

MEMORANDUM

Agenda Item No. 8(N)(1)

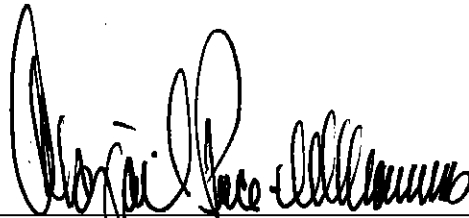
TO: Honorable Chairman Esteban L. Bovo, Jr.
and Members, Board of County Commissioners

DATE: April 10, 2018

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Resolution approving the
Access and Development
Agreement and Access and
Utility Easement between
Miami-Dade County and
1010 Brickell Holdings, LLC
("Agreements"); authorizing the
County Mayor to execute the
Agreements and exercise all
provisions contained therein

The accompanying resolution was prepared by the Transportation and Public Works Department and placed on the agenda at the request of Prime Sponsor Commissioner Bruno A. Barreiro.

A handwritten signature in black ink, appearing to read 'Abigail Price-Williams', is written over a horizontal line.

Abigail Price-Williams
County Attorney

APW/smm

Memorandum



Date: April 10, 2018

To: Honorable Chairman Esteban L. Bovo, Jr.
and Members, Board of County Commissioners

From: Carlos A. Gimenez
Mayor

A handwritten signature in black ink, appearing to read "Carlos A. Gimenez", written over the name in the "From:" field.

Subject: Resolution Approving the Access and Development Agreement and a Access and Utility Easement Between Miami-Dade County and 1010 Brickell Holdings, LLC ("Agreements"); Authorizing the County Mayor or County Mayor's Designee to Execute the Agreements and Exercise All Provisions Contained Therein

Recommendation

It is recommended that the Board of County Commissioners (Board) approve the Access and Development Agreement and Access and Utility Easement (Agreements) with Brickell Holdings, LLC (Developer) and authorize the County Mayor or County Mayor's designee to execute the Agreements in substantially the form attached hereto and to exercise all provisions contained therein.

Scope

The impact of this project is countywide; however, the project is located within Commission District 5, represented by Commissioner Bruno A. Barreiro.

Fiscal Impact/Funding Source

This item represents a positive fiscal impact to the County as the project will be entirely funded by the Developer.

Track Record/Monitor

The project will be monitored by Froilan I. Baez, Chief of Right of Way, Utilities and Joint Development Division, Department of Transportation and Public Works.


Background

The Developer is building a 50-story mixed use residential tower and ground floor retail on privately owned land adjacent to the Tenth Street/Promenade Metromover Station (Station). The Developer requested that the County allow pedestrian ingress and egress to its property by traversing the Station right-of-way. This Agreement provides the Developer non-exclusive access for pedestrian ingress and egress to commence upon the execution of said Agreement for a period of 30 years, and to automatically extend by two (2) additional 30 year terms. Additionally, the County is granting an Access and Utility Easement on its property to allow the Developer to install utilities for its property. Appraisals were performed on the access and the utility easement area. The valuation of the area is appraised for a combined total of \$79,250.00.

In lieu of a one-time payment, the Developer will provide improvements to the Station in the amount of \$764,780.00. The Station will be integrated with the new development by way of improvements including new walkways, ramps, and improved lighting. Access to

Honorable Chairman Esteban L. Bovo, Jr.
and Members, Board of County Commissioners
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the Station will be improved by demolishing existing planters, benches, and concrete monuments, and by installing new hardscaping, signage, handrails, and bicycle racks. Additional improvements include modification and reconfiguration of the north entry to the Station, reconfiguration of existing fence and gates, relocation of automatic passenger counters, pressure cleaning and painting of ground floor and concrete structures, restoration of elevator cab and door, installation of new LED lights and fan inside elevator, and a one-time cleaning and maintenance of escalator. These improvements will improve the safety, aesthetics, comfort level, and public use of the Station.



Alina T. Hudak
Deputy Mayor

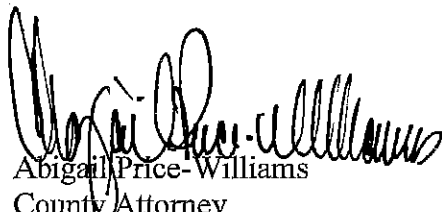


MEMORANDUM

(Revised)

TO: Honorable Chairman Esteban L. Bovo, Jr.
and Members, Board of County Commissioners

DATE: April 10, 2018

FROM: 
Abigail Price-Williams
County Attorney

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

Please note any items checked.

- ☐ "3-Day Rule" for committees applicable if raised
- ☐ 6 weeks required between first reading and public hearing
- ☐ 4 weeks notification to municipal officials required prior to public hearing
- ☐ Decreases revenues or increases expenditures without balancing budget
- ☐ Budget required
- ☐ Statement of fiscal impact required
- ☐ 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. 8(N)(1)
4-10-18

RESOLUTION NO. _____

RESOLUTION APPROVING THE ACCESS AND DEVELOPMENT AGREEMENT AND ACCESS AND UTILITY EASEMENT BETWEEN MIAMI-DADE COUNTY AND 1010 BRICKELL HOLDINGS, LLC ("AGREEMENTS"); AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE THE AGREEMENTS AND EXERCISE ALL PROVISIONS CONTAINED THEREIN

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

WHEREAS, 1010 Brickell Holdings, LLC ("1010 Brickell") is the owner of that certain parcel of land located west of Brickell Avenue and south of southeast Tenth Street in Downtown Miami, which 1010 Brickell intends to redevelop into a mixed-use commercial and residential development; and

WHEREAS, the western boundary of the 1010 Brickell Property is directly adjacent to and west of certain lands owned by the County (the "Transit Property"), wherein the Tenth Street/Promenade Metromover Station is located along southeast First Avenue south of southeast Tenth Street; and

WHEREAS, this Board finds consistent with section 125.35(2), Florida Statutes, that the Transit Property is of insufficient size, and shape to be issued a building permit for any type of development to be constructed on the property and is of use only to the adjacent property owner, 1010 Brickell; and

WHEREAS, an access easement across the Transit Property is necessary for access for pedestrian ingress and egress from the 1010 Brickell Property; and

WHEREAS, a utility easement is needed in order to facilitate utilities for the 1010 Brickell Property; and

WHEREAS, 1010 Brickell will be completing improvements to the Station in the amount of \$764,780 in lieu of a one-time payment to the County; and

WHEREAS, the improvements will include, among other things, integrating the Tenth Street/Promenade Metromover Station with the new development by way of improvements such as new walkways, ramps and improved lighting, the installation of new hardscaping, signage, handrails and bicycle racks, and the reconfiguration of existing fence and gates, relocation of automatic passenger counters, restoration of elevator cab and door, installation of new light and fan inside elevator, and one-time cleaning and maintenance of escalator; and

WHEREAS, the improvements are designed to improve the safety, aesthetics, comfort level, attractiveness and public use of the Tenth Street/Promenade Metromover Station,

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

Section 1. Approves the foregoing recitals, which are incorporated herein by reference.

Section 2. Approves the Access and Development Agreement and the Access and Utility Easement ("Agreements") between Miami-Dade County and 1010 Brickell Holdings, LLC, in substantially the form attached hereto and made a part hereof.

Section 3. Further authorizes the County Mayor or the County Mayor's designee to execute said Agreements in substantially the form attached hereto and made a part hereof and to take all actions necessary to effectuate same and to exercise all provisions contained therein.

Section 4. Pursuant to Resolution No. R-974-09, further directs the County Mayor or County Mayor's designee to record the easement, in the public records of Miami-Dade County, and to provide a recorded copy of the documents to the Clerk of the Board within 30 days of their execution, and further directs the Clerk of the Board to attach and permanently store a recorded copy of the easement together with this resolution.

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:

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

The Chairperson thereupon declared the resolution duly passed and adopted this 10th day of April, 2018. 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.



Bruce Libhaber

This instrument prepared by or under the direction of:

Ryan D. Bailine, Esq.
Greenberg Traurig, P.A.
333 SE 2nd Avenue, Suite 4400
Miami, Florida 33131

(This space reserved for Clerk)

ACCESS AND UTILITY EASEMENT AGREEMENT

THIS ACCESS AND UTILITY EASEMENT AGREEMENT (this “**Agreement**”) is made and entered into as of this ____ day of _____, 2018 (the “**Effective Date**”), by and among **MIAMI-DADE COUNTY**, a political subdivision of the State of Florida (the “**County**”), by and through **THE DEPARTMENT OF TRANSPORTATION AND PUBLIC WORKS (“DTPW”)** whose place of business and mailing address is at 701 NW 1st Court, 17th Floor, Miami, Florida 33136, as Grantor; and **1010 BRICKELL HOLDINGS LLC**, a Delaware limited liability company (“**1010 Brickell**”), whose place of business and mailing address is 848 Brickell Avenue, Suite PH-1, Miami, FL 33131, as Grantee,.

WITNESSETH:

WHEREAS, 1010 Brickell is the owner of that certain parcel of land located west of Brickell Avenue and south of SE Tenth Street in Downtown Miami, Miami-Dade County, Florida more particularly described on Exhibit “A” attached hereto and made a part hereof (the “**1010 Brickell Property**”) which 1010 Brickell intends to redevelop into a mixed-use commercial and residential development; and

WHEREAS, the western boundary of the 1010 Brickell Property is directly adjacent to and west of certain lands owned by the County and operated by DTPW (the “**Transit Property**”) containing a Metromover station located along SE First Avenue south of SE Tenth Street (referred to herein as the “**Tenth Street/Promenade Metromover Station**”); and

WHEREAS, to facilitate the new development of the 1010 Brickell Property with proper access for pedestrian ingress and egress and with proper utility passageways or routes for service lines, DTPW desires to grant to 1010 Brickell certain access and utility easements across the Transit Property; and

WHEREAS, the access easements will be a benefit to the general public and to Miami-Dade County whereby the citizens of Miami will have access through the Transit Property to the developments on the 1010 Brickell Property; and

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WHEREAS, pursuant to Resolution R-504-15, the utility service lines to be implemented shall be directly buried underground for aesthetic presentation with no or very little above ground appearances; and

WHEREAS, both the access easements and utility easements are designed to cross the Transit Property so as to enter or have access to SW First Avenue and SW Tenth Street, each a public road; and

WHEREAS, both the access easements and utility easements shall not interfere with the existing DTPW infrastructures as located within the Transit Property.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements set forth herein, the sum of Ten and No/100 Dollars (\$10.00) in hand paid by each party hereto to the other and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto do hereby agree to the terms, conditions and covenants hereinafter set forth:

ARTICLE I RECITALS; TERM

1.1 Recitals. The foregoing recitals are true and correct and are incorporated herein by reference as if set out in full in the body of this Agreement.

1.2 Term. In consideration of improvements (as described in Schedule 2.1 to the Access and Development Agreement dated as of the date hereof between the County and 1010 Brickell) made by 1010 Brickell to the DTPW in connection with this Agreement, the term of this Agreement and the easements created hereby shall be perpetual unless otherwise terminated.

ARTICLE II ACCESS EASEMENTS

2.1 Access Easement. The County, as the owner of the Transit Property, as Grantor, hereby grants and conveys unto 1010 Brickell, the Grantee, for the benefit of, and as appurtenances to the 1010 Brickell Property, as improved from time to time, and to 1010 Brickell and its successors and assigns a non-exclusive, permanent easements (the "**Access Easement**") for access, ingress and egress over, upon and across those portions of the Transit Property more particularly described on Exhibit "B" attached hereto and made a part hereof (the "**Access Easement Area**"), for purposes of providing passageways for pedestrians to travel upon, on, over, and across the Access Easement Area; and

The Access Easement shall be effective from and after the Effective Date, for the use and benefit of 1010 Brickell and the employees, agents, representatives or contractors (collectively, "**Agents**") of 1010 Brickell, together with the owners, lessees, tenants and other occupants from time to time of the 1010 Brickell Property and the customers, employees, agents, representatives, tenants, subtenants, licensees, contractors, concessionaires and business invitees thereof (collectively, "**Permitted Users**") and for the sole purpose of ingress and egress from the 1010 Brickell Property.

2.2 Third Party Conflicts. If any part of the Access Easement Area is encumbered by a prior easement in favor of a third party that is not used to provide services to the Transit Property and that conflicts with the Access Easement, 1010 Brickell, at its sole cost and expense, shall use its best efforts to obtain an appropriate amendment or release from the beneficiary of such easement, and DTPW shall not unreasonably withhold its consent to executing and delivering such amendment or release.

ARTICLE III UTILITY EASEMENTS

3.1 Utility Easements. The County, as the owner of the Transit Property, as Grantor, hereby grants and conveys unto 1010 Brickell, the Grantee, for the benefit of, and as appurtenances to, the 1010 Brickell Property, as improved from time to time, and to 1010 Brickell and its successors and assigns, non-exclusive, permanent easements (the "**Utility Easement**"), over, under, upon and across the areas within those portions of the Transit Property lying directly to the west of the 1010 Brickell Property described in Exhibit "C", to be further defined in accordance with Section 3.2, for installation of, access to and the use, maintenance, repair, and replacement of utility facilities of all types located both above and below ground, including meters, to serve the 1010 Brickell Property including, but not limited to, facilities providing electricity, natural gas, water, sewage, storm water, telephone, cable and data services (collectively, the "**Utilities**"); provided that no Utility Easement shall conflict with the operation of the Miami-Dade County Transit System (the "**System**"), which shall include, without limitation, all trains, buses, fixed guideways, stations, parking lots and parking structures, drop off/pickup areas, transit stops and shelters, bus bays, streets and sidewalks adjacent thereto owned by the County, and all maintenance facilities, structures and all associated facilities required in the operation of the System and owned by the County.

3.2 Specific Location of Utility Easement. At the time this Agreement is recorded, the "**Utility Easement Area**" shall refer to the area depicted in Exhibit "C" attached hereto, which represents the outermost boundaries of the areas where Utilities may be placed. 1010 Brickell shall use commercially reasonable efforts to minimize the portion of the Utility Easement Area that is permanently occupied by Utilities, subject to requirements imposed by Applicable Laws and the providers of the Utilities. Promptly after the completion of the construction or installation of any Utilities on the Utility Easement Area, 1010 Brickell shall, at its sole cost and expense, deliver to DTPW (i) a set of final "as-built" drawings thereof, and (ii) a survey of the final and actual Utility Easement Area prepared by a Florida licensed and insured surveyor meeting the Minimum Technical Standards for surveys of real property in the State of which shall include a strip of land on each side of the centerline of the installed Utilities with the minimum width required by the applicable Utility provider, with an accompanying sketch of the legal description. Under no circumstances shall such legal description(s) include any portion of the Transit Property located under a building on grade or under any of the structural supports for the Miami-Dade Metromover, including but not limited to the Tenth Street/Promenade Metromover Station. Upon the final determination of the Utility Easement Area in accordance with this paragraph, DTPW and 1010 Brickell shall record an instrument in the Public Records of Miami-Dade County, Florida containing the agreed-upon legal description(s) which shall confirm the area(s) subject to the applicable Utility Easement which shall be the final "**Utility Easement Area**" for purposes of this Agreement. When all Utilities have been installed in

connection with the development of the 1010 Brickell Property, DTPW and 1010 Brickell shall execute and record a notice, substantially in the form attached as Exhibit "D", confirming that all adjustments to the Utility Easement Area have been completed in accordance with this paragraph. 1010 Brickell shall have the non-exclusive right and privilege to temporarily access, with prior notice to the County and compliance with the Miami-Dade Transportation and Public Works Department Adjacent Construction Safety Manual or its replacement, any areas which are owned by DTPW adjacent to any Utility Easement Area to the extent necessary to install, repair or maintain the Utilities at such times as 1010 Brickell is installing, replacing or maintaining the Utilities.

