Tract A and Tract B of DOUGLAS ROAD STATION VINTAGE, according to the Plat thereof recorded in Plat Book 169, at Page 33, of the Public Records of Miami-Dade County, Florida.

[EXECUTION VERSION]

Development Agreement between Miami-Dade County and Adler 13th Floor Douglas Station, LP for the Douglas Road Station

TABLE OF CONTENTS

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (together with all amendments, supplements, addenda and renewals, this "Agreement"), dated and entered into as of this ___ day of _____, 2016, made by and between MIAMI-DADE COUNTY, a political subdivision of the State of Florida ("County"), through the Department of Transportation and Public Works ("DTPW" and together with the County, collectively, the "Owner"), having its principal office and place of business at Overtown Transit Village, 701 N.W. 1st Court, 17th Floor, Miami, Florida 33136, and ADLER 13TH FLOOR DOUGLAS STATION, LP, a Florida limited partnership having an office and place of business at 1400 NW 107th Avenue, 5th Floor, Miami, Florida 33172 (hereinafter called "Developer" and together with the Owner, collectively, referred to herein, as the "Parties").

WITNESSETH:

A. The Owner owns certain real property located in Miami-Dade County, Florida more particularly described in Schedule A attached hereto, together with all rights, privileges and access appurtenant to said real property, and all right, title and interest of the Owner, if any, in and to any land lying in the bed of any street, road, alley or right-of-way, open or closed, adjacent to or abutting the land as needed for the improvements (the "Land"), which is the location of a portion of the Miami-Dade County Metrorail System.

B. Developer desires to improve the existing Douglas Road Metrorail Station (the "Station") and make certain additional public improvements to the Land surrounding the Station in connection with improvements contemplated to be made by Developer to Owner's property adjacent to the Station (the "Project") in accordance with that certain Agreement of Lease (Douglas Road Metrorail Station) by and between Developer and Owner dated as of the date hereof (the "Ground Lease"), and the Owner desires to encourage transit oriented improvements of the Station and the Project.

C. Owner and the Developer recognize the potential benefits for public and private benefit through improvements to the Station and the Land in order to promote public transit usage and enhance the appearance of the Station.

D. Owner and Developer agree that Owner has specialized knowledge with respect to operation and maintenance of the System, and that this Agreement does not obligate the Developer to possess, operate or maintain any part of the System.

E. It is hereby mutually covenanted and agreed by and between the Parties hereto that this Agreement is made upon the agreements, terms, covenants and conditions hereinafter set forth. Capitalized terms used herein shall have the definitions and meanings set forth in Article 2 hereof and/or as elsewhere defined herein, including the foregoing recitals.

ARTICLE 1
GENERAL TERMS OF AGREEMENT

Section 1.1. **Agreement.** In accordance with (a) Chapter 125, Florida Statutes; (b) the powers granted to the Owner pursuant to authority properly delegated by the Florida legislature; and (c) the authority to grant rights or interest in real property including surface and air rights over real property belonging to the Owner; and, for and in consideration of the covenants and agreements specified herein, the Parties agree to the terms and conditions set forth in this Agreement. The Parties hereby agree that the consideration and obligations recited and provided under this Agreement constitute substantial benefits to both parties and thus adequate consideration for this Agreement.

Section 1.2. **Term of Agreement**

(a) The term of this Agreement (the "Term") shall commence on the Effective Date and shall be coterminous with the Ground Lease. The expiration or earlier termination of the Ground Lease in its entirety shall constitute a termination of this Agreement.

(b) This Agreement shall become effective on the Effective Date and shall for the Term constitute a covenant running with the land that shall be binding upon, and inure to, the benefit of the Parties, their successors, assigns, heirs, legal representatives, and personal representatives.

(c) The Developer agrees that Completion of Construction of the Stage 1 Improvements shall occur on or before the Phase I Construction Phase Deadline set forth in the Ground Lease, subject to Unavoidable Delays and Economic Unavoidable Delays. The Developer agrees that Completion of Construction of the Stage 2 Improvements shall occur on or before the Phase IV Construction Phase Deadline anniversary of the Effective Date, subject to Unavoidable Delays and Economic Unavoidable Delays. In the event that any Stage of the Improvements has not been timely completed as required by this paragraph, the (i) the Owner shall have the right to terminate this Agreement with respect to the portion of the Improvements not completed upon written notice to the Developer within sixty (60) days after the completion deadline, or (ii) the Owner shall have the right to extend the period of time as reasonably determined by the Owner to allow the Developer to complete the Improvements. If any Improvements are completed at the time this Agreement is terminated by Owner in accordance with this paragraph, then this Agreement shall continue with respect to such completed Improvements for purposes of the Parties' maintenance and easement rights and obligations only.

Section 1.3. **Conditions Precedent to Effectiveness of Agreement.** This Agreement shall not become effective unless and until the Board of County Commissioners (the "Board"), the Federal Transit Administration ("FTA") and the Florida Department of Transportation ("FDOT") shall have approved the execution of this Agreement.

Section 1.4. **Discontinued Use of Station or System.** The Owner covenants and agrees with the Developer that the Owner will not discontinue, substantially curtail, or cease the operation of the Station or the System during the Term of this Agreement. In the event the Owner, directly or indirectly, discontinues, substantially curtails, or ceases the operation of the

Station or the System, in addition to any other rights the Developer has hereunder, (a) the Developer shall have the right to terminate this Agreement and its obligations hereunder by giving written notice to the Owner ant any time after such discontinuance, substantial curtailment or cessation, and any obligations of the Developer shall cease and abate as of the date of the giving of such notice, and in such event, this Agreement shall terminate on the date set forth in such notice, or if no such date is provided, then on the fifteenth (15^{th}) day following the Owner's receipt of notice of termination; and (b) any time period under this Agreement shall be tolled for such period of discontinuance, substantial curtailment and/or cessation.

Section 1.5. Permitting Failure. In the event, due to Laws and Ordinances and/or Unavoidable Delays, the Developer is not able to build the Project or the Developer cannot obtain its Permits (as reasonably determined by the Developer), or the Ground Lease is terminated with respect to the entire Project, then in addition to any other rights the Developer has hereunder, the Developer shall have the right to terminate this Agreement and its obligations hereunder by giving written notice to the Owner at any time after such inability becomes known to the Developer. In such event, this Agreement shall terminate on the date set forth in such notice, or if no date is provided, then on the fifteenth (15^{th}) day following the Owner's receipt of notice of termination.

ARTICLE 2
DEFINITION OF CERTAIN TERMS

Section 2.1. Terms Defined. The terms set forth below, when used anywhere in this Agreement, shall be defined as follows:

(a) Additional Improvements shall mean alterations, new construction or reconstruction of the Station or the Land that have been requested by the Owner and which Developer has agreed to construct in accordance with Section 3.23(b)(2), but which are not Required Improvements.

(b) Additional Notice Period shall have the meaning set forth in Section 4.2(a).

(c) Administrative Review Period shall have the meaning set forth in Section 4.2(a).

(d) Board shall have the meaning set forth in Section 1.3.

(e) Commencement of Construction and "commenced" when used in connection with construction of any Stage shall mean the earlier of the filing of the notice of commencement under Section 713.13, Florida Statutes, or the visible start of work on the site of the Stage of the Improvements, including on-site utility, excavation or soil stabilization work after the Developer has received a foundation permit for the Stage on which construction is proposed to commence.

(f) Completion of Construction shall mean, with respect to any Stage of the Improvements, the date when (i) all work is complete and has been inspected to the extent required by Law and Ordinance, a temporary certificate of occupancy or equivalent has been issued for any structure containing such Improvements, and (iii) the Developer has delivered to the Owner written notice of completion of the Stage of Improvements and the Owner has not objected within thirty (30) days after delivery of the notice.

(g) Construction Plans shall consist of Final Design Plans for any Stage as approved by the Owner, the drawings and specifications for which are in the format with sufficient detail as required to obtain building permits for such Stage and as further described in Section 3.5.

(h) County shall mean Miami Dade County, a political subdivision of the State of Florida.

(i) Designated Representative shall mean the individual designated from time to time, by written notice to Developer, as DTPW Director's designee to serve as and carry out the responsibilities of the Designated Representative under this Agreement.

(j) Developer shall have the meaning set forth in the preamble, including its permitted successors and assigns

(k) Development Rights shall mean the rights granted to the Developer pursuant to the terms of this Agreement.

(l) DTPW shall have the meaning set forth in the Preamble of this Agreement.

(m) Economic Unavoidable Delay shall mean economic or political conditions or events that result in a significant decline in economic activity spread across the economy and materially impair access to debt or equity markets by developers for development of projects in the United States similar to any Phase of the Project or allow a committed debt or equity participant to terminate its debt or equity commitment, such as a temporary or long term liquidity crisis or major recession. Developer shall be entitled to an extension of time because of its inability to meet a time frame or deadline specified in this Agreement due to Economic Unavoidable Delay equal to the duration of the Economic Unavoidable Delay, except that the outside deadline for completion of the Stage 1 Improvements under Section 1.2(c) shall not be extended for more than five (5) years due to Economic Unavoidable Delay.

(n) Effective Date shall mean the date on which the Owner and the Developer have both executed this Agreement.

(o) Event(s) of Default shall have the meaning set forth in Section 13.1.

(p) FDOT shall be given the meaning set forth in Section 1.3.

(q) Final Design Plans shall mean the final plans and specifications for any Stage of the Improvements.

(r) FTA shall have the meaning set forth in Section 1.3.

(s) Ground Lease shall have the meaning set forth in the Recitals.

(t) Impositions shall mean all ad valorem taxes, special assessments, sales taxes and other governmental charges and assessments levied or assessed with respect to the Property and the activities conducted thereon or therein.

(u) Improvements shall mean, collectively, the Required Improvements and the Additional Improvements.

(v) Land shall have the meaning set forth in the Recitals.

(w) Law and Ordinance or Laws or Ordinances shall mean all present and future applicable laws, ordinances, rules, regulations, authorizations, orders and requirements of all federal, state, county and municipal governments, the departments, bureaus or commissions thereof, authorities, boards or officers, any national or local board of fire underwriters, or any other body or bodies exercising similar functions having or acquiring jurisdiction over all or any part of the Property.

(x) Notice shall have the meaning set forth in Section 14.2.

(y) Owner shall mean, on the Effective Date, the County, by and through DTPW, and its permitted successors and assigns.

(z) Permit shall mean any permit issued or to be issued by the appropriate agency or person, including but not limited to applicable permits for construction; demolition; installation; foundation; dredging; filling; the alteration or repair or installation of sanitary plumbing, water supply, gas supply, electrical wiring or equipment, elevator or hoist and HVAC; sidewalk; curbs; gutters; drainage structures; lift stations; paving; grease traps; subdivision plat and/or waiver of plat approvals, covenant or unity of title acceptance or the release of existing unities or covenants or agreements in lieu thereof; building permits; certificates of use and/or occupancy; stormwater; development of regional impact approvals, modifications or exemptions; and the like and any other official action of the City of Miami, County, State of Florida, DTPW, FDOT, FTA or and other government agency having jurisdiction related to the Improvements.

(aa) Phase shall mean any Phase of the Project as defined in the Ground Lease.

(bb) Plans and Specifications shall mean the plans and specifications for all the work in connection with the alteration, construction and reconstruction of the Improvements on the Property, including any changes, additions or modifications thereof, provided the same are approved by Owner in accordance with this Agreement.

