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CLERK OF THE BOARD
OF COUNTY COMMISSIONERS
MIAMI-DADE COUNTY, FLORIDA

Memorandum

MIAMI-DADE COUNTY

Date: March 6, 2012

Agenda Item No. 8(M)(2)

To: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

From: Carlos A. Gimenez
Mayor

Subject: Resolution Authorizing Execution of a Lease Agreement in the Amount of $17,650.00 between Miami-Dade County and FDG Flagler Station II LLC., for the Continued Use of a Pedestrian Safety Walkway Along the Florida East Coast Railway Co., LLC Rights-of-Way in the Vicinity of SW 69 Avenue from SW 19 Street to SW 22 Street for a Period of Four (4) Years Commencing Retroactively on September 4, 2009.

Resolution No. R-216-12

Recommendation

It is recommended that the Board of County Commissioners (BCC) approve the attached resolution authorizing the execution of a Lease Agreement in the amount of $17,650.00 between Miami-Dade County (County) and FDG Flagler Station II LLC (FDG) for the continued use of a pedestrian safety walkway along the Florida East Coast Railway Co., LLC (FEC) rights-of-way in the vicinity of SW 69 Avenue, from SW 19 Street to SW 22 Street, for a period of four(4) years commencing retroactively on September 4, 2009.

Scope

The Lease Agreement is for one (1) parcel located within Commission District 6. The pedestrian safety walkway provides protection to school children traveling to and from Coral Terrace Elementary School.

Fiscal Impact/Funding Source

The fiscal impact to the County for the year 2011-2012 is in the amount of $17,650.00. This amount is computed by adding the rental charge for year one, commencing retroactively on September 4, 2009 in the amount of $4,305.00, for year two commencing retroactively on September 4, 2010 in the amount of $4,305.00, for year three commencing retroactively on September 4, 2011 in the amount of $4,520.00, and for year four commencing on September 4, 2012 in the amount of $4,520.00. The funding source to be used is Secondary Gas Tax with index code CPE06SEC.

Track Record/Monitor

The implementing agency is the Miami-Dade County, Public Works and Waste Management Department (PWWM) and the Project Manager responsible for monitoring this project is Mr. Octavio Marin, P.E.

Background

FEC executed a Lease Agreement with the County for the use of the leased property at the subject location on March 20, 1968, authorized by the BCC under Resolution No. R-521-68, for the County's construction of a pedestrian safety walkway and fence along the railway property to provide protection to school children traveling to and from Coral Terrace Elementary School. Furthermore, Resolutions No. R-1066-84 adopted September 4, 1984; R-1458-85 adopted November 5, 1985, R-933-87 adopted July 21, 1987, R-1304-97 adopted November 4, 1997, R-80-04 adopted January 20, 2004, and R-74-06 adopted January 24, 2006, increased the annual rental fee to $1,550.00.

The current Lease Agreement was executed with FEC for a period of three (3) years, commencing retroactively on September 4, 2006, with escalating rental charges. The rental charges for year one was in the amount of $2,350.00; for year two commencing on September 4, 2007, in the amount $3,200.00; and for year three commencing on September 4, 2008 in the amount of $4,100.00.

Prior to the start of the September 2009 lease period, a number of events occurred that delayed the processing and execution of the lease agreement. The County was notified by FEC in June 2008 that certain rights had been assigned to Florida East Coast Industries Inc. In December 2009, the County was again notified of a financial transaction assigning rights to FDG Flagler Station II LLC. Since December 2009 to December 2011, the Department in consultation with the County Attorney's Office, has worked with FDG Flagler Station II LLC and their legal counsel to request, receive, review and approve the numerous documents required for execution of the new lease agreement and payment of outstanding invoices. Documents that included assignment of leases, certificates of merger, insurance certificates, invoices and subsequent revised executed leased agreements were approved for placement on Board of County Commission agenda on December 8, 2011.

The Lease is to be executed with FDG Flagler Station II LLC for a period of four (4) years with escalating rental charges in the amount of $17,650.00. The rental charges for year one, commencing retroactively on September 4, 2009 in the amount of $4,305.00; for year two commencing retroactively on September 4, 2010 in the amount of $4,305.00; for year three commencing retroactively on September 4, 2011 in the amount of $4,520.00; and for year four commencing on September 4, 2012 in the amount of $4,520.00. The increase is consistent with rental fees for surrounding properties.

County Manager / Deputy Mayor

MEMORANDUM

(Revised)

TO: Honorable Chairman Joe A. Martinez and Members, Board of County Commissioners

DATE: March 6, 2012

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

SUBJECT: Agenda Item No. 8(M)(2)

Please note any items checked.