3.3 Assignable to Utility Providers. DTPW acknowledges that 1010 Brickell shall have the right to authorize providers of Utilities to use the Utility Easement Areas granted herein for the purpose of installing facilities to serve the 1010 Brickell Property. If the provider of any of the Utilities requires that the Utility Easement be granted in a form prepared by the utility provider, DTPW agrees that it shall, upon the written request of 1010 Brickell, execute a reasonable form of utility easement in favor of such utility provider, so long as such form does not provide greater rights to the Utility provider than those rights provided herein, nor impose any liability or costs on the County.

3.4 Third Party Conflicts. If any part of the Utility Easement Area is encumbered by a prior easement in favor of a third party that is not used to provide services to the Transit Property and that conflicts with the Utility Easements, 1010 Brickell, at its sole cost and expense, shall use its best efforts to obtain an appropriate amendment or release from the beneficiary of such easement, and DTPW shall not unreasonably withhold its consent to executing and delivering such amendment or release.

3.5 Construction. It shall be the responsibility of 1010 Brickell, at its sole cost and expense, to install and construct (or to cause the applicable utility providers to install and construct) any Utilities within the Utility Easement Area as and to the extent that 1010 Brickell elects, in 1010 Brickell's sole discretion, to do so. If 1010 Brickell elects to construct such Utilities, the Utilities shall be constructed and completed in compliance with all Applicable Laws and substantially in accordance with the approvals obtained in connection with the development of the 1010 Brickell Property. 1010 Brickell's obligations with respect thereto shall be deemed to be satisfied when the City of Miami issues a temporary certificate of occupancy for any structure on the 1010 Brickell Property served by Utilities located within the Utility Easement Area. Once 1010 Brickell commences construction or installation of the Utilities, 1010 Brickell shall diligently pursue same to completion. To the extent within 1010 Brickell's reasonable control, 1010 Brickell shall use reasonable efforts to perform such work in such a manner as to minimize any material interference with the operation of the System. If 1010 Brickell or any of its Agents damages any portion of the System during the installation of the Utilities or any construction, 1010 Brickell shall be responsible for promptly repairing such damage at its sole cost and expense. No visible improvements constructed by 1010 Brickell shall be permitted on the surface of the Utility Easement Area, except for minor improvements (if any) incidental to the Utilities that do not have a material negative impact on the use of the affected property or appearance thereof.

3.6 Maintenance and Repair. 1010 Brickell shall be responsible, at its cost, for the performance of maintenance, repairs, and replacements with respect to the Utilities located in the Utility Easement Area in order to keep the same in a good condition and state of repair and in accordance with Applicable Laws. To the extent within 1010 Brickell's reasonable control, 1010 Brickell shall use reasonable efforts to perform such work in such a manner as to minimize any material interference with the operation of the System. Notwithstanding the foregoing, if 1010 Brickell or its Agents damages any portion of the System during the maintenance, repair, or replacement of the Utilities, 1010 Brickell shall be responsible for promptly repairing such damage at its sole cost and expense.

ARTICLE IV CONSTRUCTION REQUIREMENTS

4.1 General Construction Standards. In addition to the other requirements set forth in this Agreement, the parties acknowledge and agree that all construction, installation, maintenance, replacement or repair work required or permitted hereunder, shall be performed by contractors licensed and insured in the State of Florida, and that all such work shall be performed in accordance with all Applicable Laws. Upon completion of any work by 1010 Brickell or its Agents within the Access Easement Areas and the Utility Easement Areas (collectively, the "Easement Areas"), the areas affected thereby shall be promptly restored to substantially the same condition as existed prior to commencement of such work or better, excluding any specific work done (e.g., installation of a utility connection or manhole).

4.2 Information Requirements. DTPW shall supply 1010 Brickell with drawings, schematics and other information regarding the existing improvements on the Transit Property, pursuant to written request from 1010 Brickell, to allow 1010 Brickell and its Agents to design and install the Utilities. Following completion of construction of the Utilities, 1010 Brickell shall, upon written request from DTPW, provide DTPW with as-built drawings and schematics depicting the improvements constructed by 1010 Brickell in the Easement Areas.

4.3 No Storage or Construction Staging. No storage of materials (including, but not limited to, construction materials), and/or construction staging (including, but not limited to, the temporary placement of trailers, equipment or machinery) shall be allowed on any portion of any Easement Areas, except for DTPW operations and maintenance, from time to time, as deemed appropriate to utilize same space for parking for the maintenance of the System.

4.4 No Liens. 1010 Brickell shall keep the Easement Areas at all times free of mechanics' liens and any other liens for labor, services, supplies, equipment or materials purchased or procured, directly or indirectly, by or for 1010 Brickell. In no event will 1010 Brickell have the right to create, or permit there to be established by virtue of any act or omission, any lien or encumbrance of any nature against the Transit Property, or the Easement Areas. If any such lien or encumbrance is filed against any of the Easement Areas as a result of any action by 1010 Brickell, then 1010 Brickell shall discharge same of record by payment or bonding off the lien within twenty (20) days after receipt of written notice of the filing thereof, failing which 1010 Brickell will be in default under this Agreement and DTPW shall have the right to pay or bond off the lien and shall be entitled to reimbursement by 1010 Brickell for all costs and expenses actually incurred in connection therewith, together with interest at the

statutory rate established pursuant to Section 55.03(1), Florida Statutes, from the date paid until so reimbursed.

4.5 "AS IS" Condition. 1010 Brickell accepts each easement and each of the Easement Areas to which it is granted rights hereunder based on their "AS IS" physical condition and in an "AS IS" state of repair, subject only to the maintenance and repair obligations expressly set forth herein. DTPW expressly disclaims and makes no representations or warranties, whether expressed or implied, to 1010 Brickell with respect to the various easements granted to 1010 Brickell hereunder or any of the Easement Areas or facilities located therein, including, without limitation, with respect to merchantability of title, the suitability or fitness of the Easement Areas or such facilities for any of the uses or purposes contemplated by this Agreement or otherwise, or the compliance of same with all Applicable Laws.

4.6 Bus Bridge. In the event that 1010 Brickell's construction activities within the Easement Areas causes interruption of the Metromover system movements throughout the Brickell Loop of the System, the following procedures will be put immediately in operation until all elements have been assessed and Metromover movements return to normal, and in such events 1010 Brickell will reimburse DTPW for all costs of an alternate means to transport Metromover passengers during an unforeseen occurrence during construction development that impedes movement of normal Metromover traffic (the "Bus Bridge"):

(a) Metromover system will stop normal operations on the Omni Loop and a bus route will be immediately activated.

(b) 1010 Brickell shall provide professional assessment of the situation and within 48 hours after the interruption of Metromover service shall submit to DTPW a complete schedule for the repairs, including but not limited to field inspection assessments signed and sealed by a Professional Engineer licensed in the State of Florida.

(c) 1010 Brickell will be responsible for all costs associated with the bus route implemented until a permanent solution is implemented and accepted to the satisfaction of DTPW. 1010 Brickell's liability to DTPW shall be calculated based on the duration of the outage and the hourly cost of the Bus Bridge at the time of the occurrence.

A closure of the Tenth Street Promenade Metromover Station or a portion thereof to facilitate any work contemplated by this Agreement shall not require the implementation of a Bus Bridge. The Bus Bridge shall be implemented only if there is system-wide interruption of Metromover service throughout the Brickell Loop.

ARTICLE V

INSURANCE AND INDEMNITY; LIMITATION OF LIABILITY

5.1 Insurance.

(a) Casualty Insurance. 1010 Brickell shall be responsible for insuring the improvements that are constructed by 1010 Brickell on the Transit Property pursuant to this Agreement and DTPW shall have no liability therefor, except for any damages that are caused by DTPW or its agents, representatives, employees, or contractors.

(b) Liability Insurance. 1010 Brickell shall maintain, and shall provide DTPW with certificate(s) of insurance confirming, the following insurance coverage prior to the commencement of any construction in the Easement Areas:

(i) Worker's Compensation Insurance for all employees of 1010 Brickell as required by Chapter 440, Florida Statutes.

(ii) Commercial General Liability Insurance on a comprehensive basis in an amount not less than \$10,000,000 combined single limit per occurrence for bodily injury and property damage. **The County shall be shown as an additional insured with respect to this coverage, but only with respect to the provisions set forth under Section 6.2 and Section 6.3 of this Agreement.**

(iii) Automobile Liability Insurance covering all owned, non-owned and hired vehicles of 1010 Brickell 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 (the "**Automobile Liability Insurance Policy**").

(iv) 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 building(s) or structure(s) under construction. The policy shall name 1010 Brickell and DTPW A.T.I.M.A.

(c) Insurance Requirements. All such insurance policies (except for the Automobile Liability Insurance Policy) shall name the County as an additional insured. 1010 Brickell shall notify DTPW at least thirty (30) days before the cancellation or a material change to any such insurance policies. Additionally, all insurance policies required under this Agreement shall be issued by companies licensed in the State of Florida with a Best's rating of "A VIII" or better. 1010 Brickell waives any claim it might have against DTPW for damage to or destruction or loss of any property, to the extent the same is insured against under any insurance policy that covers the Easement Areas or is required to be insured against under the terms hereof, regardless of whether the negligence of DTPW caused such damage, destruction or loss except for any damage, destruction or loss caused by the sole negligence of DTPW. To the extent available at reasonable rates, 1010 Brickell shall cause its insurance carrier to waive the carrier's rights of recovery under subrogation or otherwise against the other either through the terms of the applicable policies or endorsement to such policies. Any insurance to be provided hereunder may be effected by umbrella policies and/or policies of blanket insurance covering additional items or locations or insureds.

5.2 Indemnity.

(a) 1010 Brickell shall indemnify and hold harmless Miami-Dade County and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including reasonable attorneys' fees and costs of defense, which Miami-Dade County or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of this Agreement by 1010 Brickell, or its officers, employees, agents, representatives, or contractors, except to the extent caused by Miami-Dade County, or its

employees, representatives, agents or contractors. 1010 Brickell shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of Miami-Dade County, or its officers, employees, agents and instrumentalities relating to the foregoing indemnity, where applicable, including appellate proceedings, and shall pay all costs, judgments, and reasonable attorneys' fees which may be incurred in connection therewith. 1010 Brickell expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by 1010 Brickell shall in no way limit its responsibility to indemnify, keep and save harmless and defend Miami-Dade County and its officers, employees, agents and instrumentalities as herein provided.

(b) Except as provided in Section 768.28, Florida Statutes (2015), Miami-Dade County shall indemnify and hold harmless 1010 Brickell and its officers, employees, agents and representatives from any and all liability, losses or damages, including reasonable attorneys' fees and costs of defense, which 1010 Brickell or its officers, employees, agents or representatives may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of this Agreement by the County or its officers, employees, agents and instrumentalities. Miami-Dade County shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature relating to the foregoing indemnity, where applicable, including appellate proceedings, and shall pay all costs, judgments, and reasonable attorneys' fees which may be incurred in connection therewith.

(c) The indemnities contained in this Agreement shall survive any termination of this Agreement.

5.3 Limitation of Liability. Without limiting the indemnity obligations set forth in Section 5.2, 1010 Brickell shall not be liable to Miami-Dade County for any incidental or consequential loss or damage whatsoever arising from the rights of 1010 Brickell hereunder, except to the extent caused by the gross negligence or willful misconduct of 1010 Brickell, or its employees, agents, officers, partners, members, principals, representatives, or contractors. This section does not apply to actual damage to the System caused by 1010 Brickell, or its employees, agents, officers, partners, members, principals, representatives, or contractors.

Without limiting the indemnity obligations set forth in Section 5.2, Miami-Dade County shall not be liable to 1010 Brickell for any incidental or consequential loss or damage whatsoever arising from the rights of Miami-Dade County hereunder, except to the extent caused by the gross negligence or willful misconduct of Miami-Dade County to the extent allowed pursuant to section 768.28, Florida Statutes.

ARTICLE VI MISCELLANEOUS

6.1 Grantor's Use. It is expressly understood and agreed by the parties hereto that the County and DTPW reserve all rights of ownership in, and that the County shall be entitled to use any and all of, the Easement Areas owned by it and encumbered by the easements granted by it in this Agreement for any and all purposes which are not inconsistent with the easements and rights granted herein, including without limitation the right to grant further easements on, over

and/or across such easement areas. Without limiting the generality of the foregoing sentence and notwithstanding any other section of this Agreement, the County expressly reserves the right to require relocation of Utilities placed in the Utility Easement Area for any County purpose; provided, however, that (i) the County shall cooperate with 1010 Brickell and with the providers of such Utilities to relocate the utility facilities at no cost to the County and (ii) the County shall grant to 1010 Brickell or such utility providers adequate replacement easements across Transit Property for the relocation of the Utilities. In such instance, 1010 Brickell agrees to release the Utility Easement provided herein at no cost to the County and to take all necessary actions to ensure that any utility provider that was provided a utility easement pursuant to this Agreement also releases such utility easement at no cost to the County.

6.2 Binding Effect. The easements, restrictions, benefits and obligations hereunder shall create benefits and servitudes running with the title to each of the properties expressly benefitted and encumbered thereby. This Agreement shall bind and inure to the benefit of the parties hereto, their respective heirs, representatives, successors, successors in interest, and assigns, so long as 1010 Brickell or its heirs, representatives, successors, successors in interest, and assigns continues to operate the 1010 Brickell Property as a mixed use commercial and residential development. Any transferee of any property which is subject to any easement granted herein shall automatically be deemed, by acceptance of the title to such property, to have taken such title subject to the easements contained herein and to have agreed with the then owner/owners of all other properties affected hereby to abide by the terms and conditions of this Agreement. References herein to "1010 Brickell" shall mean and refer to the owners from time to time of the applicable portions of the 1010 Brickell Property benefitted by the easement, restriction, benefit or obligation in question, and each provision of this Agreement shall be construed with reference to the foregoing.

6.3 Headings/Sections/Exhibits. The headings herein are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of this Agreement nor in any way affect the terms and provisions hereof. All references to Sections and Articles mean the Sections and Articles in this Agreement. All Exhibits attached hereto are hereby incorporated herein by reference as though set out in full herein.

6.4 Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof; provided, however, that this Agreement shall not limit any easement rights, obligations or encumbrances of record as of the date hereof. Subject to the preceding sentence, the parties hereto shall not be entitled to rely upon any statement, promise or representation not herein expressed with respect to the subject matter hereof.

6.5 Governing Law. This instrument shall be construed in accordance with the laws of the State of Florida, without giving effect to rules regarding conflicts of laws.

6.6 Counterparts. The parties hereto acknowledge and agree that this Agreement may be executed in several counterparts, each of which shall be effective as and shall constitute an original instrument binding on the part or parties signing same. It shall not be necessary that each party execute all copies of this Agreement, provided that each party has executed at least one copy.