(cc) Project shall have the meaning set forth in the Recitals.

(dd) Property shall mean collectively and to the extent required for development of the Improvements:

(1) the Land;

(2) the Station Land; and

(3) the Station, the Improvements and any other improvements now or hereafter existing on the Land;

IT BEING UNDERSTOOD between the parties hereto that no portion of the Station or the System is being leased, conveyed or granted or intended to be leased, conveyed or

granted to the Developer and that all portions or areas of the Station and the System are expressly EXCEPTED AND RESERVED unto the Owner, except to the extent that rights in respect thereof and to the Improvements are granted to the Developer as hereinbefore provided.

(ee) Proposal shall mean the response by the Developer dated March 20, 2015 to the Request for Proposals for the Development of the Douglas Road Station, RFP No. 00133.

(ff) Required Improvements shall mean, collectively, the capital improvements to the Station and the Land for the benefit of the public described in Schedule 2.1(a), which Developer proposed to construct in the Proposal.

(gg) Stage shall mean any stage of the Improvements to be constructed in accordance with this Agreement.

(hh) Stage 1 Improvements shall mean the alterations, new construction or reconstruction by the Developer of the Station and the public improvements to the Land located in the immediate vicinity of the Station described in the Proposal as the initial Phase of development of the Project described on Schedule 2.1 hereto.

(ii) Stage 2 Improvements shall mean all other alterations, new construction or reconstruction by the Developer of the public improvements described in the Proposal relating to the balance of the Project described on Schedule 2.1 hereto.

(jj) Station shall have the meaning set forth in the Recitals.

(kk) Station Land shall mean those portions of the land described on Schedule B containing, among other things, the Station and the Metrorail rail lines and supports, which are not leased by Developer pursuant to the Ground Lease.

(ll) System shall mean the Miami-Dade County Transit System including, without limitation, all trains, buses, fixed guideways, stations, parking lots and parking structures, drop off/pickup areas, bus stops and shelters, bus bays, streets and sidewalks, maintenance facilities, structures and all associated facilities required in the operation of the System.

(mm) Taking shall have the meaning set forth in Section 12.1.

(nn) Term shall have the meaning set forth in Section 1.2(a).

(oo) Unavoidable Delays shall mean delays beyond the control of a party required to perform, such as (but not limited to) delays due to strikes; slowdowns; lockouts; acts of God; floods; fires; unusually severe weather conditions (such as tropical storms or hurricanes); casualty; any act, neglect or failure to perform of or by Owner; war; enemy action; civil disturbance; acts of terrorism; sabotage; restraint by court or public authority; litigation or administrative challenges by third parties to the execution or performance of this Agreement or the procedures leading to its execution; inability to obtain labor or materials; delays in settling insurance claims; moratoriums or other delays relating to Laws and Ordinances (including without limitation delays associated with Laws and Ordinances enacted subsequent to the date of the submission of the Proposal as contemplated under Section 3.9 of the Ground Lease); and/or

delays due to site conditions discovered during the Review Period under Section 1.6 of the Ground Lease or of the nature contemplated by Section 4.10 of the Ground Lease. The obligated party shall be entitled to an extension of time because of its inability to meet a time frame or deadline specified in this Agreement where such inability is caused by an Unavoidable Delay, provided that such party shall, within thirty (30) days after it has become aware of such Unavoidable Delay, give notice to the other party in writing of the causes thereof and the anticipated time extension necessary to perform. Neither party shall be liable for loss or damage or deemed to be in default hereof due to any such Unavoidable Delay(s), provided that party has notified the other as specified in the preceding sentence and further provided that such Unavoidable Delay did not result from the fault, negligence or failure to act of the party claiming the delay. Failure to notify a party of the existence of Unavoidable Delays within the thirty (30) days of its discovery by a party shall not void the Unavoidable Delays, but the time period between the expiration of the thirty (30) days period and the date actual notice of the Unavoidable Delays is given shall not be credited to the obligated party in determining the anticipated time extension.

ARTICLE 3
DEVELOPMENT OF LAND AND CONSTRUCTION OF IMPROVEMENTS

Section 3.1. Land Uses

(a) The Parties agree, for themselves and their successors and assigns, to devote the Property to the uses specified in this Agreement, including temporary construction staging and parking, and for other or additional uses which are consistent with the construction and operation of the Improvements.

(b) The Parties recognize and acknowledge that the manner in which the Property, Improvements are developed, used and operated are matters of critical importance to the Owner and to the general welfare of the community. The Developer agrees that, during the Term of this Agreement, Developer will use reasonable efforts to develop the Improvements substantially consistent with this Agreement, which (i) enhances the ridership and usage of the System from the Station and (ii) creates strong access links between the Project and the Station.

Section 3.2. Development Rights. During the Term, the Developer shall have the right to construct the Improvements, subject to the terms and conditions of this Agreement, including the following:

(a) Development Rights of Land. In connection with the construction of the Improvements and each Stage thereof, the Parties agree that Owner will, without charge by Owner, grant and join in any Permit or other application, temporary and permanent easements, restrictive covenants, easement vacations or modifications and such other documents as may necessary or desirable for the Developer to develop and use the Property in accordance with this Agreement and in a manner otherwise permitted hereunder, provided that such joinder by the Owner shall be at no cost to the Owner other than its costs of review, and also provided that the location and terms of any such easements or restrictive covenants and related documents shall be reasonably acceptable to the Owner, which acceptance shall not be unreasonably withheld or delayed. Owner agrees to use best efforts to review and approve (or disapprove with an explanation for such disapproval) any such requests within ten (10) business days of such request

from the Developer (the "Administrative Review Period") (except in the event that Board approval is required under applicable Laws and Ordinances for such approval, in which event Owner shall use its reasonable diligent efforts to expedite the approval process as soon as reasonably practical in an effort to assist Developer in achieving its development and construction milestones for the Project). If the Owner has not provided the Developer with written notice of its approval or disapproval within the Administrative Approval Period (subject to requirements for Board approval as hereinabove provided), the Developer shall have the right to deliver written notice to the Owner advising the Owner that the Owner has not responded to the Developer within the Administrative Review Period and the Owner shall have an additional three (3) business days' thereafter to respond to the Developer with such approval or disapproval (the "Additional Notice Period"). In the event that the Owner fails to respond after the expiration of the Additional Notice Period, the Owner shall be deemed to have approved the applicable request of the Developer that is then at issue under such request.

(b) Rights to Land. Notwithstanding anything in Section 3.2(a) to the contrary, nothing herein shall be construed to limit the rights of the Owner under Section 3.2(c) or to require the Owner to agree to any easements, restrictive covenants, easement vacations or modifications or such other documents that require the consent of the Board pursuant to applicable Laws and Ordinances.

(c) Miami-Dade County's Rights As Sovereign. It is expressly understood that notwithstanding any provision of this Agreement and the County's status as owner thereunder:

(1) The County retains all of its sovereign prerogatives and rights as a county under Florida laws (but not in regard to the performance of its contractual duties hereunder) and shall in no way be estopped from withholding or refusing to issue any approvals of applications for building or zoning; from exercising its planning or regulatory duties and authority; and from requiring development under present or future (as applicable) Laws and Ordinances of whatever nature applicable to the design, construction and development of the Improvements provided for in this Agreement; provided, however, that the Owner acknowledges and agrees that, during the Term, Owner's development regulations applicable to the development of the Improvements under Laws and Ordinances in effect as of the Effective Date shall govern the development and construction of the Improvements during the Term to the fullest extent permitted by law. To that end, at Developer's request, the Owner agrees to cooperate with the Developer, in good faith and with reasonable diligence, with any efforts by Developer to seek approval from Miami-Dade County under Chapter 163 of the Code that such existing development regulations shall govern the development of the Improvements throughout the Term, including without limitation the Owner's joinder in any applications for and active support of such approval.

(2) The County shall not by virtue of this Agreement be obligated to grant the Developer or the Project any approvals of applications for building, zoning, planning or development under present or future (as applicable) Laws and Ordinances of whatever nature applicable to the design, construction and development of the Project. Recognizing the public and private benefits afforded by the Project, the Owner agrees to use reasonable, diligent efforts to facilitate the approval and permitting process through Miami-Dade County in order to expedite the development of each Phase of the Project as

soon as reasonably practicable in an effort to assist the Developer in achieving its development and construction milestones for the Project. In furtherance thereof, the Owner has or will designate the Designated Representative to serve as the Owner's point of contact and liaison with the Developer in order to coordinate and facilitate the submission of applications, authorizations, Permit documents and the like across all of the various departments and offices of the County which have the authority, right or responsibility to review and approve same on behalf of the County.

Section 3.3. Conformity of Plans. Final Design Plans and Construction Plans and all work by the Developer with respect to the Improvements shall be in substantial conformity with this Agreement and all applicable Laws and Ordinances, including applicable provisions of the Fire Life Safety Criteria found in the Metrorail Compendium of Design Criteria, Volume 1, Chapter 9 and DTPW's Adjacent Construction Safety Manual or its replacement. It should be noted that the DTPW Adjacent Construction Safety Manual contains minimum requirements and the Owner may impose more stringent requirements as to construction of the Improvements if the Owner reasonably determines that more stringent requirements are warranted to adequately protect the System and its operation, provided that the Owner shall (a) impose such requirements at the earliest stage of the approval process for the Plans and Specifications when the matter of concern is or should be apparent, and (b) cooperate and work in good faith with the Developer to mitigate any safety standards and requirements that would materially increase construction costs or materially delay construction through alternative practices and procedures that are mutually acceptable to the Parties to facilitate the construction of the Improvements and each Stage thereof without such increase in costs or delays in construction wherever reasonably possible, provided that such alternative practices and procedures shall not jeopardize the safety of the System or the users of the System or of any employees, agents, licensees and permittees of the Owner.

Section 3.4. Performance Bonds and Payment Bonds. The Parties agree that the Improvements within the Station and to the Station Land are public buildings or public works as contemplated under Section 255.05, Florida Statutes. Prior to the Commencement of Construction of the Improvements on the Station Land, the Developer shall deliver to the Owner, or the prime contractor(s) hired by the Developer shall deliver to the Developer and the Owner, executed payment and performance bonds as contemplated under Section 255.05, Florida Statutes, to guarantee the construction of the Improvements within the Station and to the Station Land then being constructed by such contractor on the Station Land and payment of claimants as defined in Section 713.01, Florida Statutes. If the payment and performance bonds are delivered by the prime contractor(s), the amount of such bonds shall be equal to the contract price between the Developer and the contractor, and each bond shall name both the Owner and the Developer as dual obligees thereof and shall be issued by a surety reasonably acceptable to the Developer and the Owner. The Developer shall have the right from time to time to substitute or replace, or cause its contractor to substitute or replace, such bonds as deemed necessary by the Developer for any portion of the work on the Station Land then being constructed.

Section 3.5. Design Plans; Construction Plans; DTPW Review and Approval Process

(a) Owner has approved the Improvements described in the Proposal and authorizes Developer to proceed with the preparation of plans and specifications for construction of the Improvements substantially as shown in the Proposal.

(b) The Developer shall submit design and construction documents to DTPW for review, coordination and approval of each Stage of the Improvements. For each submittal, the Developer shall submit an electronic and three (3) sets of full prints with the date noted on each print.