6.7 Waiver of Merger Doctrine. The easements and rights herein shall continue in effect, and there shall not be a merger of estates or termination of such easements or rights, if the owner of the 1010 Brickell Property shall acquire all or any interest in the Easement Areas established hereunder.

6.8 Notices. All notices or other communications required or permitted to be given under this Agreement shall be in writing and shall be considered as properly given or made: (i) on the third (3rd) day after being mailed from within the United States by certified mail, return receipt requested, postage prepaid and addressed to the person to whom it is intended at the address of said person as set forth below, whether actually received or not; or (ii) the next business day if sent for and guaranteeing next business day delivery by a nationally recognized overnight delivery service or (iii) when actually received by the person to whom it is intended if given in any other manner. The mailing address for a party shall be the most recent address of said party designated in writing to the other party or parties, or if not so designated, as shown on the tax rolls of the taxing jurisdiction in which the property is located.

To 1010 Brickell: 1010 Brickell Holdings LLC, 848 Brickell Avenue, Suite PH-1, Miami, Florida 33131

To the County: Department of Transportation and Public Works, ATTN: Director, 701 NW 1st Court, 17th Floor, Miami, Florida 33136, with a copy to Miami-Dade County Attorney, 111 NW 1st Street, Suite 2810, Miami, Florida 33128.

Any party may change its address by delivering written notice thereof in accordance with this Section to the other party.

6.9 Separability of Void Provisions. If any provision or provisions of this Agreement or the application thereof to any owner or party, shall be held to be invalid, void or illegal, then the remaining provisions hereof, or the application of such provisions to any party, or any circumstance other than as to those which it is held to be invalid, void, or illegal, shall remain in full force and effect and not be affected thereby.

6.10 Jurisdiction and Venue. The parties hereby agree that the proper venue for any actions or proceedings pursuant to this Agreement brought by or on the behalf of any of the parties to this Agreement, shall be heard in the courts of Miami-Dade County, Florida. All parties waive any objections to the jurisdiction of said courts and hereby consent to its jurisdiction.

6.11 Estoppel Certificate. Each party hereto shall, from time to time during the term of this Agreement, upon request of the other party, execute, acknowledge, and deliver to the requesting party (or its designee) a statement in writing, certifying (a) that this Agreement is unmodified and in full force and effect if such is the fact (or if there have been any modifications thereof, that the same is in full force as modified and stating the modifications); (b) whether there are any uncured defaults hereunder by such party or, to such party's actual knowledge, by the requesting party; (c) whether any sums are owed by either party herein to the other hereunder; and (d) such other information as may be reasonably required by the requesting party.

6.12 Continuing Control. Notwithstanding the rights to the Easement Areas granted herein, it is specifically understood and agreed that Miami-Dade County reserves such access rights to the Easements as are necessary to enable the County to comply with the "continuing Control" requirements and regulations of the Federal Transit Administration as it relates to the operations of the System, provided such requirements and regulations do not prohibit or unreasonably restrict the rights herein granted to 1010 Brickell.

6.13 Disclaimer. Miami-Dade County shall not have any obligation to provide security with respect to or over any portion of the Easement Areas. All persons entering on the Easement Areas shall enter at their own risk. Miami-Dade County shall have no liability for acts or omissions arising or connecting with these Easement Areas, except to the extent that such acts or omissions constitute gross negligence or intentional misconduct by Miami-Dade County to the extent allowed pursuant to section 768.28, Florida Statutes.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the authorized representatives of the parties hereto have executed this Access and Utility Easement Agreement under seal as of the day and year written above.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

Grantor:

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

Name: _____

By: _____

Name: _____

Title: _____

Name: _____

ATTEST:

APPROVED AS TO FORM AND LEGAL
SUFFICIENCY:

Harvey Ruvn, Clerk

By: _____

Name: _____

Title: _____

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

The foregoing Access and Utility Easement Agreement was acknowledged before me this
____ day of _____, 2018, by _____, who is the _____ of
MIAMI-DADE COUNTY and who is personally known to me.

Print Name: _____

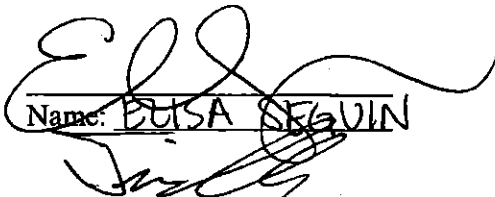

Notary Public, State of Florida

My Commission Expires:

[NOTARIAL SEAL]

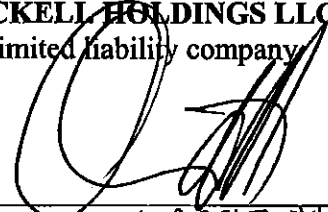
IN WITNESS WHEREOF, 1010 Brickell Holdings LLC executed this Access and Utility Easement Agreement under seal as of the day and year written above.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:


Name: ELISA SEGUIN

Name: Tim Sanders

Grantee:

1010 BRICKELL HOLDINGS LLC, a
Delaware limited liability company

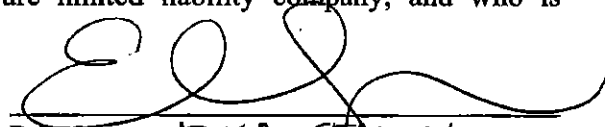
By: 
Name: ARNAUD KARSENTI
Title: AUTHORIZED MEMBER

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

The foregoing Access and Utility Easement Agreement was acknowledged before me this 7 day of FEBRUARY 2018, by ARNAUD KARSENTI, who is the AUTHORIZED MEMBER of **1010 BRICKELL HOLDINGS LLC**, a Delaware limited liability company, and who is personally known to me.



Elisa Seguin
Commission # FF975191
Expires: March 24, 2020
Bonded thru Aaron Notary


Print Name: ELISA SEGUIN
Notary Public, State of Florida

My Commission Expires: MARCH 24, 2020

[NOTARIAL SEAL]

EXHIBIT "A"

1010 Brickell Property

Lots 22, 23, 24 and 25, Block 100 South, BRICKELL ADDITION AMENDED A/K/A MARY BRICKELL'S ADDITION A/K/A AMENDED MAP OF BRICKELL'S ADDITION TO THE MAP OF MIAMI, according to the plat thereof as recorded in Plat Book B, Page 113, of the Public Records of Miami - Dade County, Florida;

LESS AND EXCEPT:

Those portions of Lot 25, Block 100 South, BRICKELL'S AMENDED ADDITION, according to the plat thereof as recorded in Plat Book B, Page 113, of the Public Records of Miami - Dade County, Florida, being more particularly described as follows:

The external area of a circular curve, contained within said Lot 25, concave to the Southeast, and having a radius of 25 feet and tangents which are 25 feet South of and parallel with the centerline of S.E. 10 Street and 37.5 feet Easterly of and parallel with the centerline of S.E. 1 Avenue.

AND

The West 7.70 feet of Lots 22 through 25, inclusive, in Block 100 South, of AMENDED MAP OF BRICKELL'S ADDITION TO THE MAP OF MIAMI, according to the plat thereof as recorded in Plat Book B, Page 113, of the Public Records of Miami - Dade County, Florida, LESS that portion thereof which lies within the external area formed by a 25.00 foot radius arc concave to the Southeast, tangent to the West line of said Lot 25 and tangent to the North line of said Lot 25.

EXHIBIT "B"

Access Easement Area

Exhibit "B" **Sketch To Accompany Legal Description** **Ingress-Egress Easement**



Scale: 1"=40'

NOTE:

Bearings shown hereon relate to an assumed bearing (S15°00'00"W) along the centerline of S.E. 1st Avenue (Brickell Plaza).

See Sheet 3 for Legal Description.

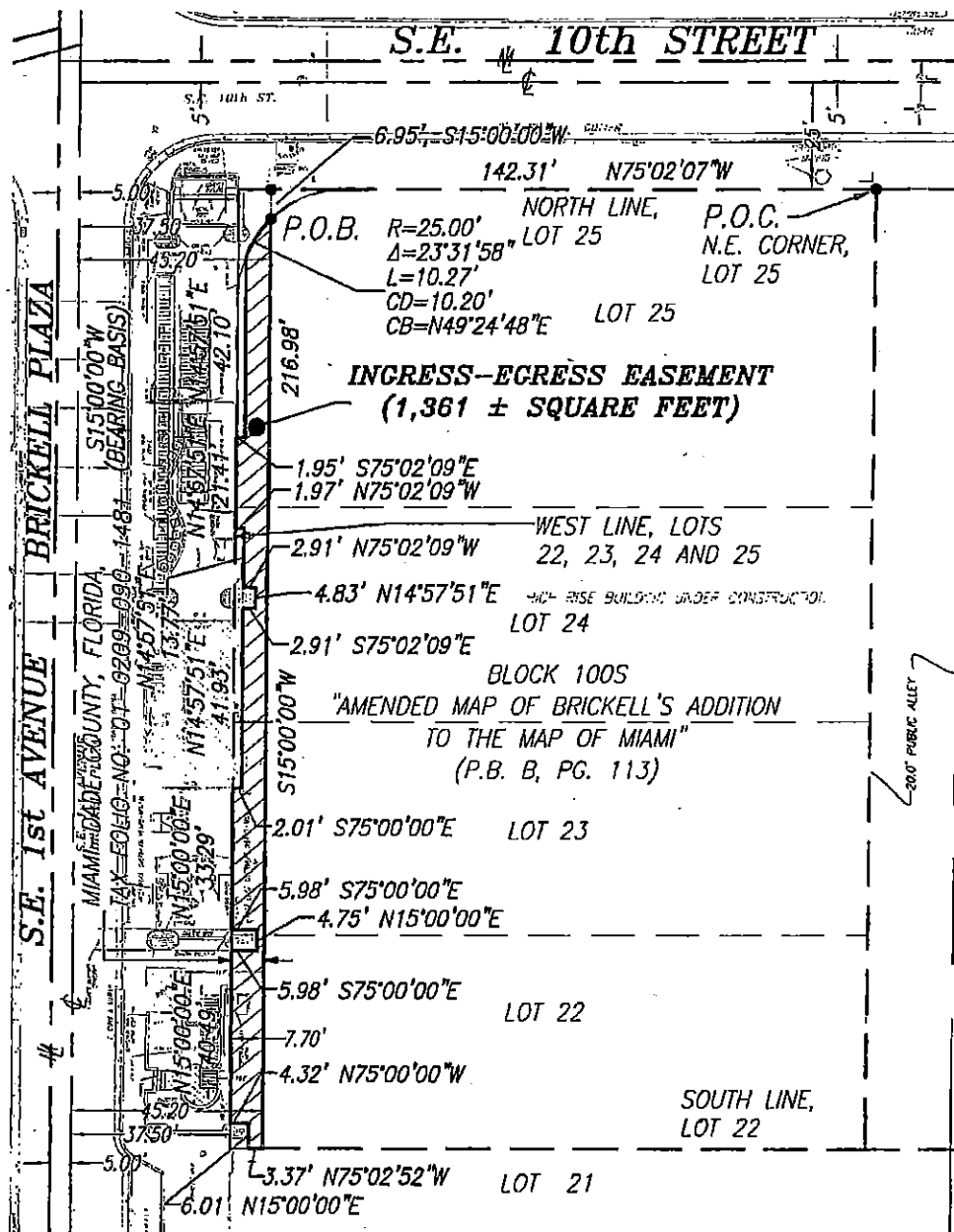
P.O.B. - Point of Beginning

P.O.C. - Point of Commencement

CL - Centerline

ML - Monument Line

Prepared For: 13th Floor Investments



Revised: May 16, 2016

Schwebke-Shiskin & Associates, Inc.
 LAND SURVEYORS • ENGINEERS • LAND PLANNERS

3240 CORPORATE WAY, MIRAMAR, FLORIDA 33025 DADE (305) 652-7010 BROWARD (954) 445-7010 FAX (305) 652-8284

THIS IS NOT A "LAND SURVEY."

ORDER NO.: 205146

DATE: JANUARY 26, 2015

SHEET 1 OF 3 SHEET(S)

F.B.: N.A.

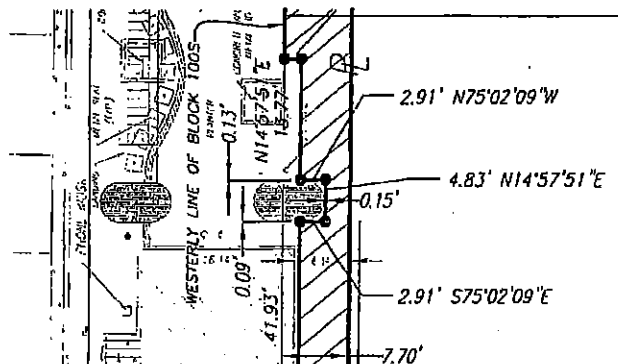
PREPARED UNDER MY SUPERVISION:

MARK STEVEN JOHNSON, PRINCIPAL
 FLORIDA PROF. LAND SURVEYOR NO. 4775

Exhibit "B" Sketch To Accompany Legal Description Ingress-Egress Easement



Scale: 1"=20'



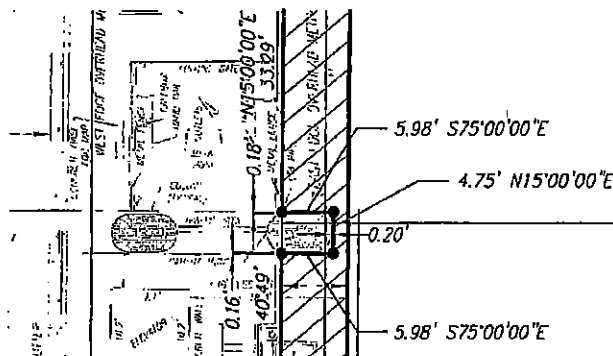
Pier "C"

NOTE:

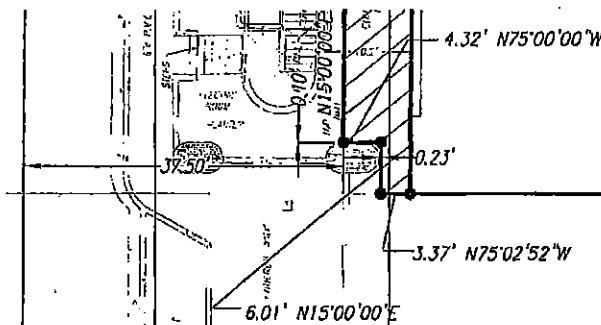
Bearings shown hereon relate to an assumed bearing (S15°00'00"W) along the centerline of S.E. 1st Avenue (Brickell Plaza).

See Sheet 3 for Legal Description.

Prepared For: 13th Floor Investments



Pier "D"



Pier "E"

Revised: May 16, 2016

Schwabke-Shiskin & Associates, Inc.

LAND SURVEYORS • ENGINEERS

3240 CORPORATE WAY, MIRAMAR, FLORIDA 33025 DADE: (305) 652-7010 BROWARD: (954) 435-7010 FAX: (305) 652-8284

NO. 4775

THIS IS NOT A "LAND SURVEY."

ORDER NO.: 205146

DATE: JANUARY 26, 2015

SHEET 2 OF 3 SHEET(S)

F.B.: N.A.