(c) At fifteen percent (15%) of the overall design completion of each Stage of the Improvements, the Developer shall submit conceptual site layouts and plans, sections, and elevations to DTPW for review in conformity with applicable Laws and Ordinances, including applicable provisions of the Metrorail Compendium of Design Criteria.

(d) At fifty percent (50%) design completion of each Stage of the Improvements, the Developer shall submit drawings, conceptual site layouts and plans, sections, elevations and pertinent documentation to DTPW for review.

(e) At one hundred percent (100%) design completion of each Stage of the Improvements the Developer shall submit to DTPW the Final Design Plans. DTPW shall review these plans to ensure that all previous DTPW comments to which the parties have agreed have been incorporated therein. However, the Developer may request reconsideration of any comments made by DTPW.

(f) Upon receipt of each of the above-mentioned submittals, DTPW shall review same, and shall, within thirty (30) days after receipt thereof, advise the Developer in writing of its approval or disapproval, setting forth in detail its reasons for any disapproval. In the event of a disapproval, Developer shall, within thirty (30) business days after the date Developer receives such disapproval, make those changes necessary to meet DTPW's stated grounds for disapproval or request reconsideration of such comments, and DTPW shall respond to such request for reconsideration within ten (10) days after receipt of such request. Within thirty (30) business days of DTPW's response to such request for reconsideration, Developer shall, if necessary, resubmit such altered plans to DTPW. Any resubmission shall be subject to review and approval by DTPW, in accordance with the procedure hereinabove provided for an original submission, except that DTPW shall have fifteen (15) days to respond to submissions in lieu of thirty (30) days, until the same shall receive final approval by DTPW. DTPW and the Developer shall in good faith, acting reasonably, attempt to resolve any disputes concerning the Plans and Specifications in an expeditious manner, failing which the matter shall be resolved in accordance with Section 17.1. If DTPW fails to respond to any submission or request for reconsideration by Developer hereunder within the time frame required herein for such response, Developer's submittals or requests shall be deemed approved. In addition, if DTPW shall have approved any aspect of the Preliminary Plans (and, thereafter, Plans and Specifications) in any submittal, and no portion of the revised Plans and Specifications has affected the earlier-approved aspect, DTPW shall not have the right to disapprove that which it approved earlier, absent a finding that the aspect of the Plans and Specifications fails to comply with applicable Laws and Ordinances.

(g) Upon the approval of the Final Design Plans for any Stage of the Improvements, such design shall serve as the basis for the Construction Plans for that Stage. DTPW's approval

shall be in writing and each Party shall have a set of Construction Plans signed by all parties as approved. In the event any material and adverse change occurs after approval of the Final Design Plan for a Phase, then the Developer must resubmit the changed portion of the Construction Plans for DTPW's reasonable approval (unless the change is required by another County department as part of the permitting process).

(h) DTPW's acceptance of Final Design Plans for any Improvements to be located on the Property that is subject to the Ground Lease shall constitute final approval under the Ground Lease for such Improvements. To the extent that DTPW accepts final design plans under the Ground Lease for any improvements to the Land that constitute a part of the Improvements, such approval shall constitute final approval of such Improvements under this Agreement.

(i) DTPW's approval of Final Design Plans for any Improvements under this Agreement shall constitute final approval of such Improvements by DTPW solely as the owner of the Land and the Station. Following DTPW's approval of Final Design Plans, Developer shall be required to obtain any permits for construction of the Improvements that may be required by Applicable Law.

Section 3.6. **"As-Built" Plans**. As soon as reasonably practicable after completion of each Stage constructed or installed in or on the Property, the Developer shall provide to the Owner an electronic copy and three (3) sets of "as-built" construction plans for the Stage.

Section 3.7. **Station and System Plans**. The Owner agrees, at the request of the Developer, to make available to the Developer for inspection all plans, specifications, working drawings and engineering data in the possession of the Owner, or available to it, relating to the Station, the System and other facilities of the Owner in the County, it being understood and agreed that the Developer will reimburse the Owner for any duplication costs incurred in connection therewith and the Owner assumes no responsibility or liability for the information obtained pursuant to this Section. Developer shall obtain clearance from DTPW's document management office prior to request/receipt of any public records request. DTPW makes no warranties or assurances as to the accuracy of the information provided to the Developer. Any materials provided will be for reference purposes only.

Section 3.8. **Developer Obligations**. DTPW approval of any Plans and Specifications pursuant to this Article 3 shall not relieve the Developer of its obligations under applicable Laws and Ordinances to file such Plans and Specifications and/or Construction Plans with any department of the County, the Metropolitan Planning Organization or any other governmental authority having jurisdiction over the issuance of building or other Permits and to take such steps as are necessary to obtain issuance of such Permits. The Owner agrees to cooperate with Developer in connection with obtaining such approvals and Permits, and join in (if applicable), with the Developer in connection with the obtaining of such approvals and Permits as provided herein. Developer shall have the right to execute any and all applications, approvals and consents for any Permits relating to the Improvements without any further joinder, consent or approval from the Owner (if the Owner's joinder is not required by Laws and Ordinances), but in the event that the Owner's authorization or signature is required for any Permit, the Owner agrees to execute any such Permit, approval, consent or authorization within the Administrative Review Period. The Developer acknowledges that any approval given by the Owner, as owner, pursuant to this Article 3, shall not constitute an opinion or agreement by the Owner that the Construction

Plans are structurally sufficient or in compliance with any Laws and Ordinances, codes or other applicable regulations, and no such approval shall impose any liability upon the Owner.

It should be noted that the County retains jurisdiction for building and zoning approvals, including issuance of building permits, building inspections and issuance of certificates of occupancy within the Rapid Transit Zone in accordance with Florida Statutes 125.011 and 125.015 and Code, Chapter 33C-2.

Section 3.9. Conditions Precedent to Construction. Precedent to the Commencement of Construction for any Stage of the Improvements:

(a) Developer shall have complied with the DTPW submittal and review process by submitting all plans for such Stage of the Improvements;

(b) DTPW shall have approved the Final Design Plans for the Improvements; and

(c) Developer shall have satisfied any other prerequisites under Applicable Law to commence construction of the applicable Improvements.

Section 3.10. Facilities to be Constructed. The Owner shall not be responsible for any costs or expenses of construction or installation of the Improvements, except as otherwise provided herein or agreed to by the Parties.

Section 3.11. Progress of Construction. From the Commencement of Construction of any Stage until Completion of Construction of such Stage, upon written request of the Designated Representative, but not more frequently than quarterly, the Developer shall submit a report to the Designated Representative of the progress of the Developer with respect to development and construction of such Stage of the Improvements.

Section 3.12. Site Conditions. The Developer, by executing this Agreement, represents it has visited the Property, is familiar with local conditions under which the construction and development is to be performed.

Section 3.13. Ownership of Improvements. All Improvements located on the Station Land and all material and equipment provided by the Developer or on its behalf which are incorporated into or become a part of the Improvements located on the Station Land (excepting all of the System facilities) shall, upon being added thereto or incorporated therein, be and remain the property of the Owner, not including personal property of the Developer.

Section 3.14. Mutual Covenants of Non-Interference. The Developer's development and construction of the Improvements shall not materially and adversely interfere with the Owner's customary and reasonable operation of the System, unless prior arrangements have been made in writing between the Parties. The Developer may request interruption of the System operation by the Owner for construction of the Improvements and the Owner agrees to reasonably cooperate with such interruption in order to enable such construction. Similarly, the Owner's use of the Station area and the System shall not materially and adversely interfere with the Developer's development and construction of the Project and its use and operation of the Property and the Improvements to be constructed thereon, unless prior arrangements have been made in writing between the Parties. The Owner may at any time during the Term of this

Agreement, stop or slow down construction of the Improvements, but only upon the Owner's reasonable determination that the safety of the System, or of the users of the System or of any employees, agents, licensees and permittees of the Owner is jeopardized, provided that (i) Owner shall first notify Developer of such determination (and the basis for it), (ii) the Parties shall cooperate in good faith to abate or effectively manage the source of the problem, and (iii) Owner shall stop or slow down construction by Developer under this provision only if, despite the good faith efforts of the Parties to abate or effectively manage the problem, the safety of the System or its users remains in jeopardy. Any such slowdown or stoppage shall be deemed to be an Unavoidable Delay and shall entitle Developer to appropriate extensions of time hereunder, provided that such safety hazard which caused the slowdown or stoppage is not the result of Developer's negligence or willful act. The Owner acknowledges that operations at the Station may be affected during the construction of the Improvements, by, inter alia, general noise emanating from the construction of the Improvements, vehicle and traffic noise (including loading and unloading of trucks) from construction and other large vehicles, construction staging, traffic congestion and the like, and agrees that these customary conditions, activities and disruptions (in contrast to conditions that constitute a safety hazard) shall not trigger a slowdown or stoppage of Developer's work under this provision.

Section 3.15. Connection to Utilities. The Developer, at its sole cost and expense, shall install or cause to be installed all necessary connections between the Improvements constructed or erected by it on the Property, and the water, sanitary and storm drain mains and mechanical and electrical conduits and other utilities, whether or not owned by the Owner. The Owner shall cooperate with the Developer to the extent that the Developer needs the Owner to (a) join in any agreements or documents for installation of any connections necessary or desirable for the Property and the Improvements or required to comply with its obligations hereunder, (b) grant easements to public utility providers across the Property as may be required or desirable to serve the Improvements, or (c) relocate existing utility lines and facilities to develop or improve the Improvements. The cost of all utilities relating to the Station, including, without limitation, gas, water, sewer and electric utilities and services shall be borne by and shall be the sole responsibility of the Owner, while the cost of all utilities relating to the Improvements on the Land shall be the sole responsibility of the tenant under the Ground Lease applicable to the Land.

Section 3.16. Designation of the Owner's Representative. The County Mayor or the County Mayor's designee shall have the power, authority and right, on behalf of the Owner, in its capacity as Owner hereunder, and without any further resolution or action of the Board, FTA or FDOT, to the extent allowed by applicable Laws and Ordinances, to:

(a) review and approve (if required) documents, plans, applications, assignments and requests required or allowed by the Developer to be submitted to the Owner pursuant to this Article and this Agreement;

(b) consent to actions, events, and undertakings by the Developer for which consent is required by the Owner;

(c) make appointments of individuals or entities required to be appointed or designated by the Owner in this Agreement;

(d) execute on behalf of the Owner any and all consents, agreements, easements, applications or other documents, needed to comply with applicable regulatory procedures and secure Permits, other permits or other approvals needed to accomplish the construction of the Improvements in and refurbishments of the Property,

(e) execute any and all documents on behalf of the Owner necessary or convenient to the foregoing approvals, consents, appointments and agreements; and

(f) amend this Agreement to correct any typographical or non-material errors.

The County Mayor or County Mayor's designee may only exercise the authority granted in this section consistent with the Project as outlined in this Agreement or in the Ground Lease, provided that (i) such exercise of authority shall be at no cost to Owner other than its cost to review the proposed amendments, agreements, documents and other instruments or materials, and shall not impose additional obligations or liabilities or potential obligations or liabilities on Owner beyond those set forth in this Agreement or in the Ground Lease, and (ii) the form and provisions of such amendments, agreements, documents and other instruments or materials shall be acceptable to Owner in its reasonable discretion.

Section 3.17. Additional Work. The Parties hereby acknowledge, that if both Parties hereto agree, the Owner may contract for certain work or services to be provided by the Developer in the Station, appurtenant structures and/or structures or facilities located on the Station Land, including but not limited to, construction and maintenance items (excluding those construction obligations expressly set forth in this Agreement). If such work is not part of this Agreement or the Construction Plans, it shall be done at the cost of the Owner.

Section 3.18. Developer's Duty. During the Term, the Developer will discharge any and all obligations incurred by the Developer to third parties in connection with the Improvements, it being understood and agreed that the Developer shall have the right to withhold any payment (or to transfer any such lien to a bond in accordance with applicable Florida law) so long as it is in good faith disputing liability therefor or the amount thereof. In the event that the Developer withholds any payment in connection with the Improvements as described herein, it shall give written notice to the Owner of such action and the basis therefor. The Developer shall record the applicable notice of commencement with the Section 255, Florida Statutes performance bond information attached thereto as required under Section 713 and Section 255, Florida Statutes.

Section 3.19. Owner's Duty. During the Term, the Owner will discharge any and all obligations incurred by the Owner to third parties, it being understood and agreed that the Owner shall have the right to withhold any payment so long as it is in good faith disputing liability therefor or the amount thereof.

Section 3.20. Pedestrian Overpass. Developer acknowledges that Owner is negotiating with FDOT for the possible installation of a pedestrian bridge over US Highway 1 to the east of the Land. Developer agrees to cooperate with FDOT's design efforts by providing plans and specifications for the Project upon request by FDOT or Owner.

Section 3.21. Staging of Improvements. Owner acknowledges that the Improvements shall be constructed in multiple stages in connection with the phased development of the Project

on the Land. Following the initial installation of any Improvements, Developer shall have the right from time to time to remove, reconfigure, restrict access to, and replace the Improvements in connection with the development and construction of the Project, so long as Developer ultimately delivers the Improvements as required by this Agreement and as shown on Final Design Plans approved by Owner.

Section 3.22. Art in Public Places. Developer shall, at its sole cost, expend one and one-half percent (1.5%) of the construction cost of improvements to facilities that will remain or, upon their completion, will come under the ownership of the County, for acquisition of Works of Art for and placement of same on the Property. The term "Works of Art" as utilized in the preceding sentence shall mean landscaping, plazas, arcades, lighting, walkways, fountains, tile, courtyards, terraces, walkways, roof gardens, passive and active recreational areas, murals, special graphic presentations, amphitheaters, entertainment areas, gazebos, water features, other similar decorative features and facilities, and works of art. All works of art acquired and placed on the Property shall meet, if applicable, the requirements of Miami-Dade County "Art in Public Places" policy.

Section 3.23. Financial Covenants.

(a) Aggregate Investment in Improvements. Developer is required to spend, or cause to be spent, Fourteen Million Dollars ($14,000,000) (the "Required Investment") in labor, materials, equipment and fixtures (the "Hard Costs") on the Improvements to be constructed pursuant to this Agreement.

(b) Cost Overruns.

(1) Required Improvements. Developer shall be responsible for paying for all Hard Costs incurred in connection with the construction of the Required Improvements; provided, however, that if DTPW requests one or more change orders to Developer's guaranteed maximum price contract for construction of the Required Improvements after DTPW's approval of the contract, then (i) DTPW shall be responsible for any cost increase resulting from the change order(s) and (ii) Developer shall be entitled to a credit against the rent owed under the Ground Lease equal to the aggregate amount of the increased cost resulting from the change orders, to be applied against the rent becoming due beginning the first month after Completion of Construction of all Required Improvements occurs.

(2) Additional Improvements. In addition to the construction of the Required Improvements, Developer agrees that it shall invest an additional $1,250,000 in the Hard Costs of Additional Improvements. DTPW shall have the right to propose Additional Improvements to the Station Land and/or the Land that support the transit operations at the Station Land and/or the Land, but which do not interfere with the construction or operation of the Project. DTPW and Developer shall work together in good faith to mutually agree on the scope of the Additional Improvements during the Term. Developer shall be responsible for paying all Hard Costs incurred in connection with the construction of the Additional Improvements; provided, however, that if the aggregate Hard Costs invested by Developer in the Additional Improvements exceed $1,250,000 (such excess, the "Excess Investment"), and the work or materials giving rise to such

Excess Investment is agreed upon by both DTPW and Developer and reflected in plans submitted by Developer and approved by DTPW, then Developer shall be entitled to a credit against the rent owed under the Ground Lease equal to the amount of the Excess Investment, to be applied against the rent becoming due beginning the first month after Completion of Construction of all Additional Improvements occurs.

(c) Escrow of Excess Funds. If upon Completion of Construction of all Required Improvements and Additional Improvements the Required Investment in Hard Costs has not been spent, then within 60 days after Completion of Construction of all of the Improvements Developer shall deposit with DTPW an amount equal to the difference between the Required Investment and the actual aggregate Hard Costs incurred in construction of the Improvements (the "Shortfall"). The Shortfall shall be held by DTPW in a reserve dedicated solely for the maintenance, repair and improvement of the Station and the Land. DTPW shall have the sole authority to disburse Shortfall funds from the reserve for purposes permitted by this Agreement.

(d) Reporting Obligations. From the Commencement of Construction of any Stage until Completion of Construction of such Stage, the Developer shall deliver to the Owner a quarterly progress report as of the end of each calendar quarter detailing (i) the Improvements constructed or installed to date and (ii) the total Hard Costs incurred to date in connection with the construction of such Improvements.

ARTICLE 4
PAYMENT OF TAXES, ASSESSMENTS

The Developer shall not be required to pay any Impositions with respect to the Station Land or any improvements located now or hereinafter thereon.

ARTICLE 5
INSURANCE; INDEMNIFICATION

Section 5.1. Insurance. It is agreed and understood that except for the insurance obligations required to be maintained by the Developer or the general contractor constructing the Improvements as set forth below, commencing at the inception of the Term and thereafter, the Owner shall be responsible for insuring the Improvements located on the Station Land consistent with all applicable Laws and Ordinances and the Developer shall have no liability therefor. The Developer or the general contractor performing the Improvements shall furnish to Miami-Dade County c/o Department of Transportation and Public Works, 701 N.W. 1st Court, Suite 1700, Miami, FL 33136, Director, Certificates of Insurance that shows that insurance coverage has been obtained that meets the requirements as outlined below, which shall be required only during the performance of the work contemplated during the applicable phase and only in connection with the performance of the Developer's obligations under this Agreement.

(a) Design Phase.

(1) Worker's Compensation Insurance for all employees of the Developer as required by Chapter 440, Florida Statutes.

(2) Commercial General Liability Insurance, on a comprehensive basis, in an amount not less than $1,000,000 combined single limit per occurrence for bodily injury

and property damage. The County must be shown as an additional insured with respect to this coverage.

(3) Automobile Liability Insurance covering all owned, non-owned and hired vehicles used in conjunction with this agreement in an amount not less than $500,000 combined single limit per occurrence for bodily injury and property damage.

(4) Professional Liability Insurance in the name of the Developer or in the name of the licensed design professional for the Improvements in an amount not less than $1,000,000 per claim. This insurance coverage shall be maintained for a period of two (2) years after Completion of Construction.

(b) Construction Phase. Developer or the general contractor performing the Improvements shall provide certificate(s) of insurance indicating the following insurance coverage prior to Commencement of Construction:

(1) Worker's Compensation Insurance for all employees of the Developer as required by Chapter 440, Florida Statutes.

(2) Commercial General Liability Insurance on a comprehensive basis in an amount not less than $50,000,000 combined single limit per occurrence for bodily injury and property damage. The County must be shown as an additional insured with respect to this coverage.

(3) Automobile Liability Insurance covering all owned, non-owned and hired vehicles used in conjunction with this Agreement in an amount not less than $1,000,000 combined single limit per occurrence for bodily injury and property damage.

(4) Completed Value Builder's Risk Insurance on an "All Risk" basis in an amount not less than one hundred (100%) percent of the insurable value of the Improvements under construction. The policy shall name the Developer and the Owner A.T.I.M.A.

(c) Operation Phase. Developer shall provide certificate(s) of insurance indicating the following insurance coverage following the Completion of Construction:

(1) Worker's Compensation Insurance for all employees of the Developer as required by Chapter 440, Florida Statutes.

(2) Commercial General Liability Insurance on a comprehensive basis in an amount not less than $1,000,000 combined single limit per occurrence for bodily injury and property damage. Miami Dade County must be shown as an additional insured with respect to this coverage.

(3) Automobile Liability Insurance covering all owned, non-owned and hired vehicles used in conjunction with this agreement in an amount not less than $500,000 combined single limit per occurrence for bodily injury and property damage.

Section 5.2. Indemnification.

(a) Subject to Section 5.3, the Developer shall indemnify and hold harmless the Owner and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including reasonable attorneys' fees and costs of defense, which the Owner or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature (herein, "claims") arising out of, relating to or resulting from the performance of this Agreement by the Developer or its employees, agents, officers, partners, member, principals, or contractors; provided, however, that this indemnity shall not extend to cover any claims, losses or damages arising out of the negligence or willful misconduct of the Owner or its officers, employees, agents, contractors or instrumentalities or any liability of the Owner to third parties existing at or before the Effective Date. The Developer shall pay all claims, losses and damages in connection with any matters indemnified hereunder, and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the Owner, where applicable, with respect to such matters, including appellate proceedings, and shall pay all costs, judgments, and reasonable attorney's fees which may issue thereon. Subject to the terms of Section 5.3, the Developer expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by the Developer shall in no way limit the responsibility to indemnify, keep and save harmless and defend the Owner or its officers, employees, agents and instrumentalities as herein provided.

(b) Except as provided in Section 768.28 of the Florida Statutes, the Owner shall indemnify and hold harmless the Developer and its employees, agents, officers, partners, members and principals from any and all liability, losses or damages, including reasonable attorneys' fees and costs of defense, which the Developer or its employees, agents, officers, partners, members or principals may incur as a result of claims arising out of, relating to or resulting from the performance of this Agreement by the Owner or its employees, agents, officers, contractors or instrumentalities; provided, however, that this indemnity shall not extend to or cover any claims, losses or damages arising out of the negligence or willful misconduct of the Developer or its employees, agents, officers, partners, members, principals or contractors. The Owner shall pay all claims, losses and damages in connection with any matters indemnified hereunder and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the Developer, where applicable, with respect to such matters, including appellate proceedings, and shall pay all costs, judgments, and reasonable attorney's fees which may issue thereon. The Owner expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by the Owner shall in no way limit the responsibility to indemnify, keep and save harmless and defend the Developer or its employees, agents, officers, partners, members and principals as herein provided.

Section 5.3. Waiver of Subrogation. The Developer waives all rights to recover against the Owner, its employees, agents, officers, contractors or instrumentalities, for any claims, losses or damages arising from any cause covered by property insurance required to be carried by the Developer hereunder. The Developer shall cause its insurer(s) to issue appropriate waiver of subrogation rights endorsements to all such policies of insurance carried by the Developer with respect to the Project. The Owner waives all rights to recover against the Developer, its employees, agents, officers, partners, members, principals or contractors, for any claims, losses or damages arising from any cause covered by property insurance (irrespective of whether the insurance is carried by the Developer or the Owner). The Owner shall cause its insurer(s) to issue appropriate waiver of subrogation rights endorsements in favor of the Developer to all such policies of insurance carried by the Owner in connection with the Station,

System and/or the Station Land. Any self-insurance program of the Owner shall be deemed to include a full waiver of subrogation consistent with this Section.