PREPARED UNDER MY SUPERVISION:

STATE OF

MARK STEVEN JOHNSON, PRINCIPAL
FLORIDA PROF. LAND SURVEYOR NO. 4775

Exhibit "B"
Sketch To Accompany Legal Description
Ingress-Egress Easement

Legal Description:

A portion of Lots 22, 23, 24 and 25, "Block 100S, "AMENDED MAP OF BRICKELL'S ADDITION TO THE MAP OF MIAMI," according to the Plat thereof, as recorded in Plat Book B at Page 113, of the Public Records of Miami-Dade County, Florida, being more particularly described as follows:

Commence at the Northeast corner of said Lot 25, Block 100S; thence run North 75 degrees 02 minutes 07 seconds West, along the North line of said Lot 25, for a distance of 142.31 feet to a point; thence run South 15 degrees 00 minutes 00 seconds West, along a line 7.70 feet Easterly of and parallel with, as measured at right angles to, the Westerly boundary line of said Block 100S, for a distance of 6.95 feet to the POINT OF BEGINNING of the following described parcel of land; thence run South 15 degrees 00 minutes 00 seconds West, along the last described course, for a distance of 216.98 feet to a point; thence run North 75 degrees 02 minutes 52 seconds West, along the South line of said Lot 22, Block 100S, for a distance of 3.37 feet to a point; thence run North 15 degrees 00 minutes 00 seconds East for a distance of 6.01 feet to a point; thence run North 75 degrees 00 minutes 00 seconds West for a distance of 4.32 feet to a point; thence run North 15 degrees 00 minutes 00 seconds East, along the West line of said Lot 22, Block 100S, for a distance of 40.49 feet to a point; thence run South 75 degrees 00 minutes 00 seconds East for a distance of 5.98 feet to a point; thence run North 15 degrees 00 minutes 00 seconds East for a distance of 4.75 feet to a point; thence run North 75 degrees 00 minutes 00 seconds West for a distance of 5.98 feet to a point; thence run North 15 degrees 00 minutes 00 seconds East, along the West line of said Lot 23, Block 100S, for a distance of 33.29 feet to a point; thence run South 75 degrees 00 minutes 00 seconds East for a distance of 2.01 feet to a point; thence run North 14 degrees 57 minutes 51 seconds East for a distance of 41.93 feet to a point; thence run South 75 degrees 02 minutes 09 seconds East for a distance of 2.91 feet to a point; thence run North 14 degrees 57 minutes 51 seconds East for a distance of 4.83 feet to a point; thence run North 75 degrees 02 minutes 09 seconds West for a distance of 2.91 feet to a point; thence run North 14 degrees 57 minutes 51 seconds East for a distance of 13.77 feet to a point; thence run North 75 degrees 02 minutes 09 seconds West for a distance of 1.97 feet to a point; thence run North 14 degrees 57 minutes 51 seconds East, along the West line of said Lots 24 and 25, Block 100S, for a distance of 21.41 feet to a point; thence run South 75 degrees 02 minutes 09 seconds East for a distance of 1.95 feet to a point; thence run North 14 degrees 57 minutes 51 seconds East for a distance of 42.10 feet to a point on the next described circular curve concave to the Southeast; thence run along the arc of a circular curve to the right, having a radius of 25.00 feet, a central angle of 23 degrees 31 minutes 58 seconds, a chord distance of 10.20 feet through a chord bearing of North 49 degrees 24 minutes 48 seconds East, for an arc distance of 10.27 feet to the POINT OF BEGINNING, lying and being in Section 38, Township 54 South, Range 41 East, City of Miami, Miami-Dade County, Florida. Said easement lying generally below Elevation 17.50 feet, as related to National Geodetic Vertical Datum of 1929.

Said easement containing 1,361 square feet, more or less.

NOTE:

1. Bearings shown hereon relate to an assumed bearing (S15°00'00"W) along the centerline of S.E. 1st Avenue (Brickell Plaza).
2. See Sheets 1 and 2 of 3 for Sketch To Accompany Legal Description.
3. Prepared For: 13th Floor Investments

Revised: May 16, 2016

Schwelbke-Shiskin & Associates, Inc.
LAND SURVEYORS • ENGINEERS • LAND PLANNERS

3240 CORPORATE WAY, MIRAMAR, FLORIDA 33025 DADE: (305) 652-7010 BROWARD: (954) 435-7010 FAX: (305) 652-8284

THIS IS NOT A "LAND SURVEY."

ORDER NO.: 205146

DATE: JANUARY 26, 2015

SHEET 3 OF 3 SHEET(S)

F.B.: N.A.


PREPARED UNDER MY SUPERVISION:
STATE OF

MARK STEVEN JOHNSON, PRINCIPAL
FLORIDA PROFESSIONAL SURVEYOR NO. 4775

EXHIBIT "C"

Utility Easement Area

Exhibit "C"
Sketch To Accompany Legal Description
Utility Easement

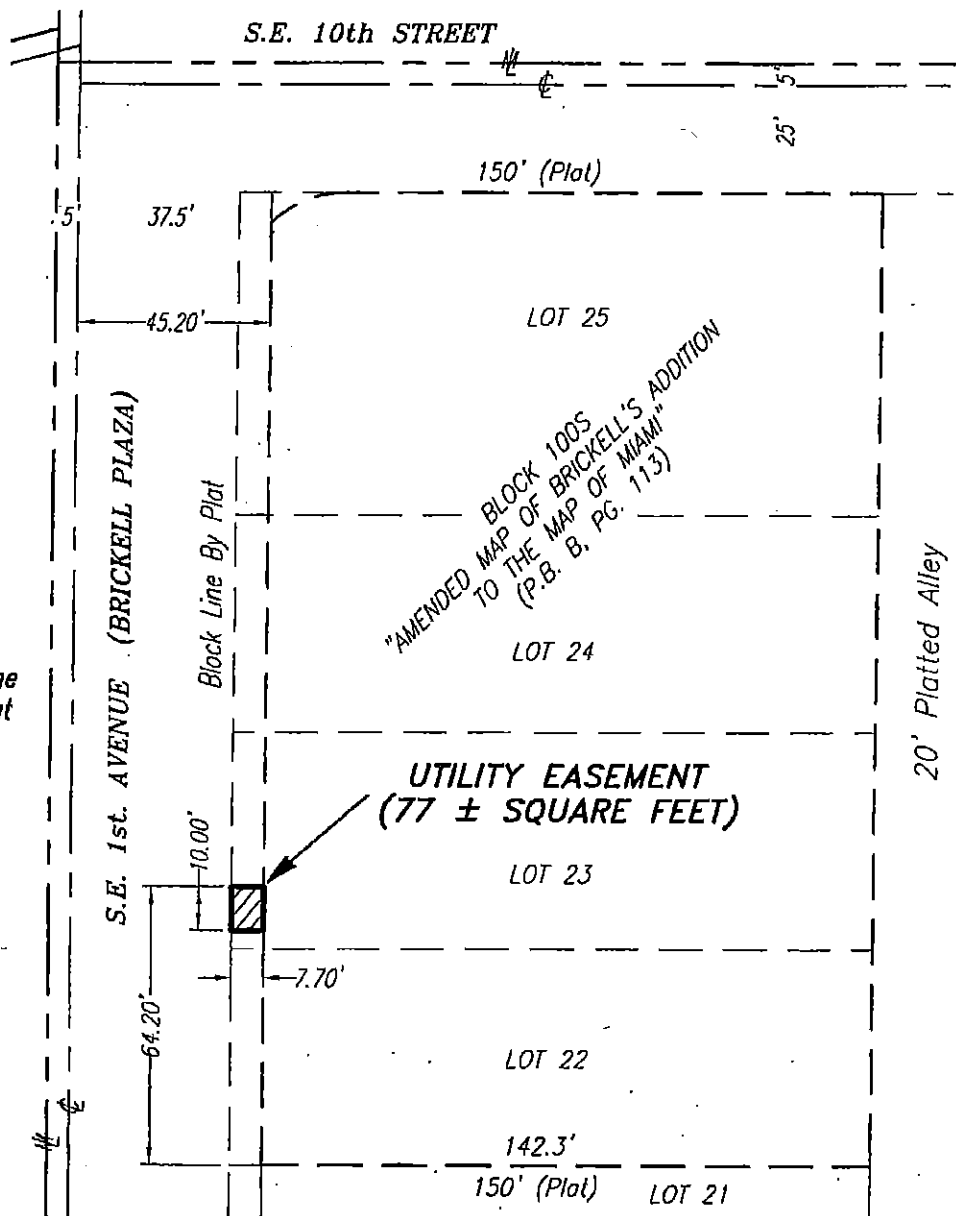
NORTH

 Scale: 1"=40'

LEGAL DESCRIPTION:

The Northerly 10.00 feet of the Southerly 64.20 feet of the Westerly 7.70 feet of Lots 22 through 25, Inclusive, in Block 100S, "AMENDED MAP OF BRICKELL'S ADDITION TO THE MAP OF MIAMI," according to the Plat thereof, as recorded in Plat Book B, at Page 113, of the Public Records of Miami-Dade County, Florida.

NOTE:

± - More or Less
 CL - Centerline
 ML - Monument Line
 PL - Property Line
 P.B. - Plat Book
 PG. - Page



Prepared For: 13th Floor Investments

Revised: May 16, 2016

Schuelke - Shickin & Associates, Inc.

LAND SURVEYORS • ENGINEERS

3240 CORPORATE WAY, MIRAMAR, FLORIDA 33025 DADE: (305) 652-7010 BROWARD: (954) 419-7040 FAX: (305) 652-8284

(LB-87)

THIS IS NOT A "LAND SURVEY."

ORDER NO.: 205245

DATE: MARCH 8, 2016

SHEET 1 OF 1 SHEET(S)

F.B.: N.A.

PREPARED UNDER MY SUPERVISION:

MARY STEVEN JOHNSON, PRINCIPAL
 FLORIDA PROFESSIONAL LAND SURVEYOR NO. 4775

EXHIBIT "D"

NOTICE REGARDING UTILITY EASEMENT AREA

This instrument was prepared by
and after recording return to:

[]

NOTICE REGARDING UTILITY EASEMENT AREA

THIS NOTICE REGARDING UTILITY EASEMENT AREA (the "Notice") is made as of this ____ day of _____, 20____, by and among **MIAMI-DADE COUNTY**, a political subdivision of the State of Florida (the "**County**"), by and through **THE DEPARTMENT OF TRANSPORTATION AND PUBLIC WORKS ("DTPW")** (collectively referred to as "Miami-Dade County," "County," or "DTPW") whose place of business and mailing address is at 701 NW 1st Court, 17th Floor, Miami, Florida 33136, as Grantor; and **1010 BRICKELL HOLDINGS LLC**, a Delaware limited liability company ("**1010 Brickell**"), as Grantee.

RECITALS

WHEREAS, DTPW and 1010 Brickell entered into that certain Access and Utility Easement Agreement dated _____, 2018 and recorded in Official Records Book ____, Page ____ of the Public Records of Miami-Dade County, Florida (the "**Easement Agreement**"). Capitalized terms not defined herein shall have the meanings ascribed thereto in the Easement Agreement;

WHEREAS, the DTPW is the fee owner of the Utility Easement Area;

WHEREAS, the actual and final location of the Utility Easement Area has been determined pursuant to the terms and conditions of the Easement Agreement; and

WHEREAS, DTPW and 1010 Brickell, pursuant to paragraph 3.2 of the Easement Agreement, desire to execute and record this Notice to provide record notice of the actual and final location and legal description of the Utility Easement Area;

NOW, THEREFORE, pursuant to the terms and conditions of the Easement Agreement, the parties hereby provide record notice of the following:

The final and actual "**Utility Easement Area**," as defined in the Easement Agreement, shall permanently refer to and shall be those lands described in the following instruments recorded in the Public Records of Miami-Dade County, Florida:

1. [List each separate final utility easement]

2.

3.

All other portions of the Transit Property, including without limitation any portion of the original Utility Easement Area described in the Easement Agreement lying outside of the land described in the instruments above, shall be excluded from the Utility Easement Area for purposes of the Easement Agreement.

[SIGNATURES FOLLOW ON NEXT PAGE(S)]

Signed, witnessed, executed and acknowledged on this ____ day of _____, 20__.

[add appropriate signature blocks and notary provisions]

Access and Development Agreement
between
Miami-Dade County
and
1010 Brickell Holdings LLC
for Access and Improvements at
Tenth Street/ Promenade Metromover Station

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ACCESS AND DEVELOPMENT AGREEMENT

THIS ACCESS AND DEVELOPMENT AGREEMENT (the "Agreement"), dated as of the ____ day of _____, 2017, made by and between MIAMI-DADE COUNTY, a political subdivision of the State of Florida ("County"), by and through the Department of Transportation and Public Works ("DTPW") and together with the County, collectively, the "Owner", having an office and place of business at Overtown Transit Village, 701 N.W. 1st Court, 17th Floor, Miami, Florida 33136 Attn: Director, Department of Transportation and Public Works, and 1010 Brickell Holdings LLC, a Delaware limited liability company, having an office and place of business at 848 Brickell Avenue, Suite PH-1, Miami, Florida 33131 (hereinafter called "Developer" and together with the Owner, collectively, referred to herein, as the "Parties").

W I T N E S S E T H:

A. The Owner owns certain real property located in Miami-Dade County, Florida, as more particularly described on Exhibit A attached hereto, and generally depicted on Exhibit B attached hereto and made a part hereof (the "Land"), which is the location of a portion of the Miami-Dade County Metromover System.

B. Developer desires to improve the existing Tenth Street/Promenade Metromover Station (the "Station") in connection with improvements to Developer's property located adjacent to the Station (the "Project"), and the Owner desires to encourage development of the Station and the Project.

C. Owner and the Developer recognize the potential for public and private benefit through improvements to the Station in order to promote public transit usage, improve the appearance, functionality and maintenance of the Station in the vicinity of the Project and to further economic development in the County. .

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 operate or maintain any part of the System, unless specified in this Agreement.

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 set forth in Article 2 hereof.

ARTICLE 1 GENERAL TERMS OF AGREEMENT

Section 1.1. Agreement. 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 for under this Agreement constitute substantial benefits to both parties and thus adequate consideration for this Agreement.

Section 1.2. Term of Agreement. Subject to the terms of Section 1.3 and Section 17.1 below, the term of this Agreement (the "Term") shall be thirty (30) years, commencing on the date hereof. Unless (a) this Agreement is terminated as of the expiration of the current Term by the Developer giving written notice thereof to the Owner at any time during the last year of the current Term, or (b) the Developer is in default of its terms, conditions, and obligations under this Agreement at the expiration of the current Term, then the Term of this Agreement shall automatically renew for up to two additional renewal terms of thirty (30) years each upon expiration of the preceding Term. The Term shall not exceed ninety (90) years from the effective date of this Agreement.

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, or any renewal thereof. In the event the Owner, directly or indirectly, discontinues, substantially curtails, or ceases the operation of the Station or the System for a period of more than thirty (30) days, as its sole and exclusive remedy, 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 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 (15th) day following the Owner's receipt of notice of termination.

Section 1.5. Failure of Requirements. In the event the Developer is not able to build the Project or the Developer cannot obtain its Permits or the Developer does not elect, in its sole discretion, to build or develop the Project, then 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 (15th) day following the Owner's receipt of notice of termination and if Developer has begun any work on Improvements at Station, Developer shall at its sole cost and expense return the Station to original or better condition.