ARTICLE 6
OPERATION

Section 6.1. **Control of the Property; Improvements.** During the Term and the construction of Improvements, the Developer shall have the right to develop, direct and manage the development of the Improvements. The Owner covenants and agrees to use reasonable efforts to continuously operate the Station Land consistent with prudent business practices.

Section 6.2. **Non-Interference**. The Parties hereby mutually agree not to interfere with the free flow of pedestrian or vehicular traffic to and from the Station. They further agree that, except for those structures reasonably necessary for security and safety purposes, no fence, or any other structure of any kind (except as may be specifically permitted or maintained under the provisions of this Agreement, indicated on approved Construction Plans or otherwise mutually agreed upon in writing) shall be placed, kept, permitted or maintained in such a fashion as to materially or adversely interfere with pedestrian or vehicular traffic to and from the Station. The foregoing shall not prohibit the Developer from closing the Improvements and denying access to the public at such times and in such manner as deemed necessary by the Developer during the development or construction of any portion of the Improvements, the repair and maintenance of the Property, during the operation of the adjacent Project, provided such closing does not materially and adversely interfere with

(a) the public's reasonable access to the Station, or

(b) Owner's customary operation of the System, unless the Developer obtains Owner's prior written consent to the extent required by Section 3.12 hereof.

Section 6.3. **Owner's Signs Upon the Property**. System-wide informational graphics, directional information, maps, and transit information shall be allowed to be placed in and about the Station at the sole expense of the Owner and at locations and in sizes mutually agreed upon by the Parties. Nothing in this Section limits the County's right as Owner to place signs or advertisements on any other portion of the Station Land.

Section 6.4. **Developer's Signs in Station**. The Developer shall be permitted to place directional signs within the Station consistent with Laws and Ordinances and DTPW rules and regulations, at the sole expense of the Developer, and at locations and in sizes mutually agreed to by the Parties. No such placement of signs shall interfere with ongoing System or Station operations.

ARTICLE 7
REPAIRS AND MAINTENANCE

Section 7.1. **Owner Repairs and Maintenance**. From and after the Completion of Construction of any Stage, the Owner, at its sole cost and expense, shall keep the Station and Station Land in good order and condition, make all necessary repairs thereto, except for matters that are the responsibility of the Developer pursuant to Section 7.2, maintain the Station in a manner that is consistent with the level of service provided at other stations throughout the

System. The term "repairs" shall include all replacements, renewals, alterations, additions and betterments deemed necessary by the Owner or as required under applicable Laws and Ordinances. All repairs made by the Owner shall be at least substantially similar in quality and class to the original work. The Owner shall keep and maintain all portions of the Station and the Station Land in a clean and orderly condition, reasonably free of dirt, rubbish, graffiti, and unlawful obstructions, in a manner that is consistent with the level of service provided at other stations throughout the System. The Developer, at its option, and after thirty (30) days written notice to the Owner, may perform any maintenance or repairs required of the Owner hereunder which have not been performed by the Owner following the notice described above, and the Developer shall be entitled to receive from the Owner all of its reasonable costs and expenses incurred in connection therewith.

Section 7.2. **Developer Repairs and Maintenance**. Following the Commencement of Construction and prior to the Completion of Construction of any Stage, the Developer, at its sole cost and expense, shall keep and maintain all portions of the Improvements in a clean and orderly condition, reasonably free of dirt, rubbish, graffiti, and unlawful obstructions, subject to obstructions, alterations and cosmetic blemishes that may be required or permitted during the construction of the Improvements. Throughout the Term, subject to Article 10, the Developer, at its sole cost and expense, shall keep in a clean and orderly condition, reasonably free of dirt, rubbish, graffiti, and unlawful obstructions, (i) all of the Improvements located on the Land and (ii) the Improvements located on the Station Land which are outside of the gates/turnstiles requiring payment for admittance to the System, as shown on Schedule 7.2. Notwithstanding anything to the contrary contained herein, following the Completion of Construction of such Improvements the Developer shall have no obligation to maintain or repair (a) parking spaces installed or refurbished by Developer but not located on the Land, or (b) the asphalt travel lanes and bays for System buses located on the Land or the Station Land, or (c) damage to any portion of the Station Land or the improvements thereon caused by the Owner or any party other than the Developer. In addition, the Developer shall have the right, at its sole cost and expense, to provide enhanced security, maintenance, and/or repairs to the portions of the Station Land which are outside of the gates/turnstiles requiring payment for admittance to the System, at its option, and after giving thirty (30) days' written notice to the Owner. The Owner, at its option, and after thirty (30) days written notice to the Developer, may perform any maintenance or repairs required of the Developer hereunder which have not been performed by the Developer following the notice described above, and may seek reasonable cost and expenses thereof from the Developer.

ARTICLE 8
COMPLIANCE WITH LAWS AND ORDINANCES

Section 8.1. **Compliance by the Parties**. Throughout the Term of this Agreement, the Parties, at their own cost and expense, shall promptly comply in all material respects with all Laws and Ordinances applicable to the Improvements, provided such Laws and Ordinances apply to similar properties located in Miami-Dade County or the City of Miami as the Property generally, and is not specific to the Property. To the extent that the Developer's compliance shall require the cooperation and participation of the County, the County agrees to use its best efforts to cooperate and participate in accordance with the Joint Use Policy for Joint Development Projects, as set forth in County Commission Resolution R-1443A-81, adopted September 28, 1981.

Section 8.2. **Contest by Developer**. Developer shall have the right, after prior written notice to Owner, to contest the validity or application of any Law or Ordinance by appropriate legal proceedings diligently conducted in good faith, in the name of Developer without cost or expense to Owner, except as may be required in Owner's capacity as a party adverse to Developer in such contest. If counsel is required, the same shall be selected and paid by Developer, except to the extent that Owner is an adverse party to Developer, in which case Developer shall have no obligation to pay for Owner's counsel. Owner hereby agrees to execute and deliver any necessary papers, affidavits, forms or other such documents necessary for Developer to confirm or acquire status to contest the validity or application of any Laws and Ordinances, which instrument shall be subject to the reasonable approval of counsel for Owner, which approval shall not be unreasonably withheld or delayed. Owner shall not be required to join in any such contest unless its joinder is required for a contest to be valid.

Section 8.3. **Federal Laws**. Developer shall comply with the following statutes, rules, regulations and orders (as amended from time to time) to the extent that these are made applicable by virtue of the grant to Owner under the Urban Mass Transportation Act of capital grant for the Metrorail System, including but not limited to:

(a) Requirements found in Title VI of the Civil Rights Act of 1964;

(b) Requirements found in 49 CFR Part 26.7 regarding nondiscrimination based on race, color, national origin or sex;

(c) Requirements found in 49 CFR Parts 27.7 and 27.9 regarding non-discrimination based on disability and complying with the Americans With Disabilities Act with regard to any Improvements constructed;

(d) Requirements contained in the Federal Transit Administration Master Agreement Section 3, Subparagraphs (a)(1), (a)(2), and (b) thereof relating to conflicts of interests, debarment and suspension.

Section 8.4. **Contest by the Developer**. The Developer shall have the right, after prior written notice to the Owner, to contest the validity or application of any Law or Ordinance by appropriate legal proceedings diligently conducted in good faith, in the name of the Developer without cost or expense to the Owner, except as may be required in the Owner's capacity as a party adverse to the Developer in such contest. If counsel is required, the same shall be selected and paid by the Developer, except to the extent that the Owner is an adverse party to the Developer, in which case the Developer shall have no obligation to pay for the Owner's counsel. The Owner hereby agrees to execute and deliver any necessary papers, affidavits, forms or other such documents necessary for the Developer to confirm or acquire status to contest the validity or application of any Law or Ordinance, which instrument shall be subject to the reasonable approval of counsel for the Owner, which approval shall not be unreasonably withheld or delayed. The Owner shall not be required to join in any such contest unless its joinder is required for a contest to be valid.

ARTICLE 9
LIMITATION OF LIABILITY

Section 9.1. **Limitation of Liability of the Owner**. The Owner shall not be liable to the Developer for any incidental or consequential loss or damage whatsoever arising from the rights of the Owner hereunder.

Section 9.2. **Limitation of Liability of the Developer**. The Developer shall not be liable to the Owner for any incidental or consequential loss or damage whatsoever arising from rights of the Developer hereunder. Excluding actual damage to the System caused by the Developer, any liability of the Developer hereunder is limited to the fair market value of the Improvements made by the Developer to the Land.

ARTICLE 10
DAMAGE AND DESTRUCTION

Section 10.1. **Developer's Right to Restore**. If, at any time during the Term of this Agreement, the Improvements or any part thereof shall be damaged or destroyed by fire or other casualty, the Developer, at its option and its sole cost and expense, and provided that the insurance proceeds related to such casualty are made available to the Developer by the Owner for use in connection therewith, shall have the right to (a) terminate this Agreement and, if requested by the Owner, and subject to the Owner providing to the Developer sufficient insurance proceeds to cover the cost, remove the Improvements and repair any damage as a result of such removal, from the Property; or (b) repair, alter, restore, replace or rebuild the same as nearly as reasonably possible, using the insurance proceeds which the Owner shall promptly deliver to Developer upon Owner's receipt thereof, to its value, condition and character which existed immediately prior to such damage or destruction, subject to such changes or alterations as the Developer may elect to make that are substantially consistent with the Final Design Plans or such other Construction Plans or other plans previously approved by the Owner.

Section 10.2. **Owner's Right to Repair and Rebuild Station**. If, at any time during the Term, the Station or System affecting the Property are damaged or destroyed by fire or other casualty, the Owner, at its option and its sole cost and expense, and provided that the insurance proceeds related to such casualty are made available to the Owner for use in connection therewith, shall have the right to repair, alter, restore, replace or rebuild the same as nearly as reasonably possible to its value, condition and character which existed immediately prior to such damage or destruction, subject to such changes or alterations as the Owner may elect to make that are consistent with the Final Design Plans or such other Construction Plans or other plans previously agreed upon by the Owner and the Developer. If the Owner does not elect to restore or rebuild, the Developer shall have the right to (i) terminate this Agreement upon written notice to the Owner and (ii) remove any damaged portions of the Station, the Improvements or the Project and/or restore the Project to a complete and architecturally harmonious appearance.

Section 10.3. **Interrelationship of Agreement Sections**. Except as otherwise provided in this Article 10, the conditions under which any such repair or restoration is to be performed and the method of proceeding with and performing the same shall be governed by all the provisions of Article 3.

Section 10.4. Loss Payees of Developer -Maintained Property Insurance. With respect to all policies of Property insurance required to be maintained by the Developer in accordance with Section 6.1,

(a) the County shall be named as an additional insured as its interest may appear, and

(b) the loss thereunder shall be payable to the Developer.

The Owner shall not unreasonably withhold its consent to a release of the proceeds of any fire or other casualty insurance for any loss which shall occur during the Term for repair or rebuilding. Any proceeds remaining after completion of rebuilding or repair under this Article, shall be paid to the Developer.

Section 10.5. Repairs Affecting Station or Property. Before beginning any repairs or rebuilding, or letting any contracts in connection therewith, as necessitated by any damage to or destruction of the Property which adversely affects the entranceways to the Station or System or the Project, the Developer shall submit for the Owner's approval (which approval shall not be unreasonably withheld, conditioned or delayed), Construction Plans for such repairs or rebuilding to ensure consistency with the Project.

ARTICLE 11
TRANSFERS

Section 11.1. Developer's Right to Transfer. Provided no Event of Default by the Developer exists under this Agreement, the Developer shall have the right and privilege from time to time to sell, assign or otherwise transfer all or any portion of its rights under this Agreement, to such other persons, firms, corporations, general or limited partnerships, limited liability companies, unincorporated associations, joint ventures, estates, trusts, any Federal, State, County or Municipal government bureau, department or agency thereof, or any other entities as the Developer shall select, subject, however, to the following:

(a) In the event of a transfer of all of the Developer's rights hereunder, the Developer shall deliver written notice to the Owner of such transfer, together with a copy of the transfer agreement (if applicable) and the address for the transferee thereunder;

(b) Upon the transfer by the Developer, the Developer shall be released and discharged from all of its duties and obligations hereunder which pertain to this Agreement for the then unexpired Term;

(c) Any transfer of all or any part of the Developer's interest in this Agreement shall be made expressly subject to the terms, covenants and conditions of this Agreement, and such assignee or transferee shall expressly assume all of the obligations of the Developer under this Agreement and agree to be subject to all conditions and restrictions to which the Developer is subject, but only for matters accruing while such assignee or transferee holds, and only related to, the sold, assigned, or transferred interest. However, nothing in this subsection or elsewhere in this Agreement shall abrogate (i) the Developer's obligation for payment of any sums due to the Owner which accrued prior to the effective date of such transfer, and the Owner shall always have the right to enforce collection of such sums due in accordance with the terms and provisions of this Agreement; (ii) the obligation for the development, use and operation of every part of the

Improvements to be in compliance with the requirements of this Agreement, or (iii) any liability or damages arising from actions or omissions occurring or agreements, covenants and obligations required to be performed prior to the date of any such transfer of the Developer's interest hereunder. Notwithstanding any assignment, Adler 13th Floor Douglas Station, LP shall remain liable for the representations and warranties of Section 17.2; and

(d) The Developer shall not have the right to assign this Agreement or its rights and obligations under this Agreement to a party that is on the Miami-Dade County Delinquent Vendor List or Disbarment List, or its then equivalent, without the prior consent of the Owner.

Developer shall be expressly authorized to assign this Agreement to any property owners' association or similar entity with authority under master covenants to operate and maintain common elements of the Project.

Section 11.2. Owner's Right to Transfer. If Miami-Dade County or any successor to its interest hereunder ceases to have any interest in the Land or if there is any sale or transfer of the Owner's interest in the Land, the seller or transferor shall be entirely freed and relieved of all agreements, covenants and obligations of the Owner hereunder to be performed after the date of such sale or transfer provided that the purchaser, successor or transferee of Owner's interest in the Land assumes in writing all such agreements, covenants and obligations of the Owner. Nothing herein shall be construed to relieve the Owner from any liability or damages arising from actions or omissions occurring or agreements, covenants and obligations required to be performed prior to the date of any such assignment, transfer or sale of the Owner's interest hereunder. Notwithstanding the foregoing and without limiting the previous sentence, Miami-Dade County shall remain liable for the representations and warranties of Section 18.1.

ARTICLE 12
EMINENT DOMAIN

Section 12.1. Taking of Entire Property. If at any time during the Term, the power of eminent domain shall be exercised by any federal or state sovereign or their proper delegates, by condemnation proceeding (a "Taking"), to acquire the entirety of the Station Land, such Taking shall be deemed to have caused this Agreement to terminate and expire on the date of such Taking. The Developer's right to recover a portion of the award for a Taking of the Station Land, is limited to the fair market value of the Improvements which the Developer paid for, and in no event shall the Developer be entitled to compensation for any fee interest in the Station Land. Notwithstanding anything herein contained to the contrary, the Owner shall be entitled to receive from the condemning authority not less than the appraised value of the Land and improvements owned by the Owner. For the purpose of this Article 12, the date of Taking shall be deemed to be either the date on which actual possession of the Station Land or a portion thereof, as the case may be, is acquired by any lawful power or authority pursuant to the Taking or the date on which title vests therein, whichever is earlier. The Developer and Owner shall, in all other respects, keep, observe and perform all the terms of this Agreement up to the date of such Taking.

Section 12.2. Partial Taking; Termination of Agreement. If, in the event of a Taking of less than the entire Station Land during the Term, the remaining portion of the Property not so taken cannot be adequately restored as required by the Developer, in the Developer's sole

discretion, then the Developer shall have the right, to be exercised by written notice to the Owner within one hundred twenty (120) days after the date of Taking, to terminate this Agreement on a date to be specified in said notice, which date shall not be earlier than the date of such Taking, in which case this Agreement shall terminated and the term herein demised shall cease and terminate.

Section 12.3. Partial Taking; Continuation of Agreement. If following a partial Taking during the Term, this Agreement is not terminated as hereinabove provided then, this Agreement shall terminate as to the portion of the Station Land taken in such condemnation proceedings; and, as to that portion of the Station Land not taken the Developer shall have the right, but not the obligation, to proceed at its own cost and expense either to make an adequate restoration, repair or reconstruction or to rebuild the Improvements upon the Station Land affected by the Taking. In such event, the Developer's share of the award shall be determined in accordance with Section 12.1 herein.

ARTICLE 13
DEFAULT BY THE DEVELOPER OR OWNER

Section 13.1. Events of Default. It shall be an "Event of Default" if either Party fails to keep, observe, or perform any of its obligations or duties imposed upon the Party under this Agreement and such failure shall continue for a period of thirty (30) days after written notice thereof from the other Party to the defaulting Party setting forth with reasonable specificity the nature of the alleged breach; or in the case of any such default or contingency which cannot, with due diligence and in good faith, be cured within thirty (30) days, the defaulting Party fails within said thirty (30) day period to proceed promptly and with due diligence and in good faith to pursue curing said default and thereafter continue to diligently pursue the curing of such default.

Section 13.2. Failure to Cure Default. If an Event of Default shall occur, the non-defaulting Party, at any time after the periods set forth in Section 13.1 and provided the defaulting Party has failed to cure such Event of Default within such applicable period, shall have the following rights and remedies, which are cumulative and in addition to any and all other remedies, in law or in equity that the non-defaulting Party may have against the defaulting Party:

(a) to sue the defaulting Party for all damages (as limited by Article 9), costs and expenses arising from the Event of Default and to recover all such damages, costs and expenses, including reasonable attorneys' fees at both trial and appellate levels (as limited by Article 9); or

(b) to restrain, by injunction, the commission of or attempt or threatened commission of an Event of Default and to obtain a decree specifically compelling performance of any such term or provision of this Agreement; or

(c) to terminate any and all obligations that the non-defaulting Party may have under this Agreement, in which event the non-defaulting Party shall be released and relieved from any and all liability under this Agreement.

Section 13.3. No Waiver. No failure by either Party to insist upon the strict performance of any of the terms of this Agreement or to exercise any right or remedy consequent upon a breach thereof shall constitute a waiver of any such breach or of any of the terms of this Agreement. None of the terms of this Agreement to be kept, observed or performed by the

Developer, and no breach thereof, shall be waived, altered or modified except by a written instrument executed by the non-breaching Party. No waiver of any default of any Party hereunder shall be implied from any omission by the other Party to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default specified in the express waiver and then only for the time and to the extent therein stated. One or more waivers by any Party shall not be construed as a waiver of a subsequent breach of the same covenant, term or condition.

ARTICLE 14
NOTICES

Section 14.1. Addresses. All notices, demands or requests by the Owner to the Developer shall be in writing and shall be deemed to have been properly served or given, if addressed to the Developer as follows:

Developer:	Adler 13th Floor Douglas Station, LP c/o Adler Group 1400 NW 107th Avenue, 5th Floor Miami, Florida 33172 Attn: Michael M. Adler
With a copy to:	Adler 13th Floor Douglas Station, LP c/o 13th Floor Investments 848 Brickell Avenue, PH1 Miami, Florida 33131 Attn: Arnaud Karsenti

and to such other address and to the attention of such other party as the Developer may, from time to time, designate by written notice to the Owner. If the Developer at any time during the Term hereof changes its office address as herein stated, the Developer will promptly give notice of same in writing to the Owner. All notices, demands or requests by the Developer to the Owner shall be in writing and shall be deemed to have been properly served or given if addressed to the DTPW's Director, or DTPW's Designated Representative, 701 N.W. 1st Court, 17th Floor, Miami, Florida, 33136 and to Department of Transportation and Public Works, Assistant Director of Engineering, Planning and Development, 701 N.W. 1st Court, 17th Floor, Miami, Florida, 33136, and to such other addresses and to the attention of such other parties as the Owner may, from time to time, designate by written notice to the Developer. If the Owner at any time during the Term hereof changes its office address as herein stated, the Owner will promptly give notice of same in writing to the Developer.

Section 14.2. Method of Transmitting Notice. All such notices, demands or requests (a "Notice") shall be sent by: (a) United States registered or certified mail, return receipt requested, (b) hand delivery, (c) nationally recognized overnight courier, or (d) electronic transmission, provided the electronica transmission confirms receipt of the transmission and the original of the Notice is sent by one of the foregoing means of transmitting Notice within twenty-four (2)4 hours of the electronic transmission. All postage or other charges incurred for transmitting of Notices shall be paid by the party sending same. Such Notices shall be deemed

served or given on (i) the date received, (ii) the date delivery of such Notice was refused or unclaimed, or (iii) the date noted on the return receipt or delivery receipt as the date delivery thereof was determined impossible to accomplish because of an unnoticed change of address.

ARTICLE 15
CERTIFICATES BY THE OWNER AND THE DEVELOPER

Section 15.1. Developer Certificates. The Developer agrees at any time and from time to time, upon not less than twenty (20) days' prior written notice by the Owner to execute, acknowledge and deliver to the Owner a statement in writing setting forth any monies then payable under this Agreement, if then known; certifying that this Agreement is unmodified and in full force and effect (or if there have been modifications, that the Agreement is in full force and effect as modified and stating the modification), and the dates to which monies (if any) have been paid, and stating (to the best of the Developer's knowledge) whether or not the Owner is in default in keeping, observing or performing any of the terms of this Agreement; and, if in default, specifying each such default (limited to those defaults of which the Developer has knowledge). It is intended that any such statement delivered pursuant to this Section 15.1 may be relied upon by the Owner or any prospective assignee, transferee or purchaser of the fee, but reliance on such certificate shall not extend to any default of the Owner as to which the Developer shall have no actual knowledge.

Section 15.2. Owner Certificates. The Owner agrees at any time and from time to time, upon not less than twenty (20) days' prior written notice by the Developer to furnish a statement in writing, in substantially the form attached hereto as Schedule 15.2 setting forth any monies then payable under this Agreement, if then known; certifying that this Agreement is unmodified and in full force and effect (or if there shall have been modifications that the Agreement is in full force and effect as modified and stating the modifications) and the dates to which monies (if any) have been paid; stating whether or not to the best of the Owner's knowledge, the Developer is in default in keeping, observing and performing any of the terms of this Agreement, and, if the Developer shall be in default, specifying each such default of which the Owner may have knowledge. It is intended that any such statement delivered pursuant to this Section 15.2 may be relied upon by any prospective lender, assignee, transferee or purchaser of the Developer's interest in this Agreement, but reliance on such certificate may not extend to any default of the Developer as to which the Owner shall have had no actual knowledge.