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) Administrative Review Period shall have the meaning ascribed to it in Section 4.2 hereof.

(b) Agreement shall mean this Agreement and all amendments, supplements, addenda or renewals thereof.

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

(d) Bus Bridge shall mean an alternate means to transport Metromover passengers during construction development that impedes movement of normal Metromover traffic.

(e) City shall mean the City of Miami, Florida, municipal corporation organized under the laws of the State of Florida.

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

(g) Completion of Construction shall mean, for the Improvements, the date when work is complete and has been inspected to the extent required by Law and Ordinance, and all work to be performed under the Permits issued in connection with such Improvements has been completed.

(h) Construction Plans shall consist of Final Design Plans for particular Improvements as approved by the County, the drawings and specifications for which are in the format with sufficient detail as required to obtain building permits for such Improvements and as further described in Article 4.

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

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

(k) Developer's Representative shall mean Jack Khan or the individual designated by the Developer to be the primary contact for the Developer in connection with this Agreement and any submissions, approvals, consents, joinders or inquiries with respect to this Agreement and the Improvements.

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

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

(n) Event(s) of Default shall be given the meaning ascribed to such term in Section 12.1.

(o) FDOT shall have the meaning ascribed to such term in Section 1.3 herein.

(p) Final Design Plans shall mean the final plans and specifications for the Improvements.

(q) FTA shall have the meaning ascribed to such term in Section 1.3 herein.

(r) 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.

(s) Improvement(s) shall mean the alterations, new construction or reconstruction by the Developer of the Station as described in Schedule 2.1, substantially in conformance with the renderings attached here to as Exhibit C, as the same may be amended from time to time through the written agreement of the Owner and Developer. Any and all such improvements shall become the property of the County upon installation.

(t) Land shall mean the real property described in Exhibit A hereto, and generally depicted on Exhibit B attached hereto, together with all rights, privileges and easements appurtenant to said real property, and all right, title and interest of the Owner, if any, in and to any air rights and 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.

(u) 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.

(v) Notice shall have the meaning ascribed to such term in Section 13.2 herein.

(w) Owner shall mean the County, by and through DTPW, and its permitted successors and assigns.

(x) Owner's Representative shall mean the Director of DTPW or his/her designee, or a person subsequently designated by the Director of DTPW upon written notice to the Developer.

(y) 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, County, State of Florida, DTPW, FTA or any other government agency having jurisdiction related to the Improvements.

(z) Phase shall mean any of the design phase, construction phase or operation phase of the Improvements to be constructed in accordance with this Agreement.

(aa) 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, whose approval shall not be unreasonably withheld, delayed or conditioned, and consistent with applicable Laws and Ordinances.

(bb) Preliminary Plans shall mean plans for the Improvements or a portion thereof, as the case may be, which have been submitted by the Developer to the County, as may be required herein.

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

(1) the Land; and

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

(dd) System shall mean the Miami-Dade County Metromover System including, without limitation, all mover vehicles, trains, fixed guideways, stations, parking lots and parking structures, drop off/pickup areas, sidewalks, maintenance facilities, structures and all associated facilities required in the operation of the System.

(ee) Taking shall have the meaning ascribed to such term in Section 11.1.

(ff) Term shall have the meaning ascribed to such term in Section 1.2.

ARTICLE 3 DEVELOPMENT RIGHTS AND CONSTRUCTION REQUIREMENTS

Section 3.1. Land Uses

(a) The Developer will develop the Improvements substantially consistent with the Plans and Specifications and maintain such Improvements as set forth herein, the intent of which is to enhance the Station, improve ridership level and provide for maintenance of non-standard Improvements to the Station.

(b) 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 to the extent permitted by DTPW's safety and security requirements.

(c) The Developer will use reasonable efforts to develop the Improvements substantially consistent with the Plans and Specifications and maintain such Improvements as set forth herein, the intent of which is to enhance the Station and the ridership and usage of the System.

Section 3.2. Development Rights. The Developer shall have the obligation to construct the Improvements in substantially the manner shown on Schedule 2.1, subject to the terms and conditions of this Agreement, including the following:

(a) Development Rights of Land. Subject to the terms set forth in this Section 3.2, in connection with the construction of the Project, the Owner will join in such Permits and/or other permits, licenses, approvals, or other administrative documents, as may be necessary for the Developer to construct the Improvements substantially in conformance with the Plans and Specifications and in a manner otherwise permitted hereunder, provided that:

(1) such joinder by the Owner shall be at no cost to the Owner other than its costs of review;

(2) the location, terms, and form of any such Permits or other permits, licenses, approvals or other administrative documents shall be reasonably acceptable to the Owner; and

(3) the Owner agrees to use reasonable efforts to review and approve (or disapprove with an explanation for such disapproval) any such requests within fifteen (15) business days of such request from the Developer (the "Administrative Review Period") or a reasonably longer period of time if the volume and complexity of the documents, as reasonably determined by the Owner, warrant a longer review period (except in the event that Board approval is required under applicable Law and Ordinance for such approval, in which case Section 15.6 shall control). Developer agrees to provide Owner with all documents necessary to assess such requests at the earliest possible time and Owner agrees to expedite the review of such documents and its response to such requests.

(b) Easements, Rights to Land. Nothing herein shall be construed to limit the rights of the Owner under this Section 3.2 or to require the Owner, subject to Section 15.13, 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 Law and Ordinance.

(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:

(1) The County retains all of its sovereign prerogatives and rights as a county under Florida laws 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 or Ordinances of whatever nature applicable to the design, construction and development of the Improvements provided for in this Agreement; and

(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 or Ordinances of whatever nature applicable to the design, construction and development of the Project.

Section 3.3. Compliance with Laws, Regulations and Permits. Developer shall comply with all applicable Federal, State, County and Municipal statutes, ordinances, rules, orders, regulations and requirements. Developer shall, upon request, provide proof of compliance with all applicable required licenses, permits or other legal requirements. Preliminary Plans, Final Design Plans and Construction Plans, and all work by the Developer with respect to the Improvements and the Developer's construction of or installation thereon, shall be in conformity with this Agreement and Law and Ordinance, including applicable provisions of the then-current version of DTPW's Adjacent Construction Manual or its replacement. Developer acknowledges that the DTPW Adjacent Construction Manual contains minimum requirements and the County may impose more stringent requirements if the County deems that more stringent requirements are warranted to adequately protect the System.

Section 3.4. FTA Requirements. Developer shall comply with applicable FTA requirements and which shall be included in any Agreement covering the use of property acquired and/or constructed with federal funds, including, without limitation:

- (a) Requirements found in 49 CFR Part 26.7 regarding nondiscrimination based on race, color, national origin or sex;
- (b) Requirements found in 49 CFR Parts 27.7 and 27.9(b) and 37 regarding non-discrimination based on disability and complying with the Americans With Disabilities Act with regard to any Improvements constructed;
- (c) Requirements contained in the Federal Transit Administration Master Agreement relating to conflicts of interests, debarment and suspension.
- (d) Continuing control of the Property by DTPW;
- (e) Continued unobstructed public access to the System; and
- (f) Non-interference with transit operations.

Section 3.5. Payment and Performance Bonds. AT LEAST TEN (10) DAYS' BEFORE DEVELOPER COMMENCES ANY CONSTRUCTION WORK RELATED TO ANY PORTION OF THE PROJECT OR ANY MATERIALS ARE PURCHASED FROM A SUPPLIER, DEVELOPER SHALL EXECUTE, DELIVER TO THE COUNTY AND RECORD IN THE PUBLIC RECORDS OF THE COUNTY, A PAYMENT AND PERFORMANCE BOND EQUAL TO THE TOTAL COST OF CONSTRUCTION OF THE IMPROVEMENTS. EACH PAYMENT AND PERFORMANCE BOND SHALL BE IN COMPLIANCE WITH ALL APPLICABLE LAWS INCLUDING THE TERMS OF SECTION 255.05, FLORIDA STATUTES, AND IN COMPLIANCE WITH THE REQUIREMENTS OF SECTIONS 255.05(1)(A) AND (C), SECTION 255.05(3), AND SECTION 255.05(6), AND SHALL NAME THE COUNTY AND THE DEVELOPER BENEFICIARIES THEREOF, AS JOINT OBLIGEEES. DEVELOPER SHALL NOT ALLOW ANY MECHANICS LIENS OR MATERIALMAN'S LIENS, OR LIENS, JUDGMENTS OR ENCUMBRANCES OF

ANY KIND ("ENCUMBRANCES"), TO BE PLACED ON, OR TO CLOUD TITLE OF, OWNER'S FEE SIMPLE INTEREST IN THE PROPERTY AND SHALL INDEMNIFY OWNER FOR ANY COSTS, EXPENSES, OR DAMAGES OWNER INCURS BY REASON THEREOF, IN THE EVENT THAT ANY SUCH ENCUMBRANCE IS NOT REMOVED AS A LIEN ON THE OWNER'S FEE SIMPLE INTEREST IN THE DEMISED PROPERTY WITHIN THIRTY (30) DAYS AFTER DEVELOPER RECEIVES WRITTEN NOTICE FROM OWNER DEMANDING REMOVAL OF SUCH ENCUMBRANCE, AND IN WHICH CASE SUCH ENCUMBRANCE SHALL BE DEEMED A DEVELOPER EVENT OF DEFAULT. DEVELOPER SHALL PROMPTLY TAKE ALL STEPS REQUIRED TO PROMPTLY REMOVE OR OTHERWISE RESOLVE ALL SUCH ENCUMBRANCES OF WHICH DEVELOPER HAS BEEN GIVEN ACTUAL NOTICE.

Section 3.6. Designation of the Owner's Representative. The Owner's Representative shall have the power, authority and right, on behalf of the Owner, in its capacity as the Owner hereunder, to:

- (a) review and approve (if required) documents, plans, applications, and all other requests required or allowed by the Developer to be submitted to the Owner pursuant to 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 non-disturbance agreements and issue estoppel certificates as provided elsewhere in this Agreement;
- (e) execute any and all documents on behalf of the Owner necessary or convenient to the foregoing approvals, consents, and appointments;
- (f) execute on behalf of the Owner any and all consents, agreements, 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, and
- (g) to enter into an amendment of this Agreement with the Developer to correct any typographical or non-material errors or make any other non-material changes to this Agreement.

ARTICLE 4 PLANS

Section 4.1. Design Plans.

(a) The Developer shall submit design and construction plans to DTPW for review, coordination and approval (the "Design Plans"). For each submittal, the Developer shall submit an electronic copy, in a format reviewable by the County using its existing systems, and if requested by the County, in its native format, and three (3) full-sized or half-sized sets of prints with the date noted on each print.

(b) The Improvements shown on Schedule 2.1 have been approved by the Owner. Owner authorizes the Developer to proceed with the preparation of plans and specifications for construction of the Improvements substantially as shown on Schedule 2.1.

(c) At 100% design completion of the Improvements, Developer shall submit proposed Final Design Plans for the Improvements to DTPW for its review and approval, which shall not be unreasonably withheld, delayed or conditioned.

Section 4.2. DTPW Review Process. Upon receipt of each of the above-mentioned submittals, DTPW shall review same and shall, within thirty (30) days after receipt thereof, advise 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) 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) 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, until the same shall receive final approval by DTPW. DTPW and Developer shall in good faith attempt to resolve any disputes concerning the Design Plans in an expeditious manner. DTPW's approval shall be in writing and each party shall have a set of plans signed by all parties as approved. In the event any material change occurs after approval of the Final Design Plans, then Developer must resubmit the changed portion of the Final Design Plans for DTPW's approval, and DTPW shall respond to any request for approval of changes to the Final Design Plans within ten (10) days after receipt of such request. DTPW agrees that it shall not unreasonably withhold, condition or delay its approval of the Design Plans or any subsequent submission of revisions to the Design Plans.

Section 4.3. Compliance with Policies. Developer acknowledges that all plans and construction work in connection with the Improvements must comply with DTPW's Safety and Security Certification Program Plan for Miami-Dade Transit Rail Fixed Guideway Systems, and that any modifications to the System must in connection with the Improvements must be made in compliance with the Change Review Boards Policy and Procedure.

Section 4.4. Construction Plans. The Developer shall give the Owner copies of final site and elevation plans prior to submittal for the building permits for the Improvements, in a format reviewable by the County using its existing systems, and if requested by the County, in its native format. All Construction Plans must be in substantial conformity with the Final Design Plans approved by DTPW.

Section 4.5. As-Built Plans. As soon as reasonably practicable after the completion of the Improvements constructed or installed in or on the Property, the Developer shall provide to the County an electronic copy and eight (8) full-sized sets of "as-built" construction plans for the Improvements, in a format reviewable by the County using its existing systems, and if requested by the County, in its native format.

Section 4.6. Landscaping Entrances. The Owner agrees to cooperate with the Developer in the development of plans regarding entrances to the Property in order to achieve an aesthetic blend of landscaping. All costs of developing such entranceway plans shall be paid by the Developer.

Section 4.7. Station and System Plans. The Owner agrees, at the completion and approval of a Federal background check and subject to the requirements of MDT Facility Building Plans & Records, 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 County in Miami-Dade 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.

Section 4.8. Developer Obligations. DTPW's approval of any Design Plans pursuant to this Article 4 shall not relieve the Developer of its obligations under applicable Laws or Ordinances to file such plans with any other department of Miami-Dade County, the City of Miami 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 pursuant to Section 15.13 and join in (if applicable), with the Developer in connection with the obtaining of such approvals and Permits. The Parties acknowledge that any approval given by a Party pursuant to this Article 4, or anywhere else in this Agreement, shall not constitute an opinion or agreement by such Party that the plans are structurally sufficient or in compliance with any Laws or Ordinances, and no such approval shall impose any liability upon such Party.

Section 4.9. Jurisdiction. The Parties acknowledge that the County retains jurisdiction for building approvals, including issuance of building permits, building inspections and issuance of certificates of occupancy within the any portion of the Miami-Dade County Transit System.

ARTICLE 5 CONSTRUCTION

Section 5.1. Requirements for Commencement of Construction. Prior to the Commencement of Construction, the Developer shall satisfy the following requirements:

(a) The Developer shall have become registered vendor with the County Internal Services Department Division of Procurement Management, and satisfied all requirements of the County in connection with such registration.

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

(c) Prior to any digging, boring, trenching, construction, excavation, demolition, restoration, or staging, the Developer shall hand dig to verify the locations and elevations of DTPW underground utilities and facilities within the Station or the Land.

(d) Prior to any construction, excavation, demolition, restoration, or staging within the Property, the Developer shall submit to the DTPW Right-of-Way, Utilities and Property Management Division through the DTPW Director, or his or her designee, an electronic copy and three (3) full-sized or half-sized print copies and of all such plans, drawings and calculations showing the relationship between the proposed activities 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 facilities, operations and/or systems and the extent of that impact, if any. The drawings and calculations shall include, if applicable, but not be limited to, the following:

- (1) Site plan;
- (2) Drainage area maps and calculations;
- (3) Sheet piling and shoring drawings and calculations;
- (4) Architectural drawings for all underground levels through the top floor;
- (5) Sections showing foundations in relation to System structures;
- (6) Structural drawings;
- (7) Pertinent drawings detailing possible impacts on the System;
- (8) Geotechnical reports;
- (9) Settlement monitoring, mitigation and remediation plan, if applicable; and
- (10) Proposed sequence of activities.

(e) Any such proposed construction, excavation, demolition, restoration, or staging may commence only after the requirements set forth in Sections 5.1(a)-(c) have been met. **All construction shall be in compliance with the latest edition of the Miami-Dade County Adjacent Construction Manual or its replacement.**

(f) If the Owner, in its sole discretion, determines that activities undertaken or authorized by the Developer, or planned to be undertaken or authorized by the Developer, in connection with construction of the Improvements may adversely impact the System or transit facilities or operations, the Owner may require the Developer to submit a plan to monitor, mitigate and remediate any such impacts. The plan must be approved by the Owner, whose approval shall not be unreasonably withheld, delayed or conditioned, in writing prior to the commencement of any such activities. If directed by the Owner, the Developer shall promptly mitigate and/or remediate all such impacts caused by construction of the Improvements reasonably specified by

the Owner, to the reasonable satisfaction of the Owner, at Developer's sole expense. Additionally, the Owner shall have the right to slow or stop any construction of the Improvements that the Owner, in its sole discretion, determines to be potentially hazardous to the System, or to transit facilities and/or operations, or to County employees, patrons or to the public. Owner shall not be liable to the Developer as a result of such actions.

Section 5.2. Construction Costs. 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 5.3. Progress of Construction. From the Commencement of Construction until Completion of Construction, upon written request of the Owner's Representative, but not more frequently than monthly, the Developer shall submit a written report to the Owner's Representative of the progress of the Developer with respect to development and construction of the Improvements.

Section 5.4. Site Conditions. The Developer, by executing this Agreement, represents it has visited the site, is familiar with local conditions under which the construction and development is to be performed, will perform all test borings and subsurface engineering generally required at the Property 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 Improvements. Developer shall restore any portion of the Property that is damaged in connection with such testing and studies to a condition substantially similar to its pre-testing condition after all testing, if such portion of the Property will not be the subject of any future Improvements, and shall provide the Owner with a copy of all test results. The Owner makes no warranty as to soil and subsurface conditions.

Section 5.5. 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 County. The Owner shall cooperate with the Developer pursuant to Section 15.13 hereof to the extent that the Developer needs the Owner to grant utility easements and to join in any agreements or documents for installation of any connections necessary for the Property and the Improvements or required by the Developer. The cost of all utilities used for the construction of the Improvements (but not the operation thereof which shall be the responsibility of the Owner), including, without limitation, gas, water, sewer and electric utilities and services shall be borne by and shall be the sole responsibility of the Developer.

Section 5.6. Mutual Covenants of Non-Interference. The Developer's development and construction of the Improvements and its use and operation of the Property 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, or temporary closure of the Station, for construction, maintenance or repairs to the Improvements and the Owner agrees to reasonably cooperate with such interruption in

order to enable such construction, maintenance or repairs of the Improvements. If at any time the Station is closed for construction, maintenance or repairs to the Improvements, Developer shall be responsible for ensuring that there exists an open, passable, and handicapped-accessible route for pedestrians to bypass the Station and travel to the next Metromover stations to the north and south of the Station to access the System. The Owner may at any time stop or slow down construction of the Improvements by the Developer, 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 County is jeopardized. Notwithstanding anything to the contrary contained herein, the Owner shall have no liability for any delays experienced by Developer if Owner does not interrupt System operation.

Section 5.7. Bus Bridge. In the event that construction of the Project causes interruption of the Metromover system movements throughout the Brickell Metromover Loop of the System, the following procedures will be put immediately in operation until all elements have been assessed and Metromover movements return to normal, and in such events the Developer will reimburse the Owner for all costs of the Bus Bridge:

(a) Metromover system will stop normal operations on the Brickell Metromover Loop and a bus route will be immediately activated.

(b) The Developer shall provide professional assessment of the situation and within 48 hours after the interruption of Metromover service shall submit to Owner a complete schedule for the repairs, including but not limited to field inspection assessments signed and sealed by a Professional Engineer licensed in the State of Florida.

(c) The Developer will be responsible for all costs associated with the bus route implemented until a permanent solution is implemented and accepted to the satisfaction of the Owner. Developer's liability to the Owner shall be calculated based on the duration of the outage and the hourly cost of the Bus Bridge.

Closure of the Station during construction of the Improvements, or any other closures of the Station to facilitate the maintenance and repairs contemplated by this Agreement, shall not require the implementation of a Bus Bridge. The Bus Bridge shall be implemented only if there is interruption of Metromover service throughout the Brickell Metromover Loop.

Section 5.8. Ownership of Improvements. All Improvements 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 Property (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 5.9. Art in Public Places. This project is subject to the Miami-Dade County Art in Public Places requirements, pursuant to Section 2-11.15 of the Code of Miami-Dade County, managed by the Miami-Dade County Department of Cultural Affairs as detailed in Procedure 358 in the Miami-Dade County Procedures Manual (see <http://www.miamidadepublicart.org/#tools>).

ARTICLE 6

OPERATION, MAINTENANCE AND REPAIR

Section 6.1. Non-Interference. The Parties 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 from the public right of way. Subject to obtaining the written consent of the Owner to close the Station in its entirety, which shall not be unreasonably withheld, 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 reasonably necessary during the development or construction of any portion of the Improvements or, the repair and maintenance of the Improvements, provided such closing does not interfere with the public's reasonable access to the Station, or Owner's customary operation of the System, unless the Developer obtains the Owner's prior written consent to the extent required by Section 5.6 herein.

Section 6.2. Developer Rights to Erect Signs.

(a) It is explicitly agreed and understood that this Agreement does not provide any rights for the Developer to place signs or advertisements within the Property.

(b) As used in this Agreement, "sign(s)" shall be deemed to include any display of characters, letters, illustrations, logos, murals, 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.

(c) Other than specifically delineated in this Agreement, the County maintains the right as Owner to place, erect, maintain and operate, or cause, allow and control the placement, erection, maintenance and operation of signs or advertisements within the Property.

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 within the Property at the sole expense of the County. Nothing in this Section limits the County's right as Owner to place signs or advertisements on any portion of the Property.

Section 6.4. Security. The Developer shall have the right, but not the obligation, to arrange for private security personnel and patrols on the Property including within the Station at the Developer's sole cost; provided, however, that Developer shall have no responsibility for ensuring the security of the Station, the System or the passengers using the System.

Section 6.5. Owner Repairs and Maintenance. Throughout the Term, the Owner, at its sole cost and expense, shall keep the Station in good order and condition, make all repairs thereto deemed necessary by the Owner, except for matters that are the responsibility of the Developer pursuant to Section 6.7, to maintain the Station and the

Property 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 Property 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 sole cost, 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.

Section 6.6. Developer Repairs and Maintenance. Throughout the Term, the Developer, at its sole cost and expense, shall keep in good order and condition those portions of the Improvements installed by Developer that are of different quality, constructed of different materials or are otherwise not equivalent to a standard Metromover station within the System (the "Upgraded Improvements"), subject to Section 9.1. Developer shall make all necessary repairs to the Upgraded Improvements, subject to Section 9.1, except for repairs which are required because of the negligence or misconduct of the Owner, its employees, agents or contractors. The term "repairs" shall include all replacements, renewals, alterations, additions and betterments deemed necessary by the Developer or as required under applicable Laws and Ordinances. All repairs made by the Developer shall be at least substantially similar in quality and class to the original work. The Developer shall not be required to obtain any further approvals from the Owner to repair the Upgraded Improvements to the condition required by this Section 6.7. The Developer shall keep and maintain the Upgraded Improvements in a clean and orderly condition, reasonably free of dirt, rubbish, graffiti, and unlawful obstructions. The Developer shall have the right to provide enhanced security, maintenance, and/or repairs to the Station, at its option, after giving thirty (30) days' written notice to the Owner of its intention to do so.

ARTICLE 7 PAYMENT OF TAXES, ASSESSMENTS

The Owner makes no representation or warranty with regard to impact of taxes. The Developer is responsible for all taxes assessed against Owner based on Developer's activities pursuant to this Agreement.

ARTICLE 8 INSURANCE AND INDEMNIFICATION; LIMITATION OF LIABILITY

Section 8.1. Insurance. The Developer shall furnish to the Department of Transportation and Public Works, Certificate(s) of Insurance evidencing insurance coverage held by the Developer or the general contractor constructing the Improvements that meets the requirements outlined below:

DESIGN STAGE

- A. Worker's Compensation Insurance as required by Chapter 440, Florida Statutes.
- B. 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.**
- C. Automobile Liability Insurance covering all owned, non-owned and hired vehicles used in connection with this agreement in an amount not less than \$1,000,000 combined single limit per occurrence for Bodily Injury and Property Damage.
- D. Professional Liability Insurance in the name of the Developer or the licensed design professional employed by the Developer in an amount not less than \$1,000,000 per claim.

CONSTRUCTION PHASE

- A. Worker's Compensation Insurance as required by Chapter 440, Florida Statutes.
- B. Completed Value Builders' Risk Insurance on a "special causes of loss" form in an amount not less than one hundred (100%) percent of the insurable value of the Improvements. **The Policy will name Miami-Dade County as a Loss Payee A.T.I.M.A.**
- C. Commercial General Liability Insurance on a comprehensive basis in an amount not less than \$25,000,000 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.**
- D. Automobile Liability Insurance covering all owned, non-owned and hired vehicles used in connection with this agreement in an amount not less than \$1,000,000 combined single limit per occurrence for Bodily Injury and Property Damage.

OPERATION PHASE

- A. Worker's Compensation Insurance as required by Chapter 440, Florida Statutes.
- B. 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.**
- C. Automobile liability Insurance covering all owned, non-owned and hired vehicles used in connection with this agreement in an amount not less than \$1,000,000 combined single limit per occurrence for Bodily Injury and Property Damage.

CONTINUITY OF COVERAGE

The Developer shall be responsible for assuring that the insurance documentation required in conjunction with this subsection remain in force for the duration of the agreement period, including

any and all option years. The Developer will be responsible for submitting renewal insurance documentation prior to expiration.

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

The company must be rated no less than "A-" as to management, and no less than "Class VII" as to strength, by A.M. Best Company, Oldwick, New Jersey.

or

The company must hold a valid Florida Certificate of Authority as shown in the latest "List of All Insurance Companies Authorized or Approved to Do Business in Florida" issued by the State of Florida Department of Financial Services.

**NOTE: CERTIFICATE HOLDER MUST READ: MIAMI-DADE COUNTY
111 NW 1st STREET
SUITE 2340
MIAMI, FL 33128**

Section 8.2. Indemnification.

(a) 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 (collectively, the "Claims") arising out of, relating to or resulting from the performance of this Agreement by the Developer or its officers, employees, agents, or contractors, excluding any Claims arising out of or resulting from the willful misconduct or negligence of the Owner or any of its officers, employees, agents or contractors. The Developer shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the Owner, where applicable, including appellate proceedings, and shall pay all costs, judgments, and reasonable attorney's fees which may issue thereon. 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, Florida Statutes, the Owner shall indemnify and hold harmless the Developer and its officers, employees and agents from any and all liability, losses or damages, including reasonable attorneys' fees and costs of defense, which the Developer or its officers, employees, or agents 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 officers, employees, agents, or contractors, excluding any Claims arising out of, relating to or resulting from the willful misconduct or negligence of the Developer or any of its officers, employees, agents or contractors. The Owner shall pay all claims and losses in connection therewith and shall investigate and defend

all claims, suits or actions of any kind or nature in the name of the Developer, where applicable, including appellate proceedings, and shall pay all costs, judgments, and reasonable attorney's fees which may issue thereon.

Section 8.3. Limitation of Liability of the Developer. The Developer shall not be liable to the Owner for any incidental, consequential, special or punitive loss or damage whatsoever arising from the exercise of the rights of the Developer hereunder. Excluding actual damages 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.

Section 8.4. Limitation of Liability of the Owner. The Owner shall not be liable to the Developer for any incidental, consequential, special or punitive loss or damage whatsoever arising from the exercise of the rights of the Owner hereunder.

ARTICLE 9 DAMAGE AND DESTRUCTION

Section 9.1. Developer's Right to Restore. If, at any time during the Term as it may be extended, the Improvements on the Property shall be damaged or destroyed by fire or other casualty, the Developer, at its option and its sole cost and expense, shall have the right to (a) terminate this Agreement; or (b) repair, alter, restore, replace or rebuild the Improvements 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 Developer may elect to make that are substantially consistent with the Plans and Specifications.

Section 9.2. Owner's Right to Repair and Rebuild Station. If, at any time during the Term as it may be extended, 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 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 Plans and Specifications. 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 Improvements or, with the written consent of the Owner, restore the Station and the Project to a complete and architecturally harmonious appearance.

Section 9.3. Plans for Repair. 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 Improvements, the Developer or the Owner, 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 to ensure consistency with the Project.

ARTICLE 10 TRANSFERS

Section 10.1. Developer's Right to Transfer. During the Term, as it may be extended, 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, 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) Developer shall be required to obtain the prior written consent of the Owner for a transfer of the Agreement to any party that is on the County's Delinquent Vendor List or Disbarment List, or the equivalent thereof;

(b) Developer shall not be in default under this Agreement in any material respect at the time of such sale, assignment or transfer;

(c) Developer shall deliver written notice to Owner of such sale, assignment or transfer, together with a copy of the sale, assignment or transfer agreement (if applicable) and the address for the transferee thereunder;

(d) Any sale, assignment or 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; and

(e) Upon the sale, assignment or transfer by the Developer, the Developer shall be released and discharged from all of its duties and obligations from and after the effective date of such sale, assignment or transfer.

Developer shall be expressly authorized to assign this Agreement (but not the Project) to any condominium association, property owners' association or similar entity with authority to operate and maintain common elements of the Project. Notwithstanding anything to the contrary contained herein, Developer agrees that it shall not transfer the Project to an entity that is exempt from ad valorem real estate taxes.

Section 10.2. Owner's Right to Transfer. During the Term, as it may be extended, the Owner's right to transfer the Property or any portion thereof and to assign any of its rights and obligations under this Agreement shall be subject to the following:

(a) The Owner shall not be in default under this Agreement in any material respect at the time of such sale, assignment or transfer;

(b) The Owner shall deliver written notice to the Developer of such sale, assignment or transfer, together with a copy of the sale, assignment or transfer agreement (if applicable) and the address for the transferee thereunder;

(c) Any sale, assignment or transfer of all or any part of the Owner's interest in this Agreement and/or to the Property or the Improvements or any portion thereof 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 Owner under this Agreement applicable to that portion of the Property or the Improvements being sold, assigned or transferred, and agree to be subject to all conditions and restrictions and obligations to which the Owner is subject, but only for matters accruing while such assignee or transferee holds, and only related to, the sold, assigned, or transferred interest; and

(d) Upon the sale, assignment or transfer by the Owner pursuant to the terms of this Agreement, the Owner shall be released and discharged from all of its duties and obligations hereunder from and after the effective date of such sale, assignment or transfer.