ARTICLE 16
CONSTRUCTION OF TERMS AND MISCELLANEOUS

Section 16.1. Severability. If any provisions of this Agreement or the application thereof to any person or situation shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, and the application of such provisions to persons or situations other than those as to which it shall have been held invalid or unenforceable, shall not be affected thereby, and shall continue valid and be enforced to the fullest extent permitted by law.

Section 16.2. Captions. The Article headings and captions of this Agreement and the Table of Contents preceding this Agreement are for convenience and reference only and in no way define, limit or describe the scope or intent of this Agreement nor in any way affect this

Agreement. All references to Sections and Articles mean the Sections and Articles in this Agreement unless another agreement is expressly referenced.

Section 16.3. Relationship of Parties. This Agreement does not create the relationship of principal and agent or of mortgagee and mortgagor or of partnership or of joint venture or of any association between the Parties, the sole relationship between the Parties being that of the Owner and the Developer.

Section 16.4. Recording. This Agreement shall be recorded among the Public Records of Miami-Dade County, Florida, at the sole cost of the Developer.

Section 16.5. Construction. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine or neuter, singular or plural, as the identity of the party or parties may require. The Parties hereby acknowledge and agree that each was properly represented by counsel and this Agreement was negotiated and drafted at arm's length so that the judicial rule of construction to the effect that a legal document shall be construed against the drafters shall be inapplicable to this Agreement which has been drafted by counsel for both the Parties.

Section 16.6. Consents. Whenever in this Agreement the consent or approval of the Owner or the Developer is required, such consent or approval shall be made by the County Mayor or County Mayor's designee (on behalf of the Owner) and any duly authorized representative of Developer (on behalf of the Developer) and:

(a) shall not be unreasonably or arbitrarily withheld, conditioned, or delayed unless specifically provided to the contrary, and shall not require a fee from the Party requesting same;

(b) shall not be effective unless it is in writing; and

(c) shall apply only to the specific act or transaction so approved or consented to and shall not relieve the Developer or the Owner, as applicable, of the obligation of obtaining the other's prior written consent or approval to any future similar act or transaction.

(d) Material amendments to this Agreement shall require the consent of the FTA, the FDOT and the Board and shall not be effective until the consent of each of those entities is obtained.

Section 16.7. Entire Agreement. This Agreement contains the entire agreement between the parties hereto and shall not be modified or amended in any manner except by an instrument in writing executed by the parties hereto, provided that amendments extending the time for performance of any obligation of Developer by no more than twelve (12) months may be executed or granted by the County Mayor or the County Mayor's designee on behalf of Owner.

Section 16.8. Successors and Assigns. The terms herein contained shall bind and inure to the benefit of the Owner, its successors and assigns, and the Developer, its successors and assigns, except as may be otherwise provided herein.

Section 16.9. Holidays. It is hereby agreed and declared that whenever the day on which a payment due under the terms of this Agreement, or the last day on which a response is

due to a notice, or the last day of the period for performance or a cure period, falls on a day which is a legal holiday in Miami-Dade County, Florida, or on a Saturday or Sunday, such due date, date for performance or cure period expiration date shall be postponed to the next following business day. Any mention in this Agreement of a period of days for performance shall mean calendar days, except as otherwise set forth herein.

Section 16.10. Schedules. Each Schedule referred to in this Agreement forms an essential part of this Agreement. The Schedules shall be treated as if they were part of this Agreement.

Section 16.11. Brokers. The Parties hereby represent and agree that no real estate broker or other person is entitled to claim a commission as a result of the execution and delivery of this Agreement.

Section 16.12. Protest Payments. If at any time a dispute shall arise as to any amount or sum of money to be paid by the Developer to Owner, if any, under the provisions of this Agreement, in addition to the rights set forth in Article 13 herein, the Developer shall have the right to make payment "under protest" and such payment shall not be regarded as a voluntary payment, and there shall survive the right on the part of the Developer to seek the recovery of such sum, and if it should be adjudged that there was no legal obligation on the Developer to pay such sum or any part thereof, the Developer shall be entitled to recover such sum or so much thereof as it was not legally required to pay under the provisions of this Agreement; and if at any time a dispute shall arise between the parties hereto as to any work to be performed by either of them under the provisions of this Agreement, the party against whom the obligation to perform the work is asserted may perform such work and pay the cost thereof "under protest" and the performance of such work shall in no event be regarded as a voluntary performance and there shall survive the right upon the part of said Developer and/or the Owner to seek the recovery of the cost of such work, and if it shall be adjudged that there was no legal obligation on the part of said Developer and/or the Owner to perform the same or any part thereof, said Developer and/or the Owner shall be entitled to recover the cost of such work or the cost of so much thereof as the Developer or the Owner was not legally required to perform under the provisions of this Agreement.

Section 16.13. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

Section 16.14. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall constitute an original but all of which, when taken together, shall constitute one and the same agreement.

Section 16.15. Attorneys' Fees. In the event of any litigation or other legal proceeding between the Parties arising under this Agreement, the non-prevailing party shall be responsible for all costs and expenses of the prevailing party, including attorneys' fees and court costs, at both trial and appellate levels.

Section 16.16. Waiver of Jury Trial. The Parties hereby knowingly, irrevocably, voluntarily and intentionally waive any right either may have to a trial by jury in respect of any action, proceeding or counterclaim based on this Agreement, or arising out of, under or in

connection with this Agreement or any amendment or modification of this Agreement, or any other agreement executed by and between the parties in connection with this Agreement, or any course of conduct, course of dealing, statements (whether verbal or written) or actions of any Party hereto. This waiver of jury trial provision is a material inducement for the Parties entering into this Agreement.

Section 16.17. Exculpation. It is the intent and agreement of the Parties hereto that only the Parties as entities shall be responsible in any way for their respective obligations hereunder, except as otherwise expressly provided herein. In that regard, no officer, director, partner, trustee, representative, investor, official, representative, employee, agent, or attorney of any of the Parties to this Agreement shall be personally liable for the performance of any obligation hereunder or for any other claim made hereunder or in any way in connection with this Agreement, or any other matters contemplated herein, and any and all such personal liability, either at common law or in equity or by constitution or statute or other Laws and Ordinances are expressly waived and released as a condition of, and as a consideration for, the execution of this Agreement.

Section 16.18. Documents Incorporated and Order of Precedence. Owner and Developer acknowledge that Miami-Dade County issued a Request for Proposals for Joint Development at the Douglas Road Metrorail Station, that Developer submitted the Proposal in response to that Request for Proposals and that the Request for Proposals and the Proposal was the basis for award of this Agreement and the Ground Lease and upon which Owner has relied. The Request for Proposals and the Proposal are incorporated herein by this reference. If there is a conflict between or among the provisions of this Lease, the Request for Proposals and the Proposal, the order of precedence is as follows: (i) the terms of this Agreement; (ii) the Proposal, (iii) the Request for Proposals for Joint Development at the Douglas Road Metrorail Station, RFP No. 00133.

Section 16.19. Vendor Registration. Developer shall be a registered vendor with the County for the duration of the Agreement.

ARTICLE 17
DISPUTE RESOLUTION

Section 17.1. Arbitration. Any dispute between Owner and Developer relating to the matters addressed in Article 3, whether a condition or event constitutes an Unavoidable Delay or which otherwise is expressly stated to be resolved in arbitration pursuant to the terms of this Agreement, shall be referred to and exclusively and finally settled by binding arbitration, conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association (or similar successor rules thereto), and shall not be subject to judicial review. The place of arbitration shall be Miami, Florida. In the event that any party calls for a determination in arbitration pursuant to the terms of this Agreement, the Parties shall have a period of ten (10) days from the date of such request to mutually agree on one arbitrator who, at a minimum, must be an attorney with at least fifteen (15) years of experience practicing real estate construction law (with significant experience in development projects and related litigation) in Miami-Dade County, Florida. If the parties fail to agree, each Party shall have an additional ten (10) days to select an individual meeting the same minimum qualifications set forth above, and the two (2) arbitrators selected shall select an arbitrator to be the arbitrator for the dispute in question. If any

party fails to make its respective selection of an arbitrator within the additional 10-day period provided for above, then the remaining party's selection shall select the arbitrator. The arbitrator shall decide the issues submitted to him/her in accordance with (a) the language, commercial purpose and restrictions contained in this Agreement (including exhibits hereto, if any) and (b) what is just and equitable under the circumstances, provided that all substantive issues shall be determined under the laws of the State of Florida. With respect to any arbitration proceeding hereunder, the following provisions shall apply: (i) the parties shall cooperate with one another in the production and discovery of requested documents, and in the submission and presentation of arguments to the arbitrator at the earliest practicable date; (ii) the arbitrator conducting any arbitration shall be bound by the provisions of this Agreement and shall not have the power to add to, subtract from or otherwise modify such provisions; and (iii) each party shall be responsible for its own costs and expenses incurred in the arbitration, including attorneys' fees, but the costs of the presiding arbitrator and the arbitration itself shall be shared equally by the Parties. Arbitration of any dispute hereunder shall be conducted on an expedited basis under the "Expedited Procedures" of the Commercial Arbitration Rules to the fullest extent possible.

Section 17.2. Economic Unavoidable Delay. If a dispute arises between the Parties as to whether a condition or event constitutes an Economic Unavoidable Delay and/or the duration of the Economic Unavoidable Delay, the Parties shall have a period of ten (10) days from the request of either Party to mutually agree on one expert who, at a minimum, must have at least fifteen (15) years of relevant experience in the subject matter that forms the basis of the claim for Economic Unavoidable Delay, to resolve such dispute. If the Parties fail to agree, each Party shall have an additional ten (10) days to select an individual meeting the same minimum qualifications set forth above, and the two (2) experts selected shall select a third expert who, together with the two (2) experts selected by the Parties, shall resolve the dispute in question. If any Party fails to make its respective selection of an expert within the additional 10-day period provided for above, then the remaining party's selection shall select the additional expert and the two (2) experts shall resolve the dispute in question. Once the expert(s) have been selected in accordance with this provision, the expert(s) shall render a decision on the dispute within a period of thirty (30) days.

Section 17.3. Other Disputes. Except to the extent this Agreement expressly provides that certain matters are to be resolved by arbitration or another form of dispute resolution, and except as the Parties may otherwise mutually agree, disputes between the Parties under this Agreement shall be resolved by litigation.

ARTICLE 18
REPRESENTATIONS AND WARRANTIES

Section 18.1. Owner's Representations and Warranties. The Owner hereby represents and warrants to the Developer that:

(a) It has full power and authority to enter into this Agreement and perform in accordance with its terms and provisions and that the persons signing this Agreement on behalf of the County have the authority to bind the Owner and to enter into this transaction and the Owner has taken all requisite action and steps to legally authorize it to execute, deliver and perform pursuant to this Agreement.

(b) The Owner will make available the Property to the Developer as contemplated in this Agreement.

(c) Throughout the Term, the Owner will endeavor to continue transit service to and from the Station on a daily basis, subject to service disruptions that may occur occasionally and which shall not be considered termination of service under this Agreement.

(d) In accordance with Section 125.411(3) of the Florida Statutes, the Owner does not warrant the title or represent any state of facts concerning the title to the Property, except as specifically stated in this Agreement.

Section 18.2. Developer's Representations and Warranties. The Developer hereby represents and warrants to the Owner that it has full power and authority to enter into this Agreement and perform in accordance with its terms and provisions and that the parties signing this Agreement on behalf of the Developer have the authority to bind the Developer and to enter into this transaction and the Developer has taken all requisite action and steps to legally authorize it to execute, deliver and perform pursuant to this Agreement.

[Signatures on Next Page]

IN WITNESS WHEREOF, the Owner has caused this Development Agreement to be executed in its name by the County Mayor; as authorized by the Board of County Commissioners, and the Developer has caused this Development Agreement to be executed by its duly authorized representative all on the day and year first hereinabove written.

ATTEST:

HARVEY RUVIN, CLERK

By:_____
Name:
Title:

OWNER:

MIAMI-DADE COUNTY
a political subdivision of the State of Florida

By:_____
Name:
Title:

Approved as to form and legal sufficiency

Print Name: Alexander S. Bokor
Assistant County Attorney

Signed in the presence of:

DEVELOPER:

ADLER 13TH FLOOR DOUGLAS STATION, LP, a Florida limited partnership

By: Adler 13th Floor Douglas Station GP, LLC, a Florida limited liability company, its general partner

Print Name: Jonathan Raiffe

Print Name: Nicole Shiman

By:_____
Name: Michael M. Adler
Title: Chairman and Vice President

By:_____
Name: Arnaud Karsenti
Title: Vice President

Notarizations begin on following page.

STATE OF FLORIDA)
) SS:
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this 1st day of April, 2016, by Michael M. Adler, as Chairman and Vice President, and Arnaud Karsenti as Vice President, of Adler 13th Floor Douglas Station GP, LLC, a Florida limited liability company and the general partner of ADLER 13TH FLOOR DOUGLAS STATION, LP, a Florida limited partnership.

Personally Known X OR Produced Identification _____

Type of Identification Produced: _____

Adam Matt
Notary Public, State of Florida at Large

Print or Stamp Name:
Commission No.:
My Commission Expires:

ADAM MATT
MY COMMISSION # FF 003908
EXPIRES: April 1, 2017
Bonded Thru Budget Notary Services

SCHEDULE A

Land Legal Description

Lot 1 and Lot 2 of DOUGLAS ROAD STATION, according to the Plat thereof recorded in Plat Book 158 at Page 32 of the Public Records of Miami-Dade County, Florida.

TOGETHER WITH

All of Tract B of DOUGLAS ROAD STATION VINTAGE, according to the Plat thereof recorded in Plat Book 169 at Page 33 of the Public Records of Miami-Dade County, Florida

SCHEDULE B

Station Land Legal Description

All of the Plat of DOUGLAS ROAD STATION, according to the Plat thereof recorded in Plat Book 158 at Page 32 of the Public Records of Miami-Dade County, Florida.

LESS AND EXCEPT

Tract A and Tract B of DOUGLAS ROAD STATION VINTAGE, according to the Plat thereof recorded in Plat Book 169 at Page 33 of the Public Records of Miami-Dade County, Florida

SCHEDULE 2.1(a)

Required Improvements

Stage 1 Improvements:

1. Replacement of existing Station escalators
2. Replacement of existing Station elevator
3. Replacement of existing Station surveillance system(s)
4. Upgrade of existing Station landscaping, hardscape and site illumination; replacement of existing way-finding signage on Station Land
5. Completion of a public plaza on the Land, except the portions directly appurtenant to Phases II through IV of the Project
6. Replacement of existing ground floor surface materials of the Station Land to complement the future flooring and hardscape of the public plaza
7. Relocation of existing bus bays (as currently dimensioned) to the north side of the Station
8. Relocation of existing, or provide alternative, covered walkway from the Station to the Water and Sewer District building substantially consistent with existing facilities
9. Replace existing surface parking spaces with 300 structured parking spaces for transit use
10. Provide 50 surface parking spaces for transit use at agreed upon location within the Metrorail right of way directly south of the Land.

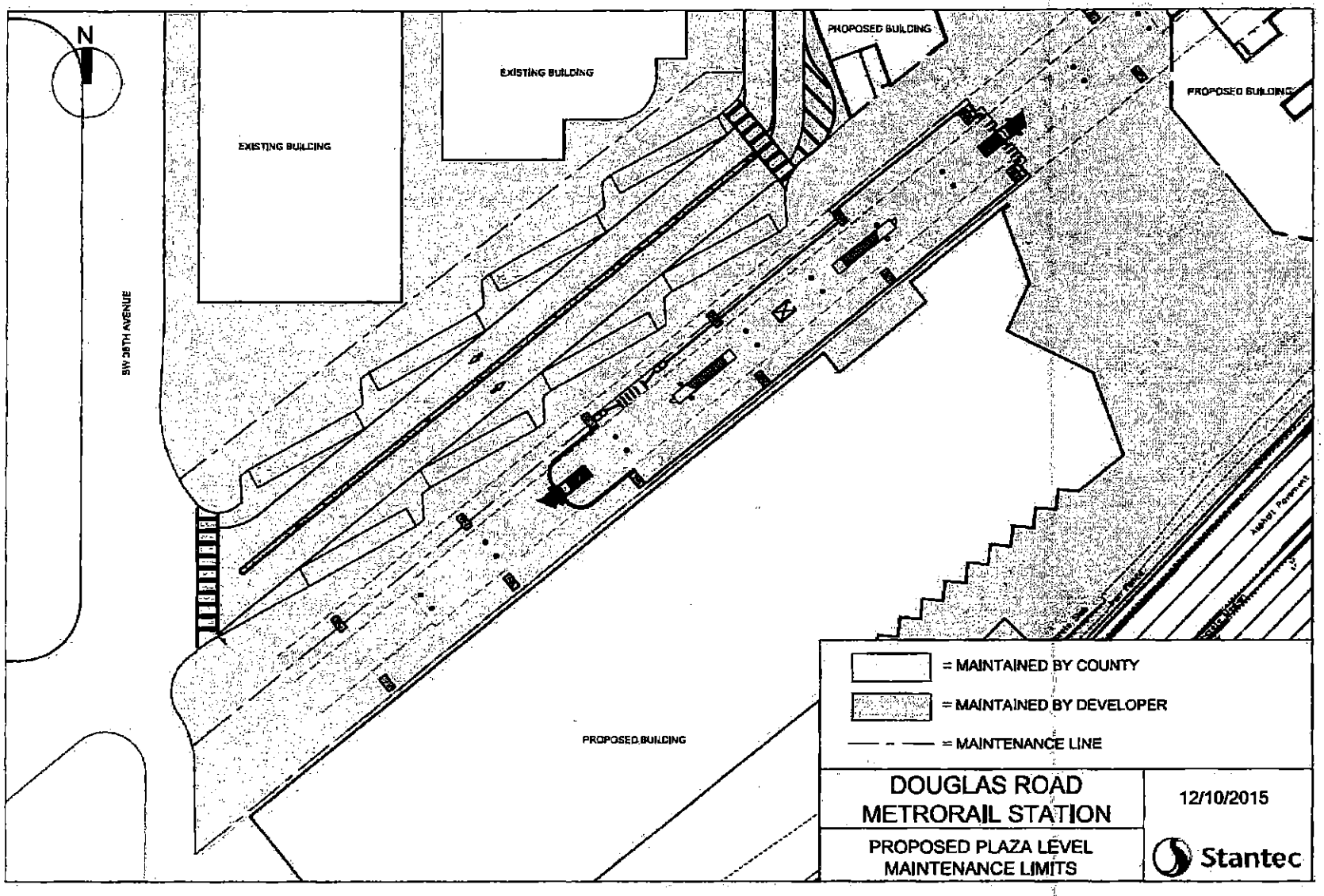
Stage 2 Improvements:

1. Completion of a public plaza on the Land
2. Provide additional structured parking to the extent required to provide a total of 300 structured parking spaces for transit use to replace existing surface parking
3. Provide additional surface parking to the extent required to provide a total of 50 surface parking spaces for transit use

SCHEDULE 7.2

Developer Maintenance Areas

(see attached)


N
EXISTING BUILDING
EXISTING BUILDING
PROPOSED BUILDING
PROPOSED BUILDING
SW 30TH AVENUE
PROPOSED BUILDING
= MAINTAINED BY COUNTY
= MAINTAINED BY DEVELOPER
= MAINTENANCE LINE
DOUGLAS ROAD METRORAIL STATION
12/10/2015
PROPOSED PLAZA LEVEL MAINTENANCE LIMITS
Stantec

PC1

SCHEDULE 15.2

Owner's Estoppel Certificate

(Form subject to amendments based on the requirements of the Developer or the Developer's lender or successors and/or assigns)

Re: Joint Development Access Agreement, dated _____, 20__ (the "Agreement"), by and between Miami-Dade County, acting by and through the Department of Transportation and Public Works (together hereinafter "Owner") and Adler 13th Floor Douglas Station, LP ("Developer")

Owner has been advised that [_____] (the "Relying Party") intends to _____ [make a loan] [acquire _____] [sublease _____] [lease _____] [take an assignment of _____] (the "Transaction") in connection with the Project and/or the Improvements described in the Agreement, and that, in connection with the Transaction, the Relying Party will act in material reliance upon this Estoppel Certificate from the Owner.

The Owner hereby certifies, represents, warrants, acknowledges and agrees as follows:

1. A true, complete and correct copy of the Agreement is attached to this Estoppel Certificate as Exhibit A. There have been no amendments, modifications, extensions, renewals or replacements of the Agreement (other than as attached hereto).

2. Other than those contained in writing in the Agreement and in the Ground Lease, the Developer has made no representations, warranties or covenants to or in favor of the Owner with respect to the Property or the Project.

3. The Agreement is in full force and effect. The Developer has constructed the Improvements in accordance with the terms of the Agreement. The Owner has no knowledge of any set offs, claims or defenses to the enforcement of the Agreement or the Developer's rights thereunder (except as expressed hereunder or attached hereto).

4. To the Owner's knowledge, (i) there is no Event of Default by the Developer or the Owner; (ii) neither the Developer nor the Owner is in breach under the Agreement, and (iii) no event has occurred or condition exists which, with the giving of notice or passage of time, or both, could result in an Event of Default or breach under the Agreement by either party (except as expressed hereunder or attached hereto).

5. As of [date], no amounts or sums are due from the Developer to the Owner.

6. The Owner has no knowledge of any present condition or event that may give rise to a violation of any federal, state, county or municipal law, regulation, ordinance, statute, rule, order or directive applicable to the Agreement, the Property, the Improvements or the Project (except as expressed hereunder or attached hereto).

7. The undersigned is properly authorized to execute this Estoppel Certificate and the Relying Parties have the right to rely on this Estoppel Certificate.

Except as otherwise expressly defined in this Estoppel Certificate, all capitalized and/or defined terms when used herein will have the same meanings as given such terms in the Agreement. This Certificate may be delivered by the Owner by facsimile; pdf or facsimile signature.

Dated this ____ day of _____, 20___.

Very truly yours,