ARTICLE 11 EMINENT DOMAIN

Section 11.1. Entire or Partial Taking; Termination of Agreement. If (a) the power of eminent domain shall be exercised by any federal or state sovereign or their proper delegates by condemnation proceeding (a "Taking") with respect to the entire Property, or (b) there is a Taking of less than the entire Property during the Term and 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 the 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 be terminated and the term herein demised shall cease and terminate. The Developer's right to recover a portion of the award for a Taking, as hereinafter provided, 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 Land. Notwithstanding anything herein contained to the contrary, the County shall be entitled to receive from the condemning authority not less than the appraised value of the Land and Improvements owned by the County. For the purpose of this Article 11, the date of Taking shall be deemed to be either the date on which actual possession of the Property 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 the Owner shall, in all other respects, keep, observe and perform all the terms of this Agreement up to the date of such Taking.

Section 11.2. 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 Property taken in such condemnation proceedings, and, as to that portion of the Property 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 Property affected by the Taking. In such event, the Developer's share of the award shall be determined in accordance with Section 11.1 herein.

ARTICLE 12 DEFAULT

Section 12.1. 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. In the event this Agreement is terminated as a result of Developer's default, all access rights provided pursuant to this Agreement shall automatically cease. In such event, Developer shall be precluded from asserting any claim alleging a takings (partial or complete) or for any damages arising from the elimination of said access rights.

Section 12.2. 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 12.1 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 (except as otherwise limited in this Agreement), costs and expenses arising from the Event of Default; 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 12.3. 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 breach shall affect or alter this Agreement, but each of the terms of this Agreement shall continue in full force

and effect with respect to any other then existing or subsequent breach thereof. 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, 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 conditions.

ARTICLE 13 NOTICES

Section 13.1. Addresses. All notices, demands or requests by the Owner to the Developer shall be deemed to have been properly served or given, if addressed to the Developer at 1010 Brickell Holdings LLC, 848 Brickell Ave, Suite PH-1, Miami, FL 33131, 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 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 deemed to have been properly served or given if addressed to the Department of Transportation and Public Works, Director, or his designee, 701 NW First 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 13.2. Method of Transmitting Notice. All such notices, demands or requests (a "Notice") shall be sent by: (a) United States registered or certified mail, postage prepaid, return receipt requested, (b) hand delivery, (c) nationally recognized overnight courier, or (d) electronic transmission, provided the transmission is electronically confirmed and the original of the Notice is sent by one of the foregoing means of transmitting Notice within 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 (a) the date received, (b) the date delivery of such Notice was refused or unclaimed, or (c) 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 14 CERTIFICATES BY THE COUNTY AND DEVELOPER

Section 14.1. 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 14.1 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 14.2. 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 14.2 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 14.2 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 15

CONSTRUCTION OF TERMS AND MISCELLANEOUS

Section 15.1. 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 15.2. 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.

Section 15.3. 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.

Section 15.4. Recording. This Agreement shall be recorded among the Public Records of Miami-Dade County, Florida, at the sole cost of the Developer.

Section 15.5. 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 arms' length so

that the judicial rule of construction to the effect that a legal document shall be construed against the draftsman shall be inapplicable to this Agreement which has been drafted by counsel for both the Parties.

Section 15.6. Consents. Whenever in this Agreement the consent or approval of the Owner or the Developer is required, such consent or approval, with respect to the County or DTPW as the Owner shall be made by the Owner's Representative, unless such approval requires the consent of the FTA and/or the Board, 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.

Material amendments to this Agreement shall require the consent of the FTA and the Board and shall not be effective until the consent of each of those entities is obtained.

Section 15.7. 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 and such amendment has been approved by the required parties.

Section 15.8. 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 15.9. 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 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 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 15.10. Schedules. Each Schedule referred to in this Agreement has been initialed by the parties and forms an essential part of this Agreement. The Schedules, even if not physically attached, shall be treated as if they were part of this Agreement.

Section 15.11. 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 15.12. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

Section 15.13. Cooperation. The Parties agree to reasonably cooperate with each other to the full extent practicable pursuant to the terms and conditions of this Agreement. The Parties agree that time is of the essence in all aspects of their respective and mutual responsibilities pursuant to this Agreement.

Section 15.14. 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 15.15. No Third-Party Rights. Nothing in this Agreement, express or implied, is intended to confer upon any person, other than the Parties hereto and their respective successors and assigns, any rights or remedies under or by reason of this Agreement.

ARTICLE 16 REPRESENTATIONS AND WARRANTIES

Section 16.1. 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) 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 16.2. 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.

ARTICLE 17 TERMINATION FOR CONVENIENCE BY OWNER

Section 17.1. Termination. The Owner's ability to terminate this Agreement for convenience is limited to the reasonable determination that said termination is needed for the expansion,

maintenance or operation of the County's transit system. The Owner will compensate the Developer for the Improvements at their depreciated value. For this purpose, the Improvements shall be depreciated on a straight-line basis for thirty (30) years from their date of completion. For purpose of compensation, all Improvement costs must be fully documented and submitted to the Owner within one hundred eighty (180) days from completion of the Improvements. No compensation will be made if the Owner terminates the Agreement during the optional renewal periods or if the Agreement is terminated for cause. No compensation will be made if the Developer cancels this Agreement.

[Signatures Begin 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:

OWNER:

HARVEY RUVIN, CLERK

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

By: _____
Name:
Title:

By: _____
Name:
Title:

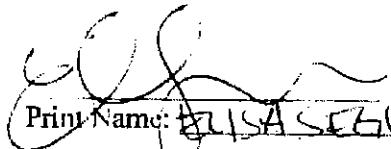

Approved as to form and legal sufficiency

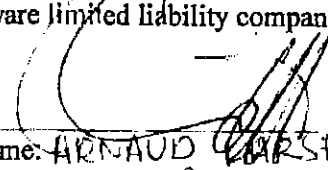
Print Name: Bruce Libhaber

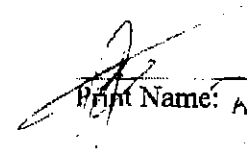
Signed in the presence of:

DEVELOPER:

1010 BRICKELL HOLDINGS LLC, a
Delaware limited liability company


Print Name: ELISA SEGUIN

By: 
Name: ARNAUD CARPENTIER
Title: VICE PRESIDENT

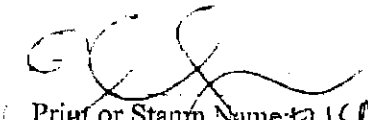

Print Name: Arnaud Carpentier

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

The foregoing instrument was acknowledged before me this 12 day of MAY, 2017,
by ARNAUD KARSEN as VICE PRESIDENT of 1010 BRICKELL HOLDINGS LLC, a
Delaware limited liability company.

Personally Known X OR Produced Identification _____

Type of Identification Produced _____


Print or Stamp Name: ELISA SEGUIN
Notary Public, State of Florida at Large
Commission No.: FF975191
My Commission Expires: MARCH 24, 2020



Elisa Seguin
Commission # FF975191
Expires: March 24, 2020
Bonded thru Aaron Notary

EXHIBIT A

Land Legal Description

Portion of Lots 22, 23, 24 and 25, Block 100 South, BRICKELL ADDITION AMENDED A/K/A MARY BRICELL'S ADDITION A/K/A AMENDED MAP OF BRICKELL'S ADDITION TO THE MAP OF MIAMI, according to the plat thereof as recorded in Plat Book B, Page 113, of the Public Records of Miami – Dade County, Florida, being more particularly described as follows: The West 7.70 feet of lots 22 through 25, inclusive, in Block 100 South, of AMENDED MAP OF BRICKELL'S ADDITION TO THE MAP OF MIAMI, according to the plat thereof as recorded in Plat Book B, Page 113, of the Public Records of Miami – Dade County, Florida LESS that portion thereof which lies within the external area formed by a 25.00 foot radius arc concave to the Southeast, tangent to the West line of said Lot 25 and tangent to the North line of said Lot 25.

EXHIBIT B

Land Location Sketch

Exhibit "B"
Sketch To Accompany Legal Description
Ingress-Egress Access Sketch And Legal

Legal Description:

A portion of Lots 22, 23, 24 and 25, "Block 100S, "AMENDED MAP OF BRICKELL'S ADDITION TO THE MAP OF MIAMI," according to the Plat thereof, as recorded in Plat Book B at Page 113, of the Public Records of Miami-Dade County, Florida, being more particularly described as follows:

Commence at the Northeast corner of said Lot 25, Block 100S; thence run North 75 degrees 02 minutes 07 seconds West, along the North line of said Lot 25, for a distance of 142.31 feet to a point; thence run South 15 degrees 00 minutes 00 seconds West, along a line 7.70 feet Easterly of and parallel with, as measured at right angles to, the Westerly boundary line of said Block 100S, for a distance of 6.95 feet to the POINT OF BEGINNING of the following described parcel of land; thence run South 15 degrees 00 minutes 00 seconds West, along the last described course, for a distance of 216.98 feet to a point; thence run North 75 degrees 02 minutes 52 seconds West, along the South line of said Lot 22, Block 100S, for a distance of 3.37 feet to a point; thence run North 15 degrees 00 minutes 00 seconds East for a distance of 6.01 feet to a point; thence run North 75 degrees 00 minutes 00 seconds West for a distance of 4.32 feet to a point; thence run North 15 degrees 00 minutes 00 seconds East, along the West line of said Lot 22, Block 100S, for a distance of 40.49 feet to a point; thence run South 75 degrees 00 minutes 00 seconds East for a distance of 5.98 feet to a point; thence run North 15 degrees 00 minutes 00 seconds East for a distance of 4.75 feet to a point; thence run North 75 degrees 00 minutes 00 seconds West for a distance of 5.98 feet to a point; thence run North 15 degrees 00 minutes 00 seconds East, along the West line of said Lot 23, Block 100S, for a distance of 33.29 feet to a point; thence run South 75 degrees 00 minutes 00 seconds East for a distance of 2.01 feet to a point; thence run North 14 degrees 57 minutes 51 seconds East for a distance of 41.93 feet to a point; thence run South 75 degrees 02 minutes 09 seconds East for a distance of 2.91 feet to a point; thence run North 14 degrees 57 minutes 51 seconds East for a distance of 4.83 feet to a point; thence run North 75 degrees 02 minutes 09 seconds West for a distance of 2.91 feet to a point; thence run North 14 degrees 57 minutes 51 seconds East for a distance of 13.77 feet to a point; thence run North 75 degrees 02 minutes 09 seconds West for a distance of 1.97 feet to a point; thence run North 14 degrees 57 minutes 51 seconds East, along the West line of said Lots 24 and 25, Block 100S, for a distance of 21.41 feet to a point; thence run South 75 degrees 02 minutes 09 seconds East for a distance of 1.95 feet to a point; thence run North 14 degrees 57 minutes 51 seconds East for a distance of 42.10 feet to a point on the next described circular curve concave to the Southeast; thence run along the arc of a circular curve to the right, having a radius of 25.00 feet, a central angle of 23 degrees 31 minutes 58 seconds, a chord distance of 10.20 feet through a chord bearing of North 49 degrees 24 minutes 48 seconds East, for an arc distance of 10.27 feet to the POINT OF BEGINNING, lying and being in Section 38, Township 54 South, Range 41 East, City of Miami, Miami-Dade County, Florida. Said easement lying generally below Elevation 17.50 feet, as related to National Geodetic Vertical Datum of 1929.

Said easement containing 1,361 square feet, more or less.

NOTE:

1. Bearings shown hereon relate to an assumed bearing (S15°00'00"W) along the centerline of S.E. 1st Avenue (Brickell Plaza).
2. See Sheets 1 and 2 of 3 for Sketch To Accompany Legal Description.
3. Prepared For: 13th Floor Investments

Revised: May 16, 2016

Schwebke-Shiskin & Associates, Inc.
LAND SURVEYORS • ENGINEERS • LAND PLANNERS

(LB-87)

3240 CORPORATE WAY, MIRAMAR, FLORIDA 33025 DADE: (305) 652-7010 BROWARD: (954) 435-7010 FAX: (305) 652-8284

THIS IS NOT A "LAND SURVEY."

ORDER NO.: 205146

DATE: JANUARY 26, 2015

SHEET 3 OF 3 SHEET(S)

F.B.: N.A.

STATE OF
FLORIDA
PREPARED UNDER MY SUPERVISION:

MARK STEVEN JOHNSON, PRINCIPAL
FLORIDA PROF. LAND SURVEYOR NO. 4775

Exhibit "B"

Sketch To Accompany Legal Description Ingress-Egress Access Sketch And Legal



Scale: 1"=40'

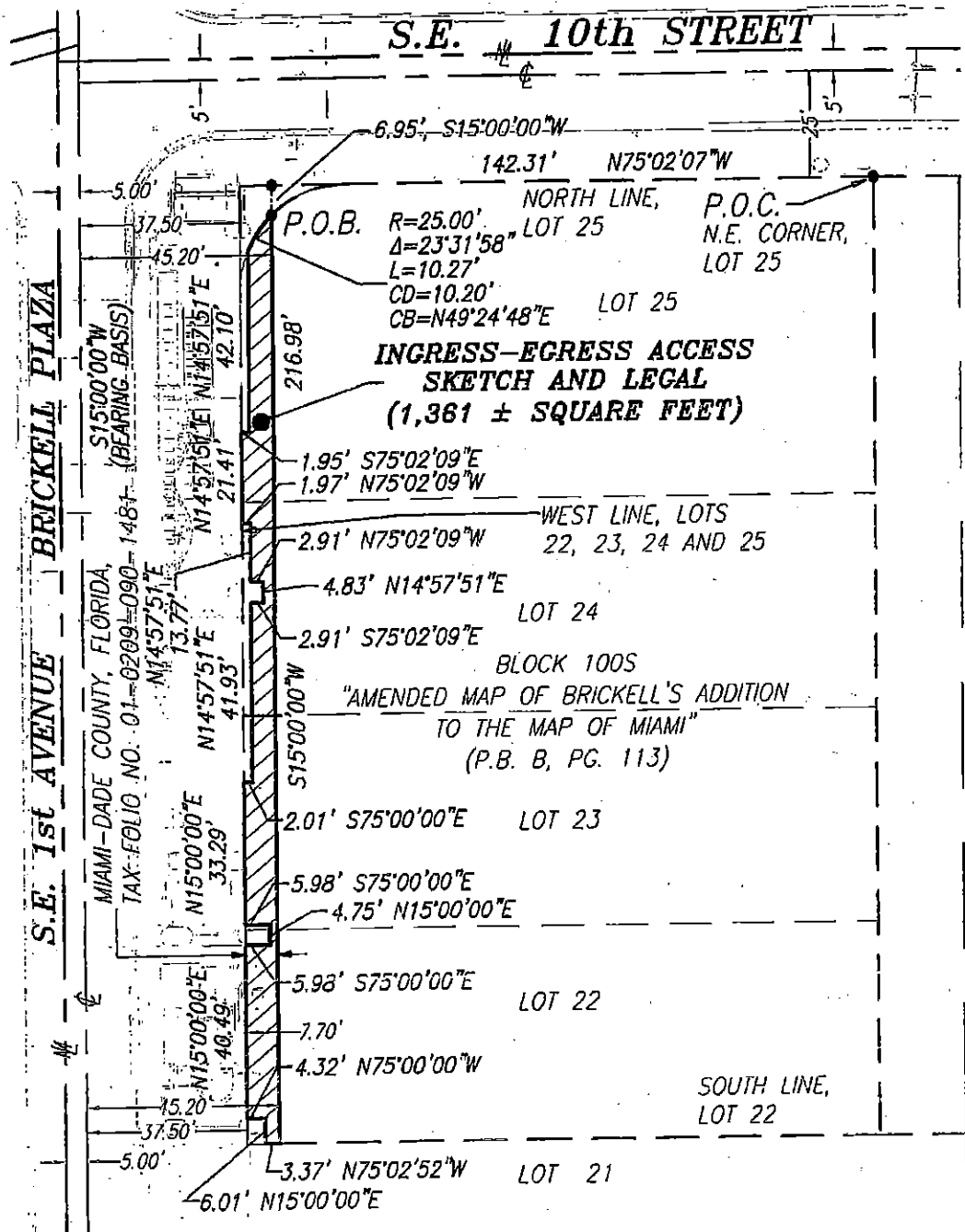
NOTE:

Bearings shown hereon relate to an assumed bearing (S15°00'00"W) along the centerline of S.E. 1st Avenue (Brickell Plaza).

See Sheet 3 for Legal Description.

P.O.B. - Point of Beginning
P.O.C. - Point of Commencement
C - Centerline
M - Monument Line

Prepared For: 13th Floor Investments



Revised: May 16, 2016

Schwabke-Shiskin & Associates, Inc.
LAND SURVEYORS • ENGINEERS • LAND PLANNERS

3240 CORPORATE WAY, MIRAMAR, FLORIDA 33025 DADE: (305) 652-7010 BROWARD: (954) 435-7010 FAX: (305) 652-8284

(LB-87)

THIS IS NOT A "LAND SURVEY."

ORDER NO.: 205146

DATE: JANUARY 26, 2015

SHEET 1 OF 3 SHEET(S)

F.B.: N.A.

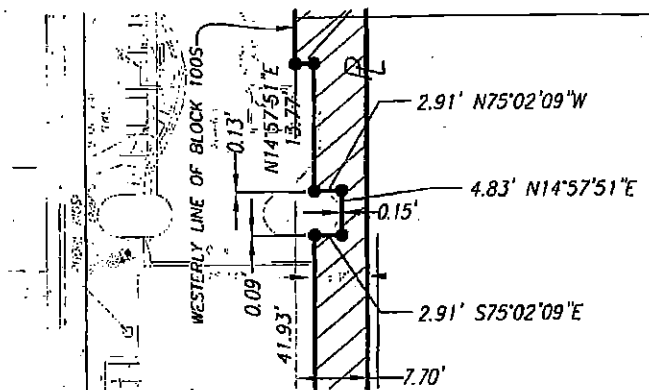
PREPARED UNDER MY SUPERVISION:

MARK STEVEN JOHNSON, PRINCIPAL
FLORIDA PROFESSIONAL LAND SURVEYOR NO. 4775

Exhibit "B" **Sketch To Accompany Legal Description** **Ingress-Egress Access Sketch And Legal**



Scale: 1"=20'



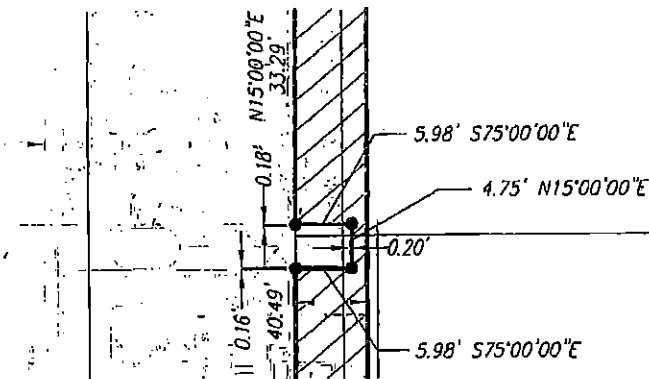
Pier "C"

NOTE:

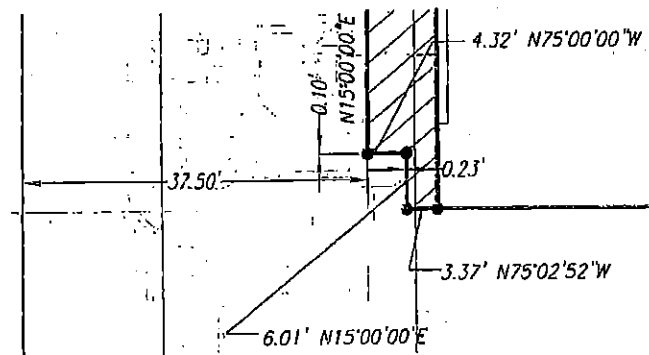
Bearings shown hereon relate to an assumed bearing (S15°00'00"W) along the centerline of S.E. 1st Avenue (Brickell Plaza).

See Sheet 3 for Legal Description.

Prepared For: 13th Floor Investments



Pier "D"



Pier "E"

Revised: May 16, 2016

Schwelke-Shiskin & Associates, Inc.
 LAND SURVEYORS • ENGINEERS • LAND PLANNERS

(LB-87)

3240 CORPORATE WAY, MIRAMAR, FLORIDA 33025 DADE: (305) 652-7010 BROWARD: (954) 435-7010 FAX: (305) 652-8284

THIS IS NOT A "LAND SURVEY."

ORDER NO.: 205146

DATE: JANUARY 26, 2015

SHEET 2 OF 3 SHEET(S)

F.B.: N.A.

STATE OF
 PREPARED UNDER MY SUPERVISION:

MARK STEVEN JOHNSON, PRINCIPAL
 FLORIDA PROF. LAND SURVEYOR NO. 4775

SCHEDULE 2.1

Scope of Work

Developer shall perform the following Improvements, all in the locations and in the manner shown on Exhibit C:

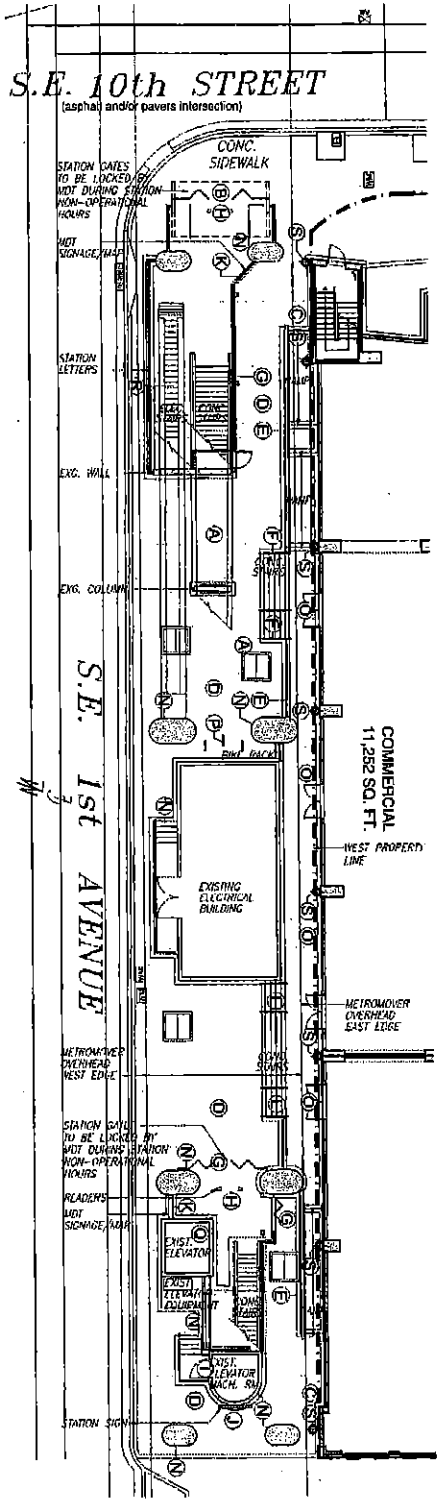
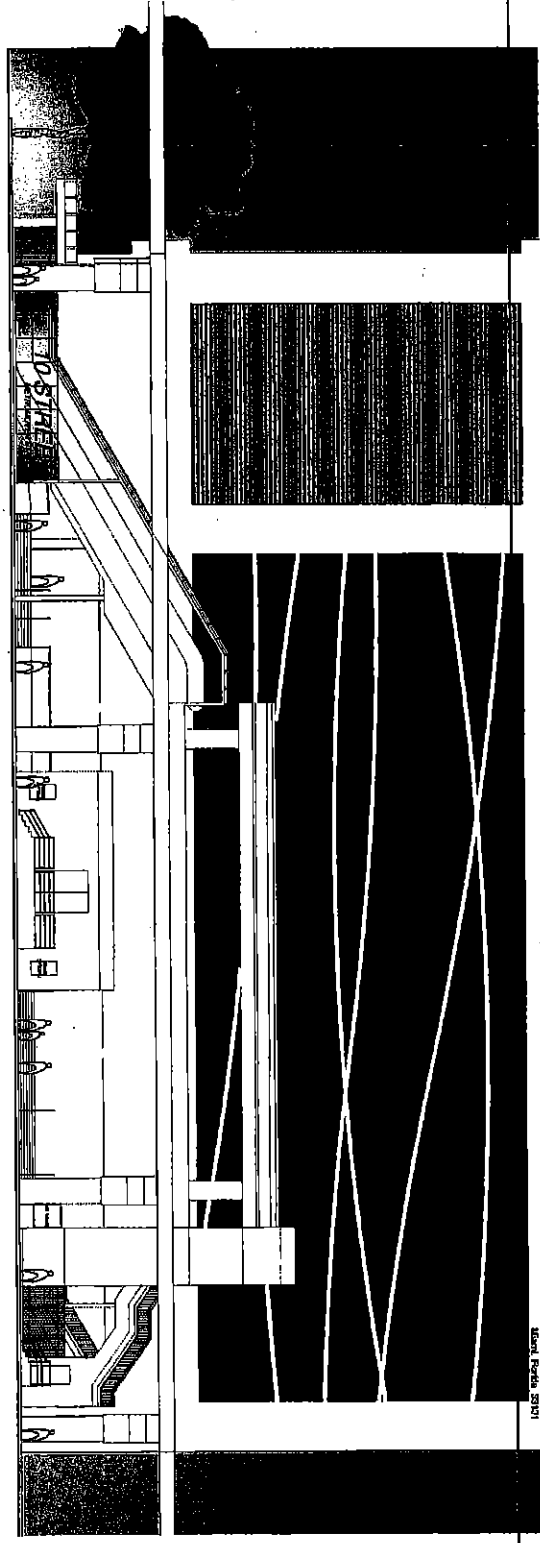
- A. Demo existing planters, benches and concrete monument support walls signs.
- B. Modification/reconfiguration of north entry to station.
- C. Build ramps, walkways and stairs as per Exhibit C providing access to Metro Mover from building .
- D. New Pavers to match sidewalk on 10th Street (pavers under escalator to be dark shade of color): Sub base to be able to support service vehicles and/or mechanical lifts.
- E. 42" rail.
- F. Hand Rails at new stairs providing access to Metro Mover station from building.
- G. Fencing: Reconfiguration/relocation of existing fence and gates or alternates new aluminum fence North and South, where needed. Provide plexiglass on the back side of existing fence sections located at north stair. Coordinate plexiglass placement location with MDT staff.
- H. APC: Relocation of existing "APC" as per reconfigured fence and gates. (Relocated APCs to meet ADA requirements for access).
- I. MDT Elevator Machine Room: Reconfiguration/Relocation of Elevator machine room stair and associated railing as per plan. Install removable railing in front of door.
- J. MDT: Signage at South column or on stair landing façade for northbound pedestrians. MDT to provide graphic and language.
- K. MDT: Information Signage Map location on fence. MDT to provide graphic and language.
- N. Ground floor area: Pressure clean and paint ground floor concrete structures and existing metal fencing and gates.
- O. Flood Panels along retail adjacent to Metro Mover.
- P. Bike Racks.
- Q. Elevator Cab and Door restoration: Install new LED light and new fan inside elevator cab.
- R. Escalator one time cleaning and maintenance to be performed.
- S. Building surface mounted wall/sconce light minimum 8'-0" above finished floor. Lights to be on a photocell and on backup emergency circuit.

All improvement to be in coordination with Miami Dade County Department of Transit and Public Works.

EXHIBIT C

Improvements Depiction/Rendering

See attached.



- Key Plan:**
- ① Demo existing planters and benches.
 - ② Modification / reconfiguration of north entry stairs.
 - ③ Built ramps, walkways and stairs as per plans.
 - ④ New Powers (powers under escalator to be dark shade of color). Sub base to be able to support service vehicles and/or mechanical fits.
 - ⑤ 42" Safeguard rail.
 - ⑥ Hand Rail at new stairs.
 - ⑦ Escalator: Reconfiguration / Relocation of existing fence and gates or alternate new gate, fence North and South. Where needed, provide plantings on the back side of existing fence sections located at north side. Coordinate plantings replacement location with MDT staff.
 - ⑧ A/C: Relocation of existing A/C as per reconfigured fence and gates. (Relocate A/Cs to meet A/C requirements for access).
 - ⑨ MDT Elevator Machine Room: Reconfiguration/Relocation of Elevator machine room and associated railing as per plan. Include removable railing in form of door.
 - ⑩ MDT: Signage at South column.
 - ⑪ MDT: Information Signage Map location on fence.
 - ⑫ Ground floor area: Pressure clean and paint ground.
 - ⑬ Food Trucks.
 - ⑭ Escalator Cab and Door insulation: Install new LED light and new fan.
 - ⑮ Escalator pole time cleaning and maintenance to be performed.
 - ⑯ Building surface mounted well-lit light min. 8' or A/C Lights to be on a timer and on backup emergency detail.

metromover site concept plan & west elevation

Exhibit "C"

1:10



The Sieger Suarez Architectural Partnership

1421 Southwest 112th Avenue, Fort Lauderdale, FL 33309

DATE: 10/1/2017
BY: J. S. S. S.

DATE	10/1/2017
BY	J. S. S. S.
FOR	1010 Brickell
PROJECT	1010 Brickell
SCALE	1/8" = 1'-0"

3/1/2017

10th Street Metromover Upgrade Estimated Budget:

Divisions	Totals
1 General Conditions/ Requirements	\$ 89,300.00
2 Site Work	\$ 110,000.00
3 Concrete	\$ 73,872.00
4 Masonry	\$ 20,000.00
5 Metals	\$ 50,252.00
6 Carpentry	\$ 5,000.00
7 Waterproofing	\$ 25,000.00
9 Finishes	\$ 36,606.00
10 Specialties	\$ 37,200.00
11 Equipment	\$ 25,000.00
14 Conveying systems	\$ 38,200.00
16 Electrical	\$ 26,000.00
Subtotal: 1 thru 16	\$ 536,430.00
Soft Cost	\$ 228,350.00
Total: Div 1 through 16 and Soft Cost	\$ 764,780.00

Schedule 14.2
Owner's Estoppel Certificate

(Form subject to amendments based on the Developer or any requirements of the Developer's lenders or successors and/or assigns)

Re:

Ladies and Gentlemen:

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 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, the Developer has made no representations, warranties or covenants to or in favor of the Owner with respect to the Project.
3. The Agreement is in full force and effect. The Developer has constructed the Improvements and is maintaining 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).

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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,