_____ **"3-Day Rule" for committees applicable if raised**

_____ **6 weeks required between first reading and public hearing**

_____ **4 weeks notification to municipal officials required prior to public hearing**

_____ **Decreases revenues or increases expenditures without balancing budget**

_____ **Budget required**

_____ **Statement of fiscal impact required**

_____ **Ordinance creating a new board requires detailed County Manager'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(M)(2)
3-6-12

RESOLUTION NO. R-216-12

RESOLUTION AUTHORIZING THE EXECUTION OF A LEASE AGREEMENT IN THE AMOUNT OF $17,650.00 BETWEEN MIAMI-DADE COUNTY AND FDG FLAGLER STATION II LLC FOR THE CONTINUED USE OF A PEDESTRIAN SAFETY WALKWAY ALONG THE FLORIDA EAST COAST RAILWAY CO., LLC RIGHTS OF WAY IN THE VICINITY OF SW 69 AVENUE FROM SW 19 STREET TO SW 22 STREET FOR A PERIOD OF FOUR (4) YEARS COMMENCING RETROACTIVELY ON SEPTEMBER 4, 2009

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

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board approves this Lease Agreement (Agreement) in the Amount of $17,650.00 Between Miami-Dade County and FDG Flagler Station II LLC., for the Continued Use of a Pedestrian Safety Walkway Along the Florida East Coast Railway Co., LLC Rights-of-Way in the Vicinity of SW 69 Avenue from SW 19 Street to SW 22 Street for a period of four (4) years commencing retroactively on September 4, 2009 as stipulated in the Agreement; and authorizes the County Mayor or the Mayor's designee to execute same for an on behalf of Miami-Dade County and to exercise all provisions contained therein.

The foregoing resolution was offered by Commissioner **Rebeca Sosa**, who moved its adoption. The motion was seconded by Commissioner **Jose "Pepe" Diaz** and upon being put to a vote, the vote was as follows:

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

The Chairperson thereupon declared the resolution duly passed and adopted this 6th day of March, 2012. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

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

HARVEY RUVIN, CLERK

By: **Christopher Agrippa**
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

Hugo Benitez

REAL ESTATE LEASE
(Land, Outside ROW – Multi Year)

The Real Estate Lease (this "Lease") is made effective as of this 4th day of September, 2009, by and between **FDG Flagler Station II LLC**, a Delaware limited liability company ("FDG") and **Miami-Dade County,** a political subdivision of the State of Florida, whose business address is 111 N.W. 1st Street, Suite 1610, Miami, Florida 33128-1970 ("Lessee").

1. Leased Premises: FDG hereby leases to Lessee and Lessee hereby leases from FDG under the terms and conditions set forth in this Lease, the following described property:

SEE EXHIBIT A
[Attached hereto and made a part hereof]

All as shown on FDG's Drawing No. FDG098, dated 2/18/2011, attached hereto as **Exhibit B,** and made a part hereof, (collectively with any buildings, facilities and improvements currently or in the future located on the described property, the "Leased Premises").

2. Term

The initial term of this Lease shall be from September 4, 2009 through September 3, 2010 (the "Initial Term"); provided, however, that LESSEE SHALL HAVE NO RIGHT TO POSSESSION OF THE LEASED PREMISES UNTIL (a) the rent and Security Deposit, as required under the terms of this Lease, has been delivered to FDG and, if the Security Deposit is in the form of a check, the Security Deposit shall not be deemed delivered to FDG until that check has cleared the bank and funds have been credited to FDG's account (b) Lessee has provided FDG with a certificate of insurance evidencing the insurance coverages Lessee is obligated to maintain pursuant to this Lease and (c) the Lease has been fully executed by both Lessee and FDG and a copy of the Lease has been received by Lessee from FDG.

This Lease shall automatically renew after the expiration of the Initial Term and any renewals thereof, for additional twelve (12) month periods (collectively the "Renewal Terms") unless terminated at least thirty (30) days before the expiration of the Initial Term or Renewal Terms, as the case may be, by furnishing written notice of termination to the other party. Unless FDG indicates otherwise in writing, the covenants and conditions of this Lease in force during the Initial Term, as the same may be modified from time to time, shall continue to be in effect during all Renewal Terms, except that the rent for the Renewal Term beginning September 4, 2010, September 2011 and September 4, 2012 shall be increased as provided in Paragraph 3 below and for any renewals thereafter, the rent shall be increased by five percent (5%) of the rental rate for the term immediately preceding the Renewal Term or, upon 30 days notification to Lessee by FDG prior to the termination of the Renewal Term, FDG shall establish a new rental rate in its sole discretion. Except as set forth in this paragraph 2, Lessee shall have no expectation of renewal and this Lease may be terminated in accordance with its terms regardless

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of the length of time Lessee has occupied the Leased Premises, or the construction by Lessee of any buildings, structures, works, paving, barricades or the placement of Lessee's personal property on the Leased Premises.

3. Rent

(a) Rent

During the Initial Term of this Lease, the Lessee shall pay to FDG an annual rental in advance on or before the 1st day of each term year, plus all sales or use taxes levied by any governmental body for the use or occupancy of the Leased Premises ("Sales and Use Tax"), as set forth below:

Effective Date	Base Rental (annual)
September 4, 2009	$ 4,305.00
September 4, 2010	$ 4,305.00
September 4, 2011	$ 4,520.00
September 4, 2012	$ 4,520.00

Rent shall be paid to FDG at P.O. Box 864638, Orlando, Florida 32886-4638 or as otherwise indicated on the applicable invoices. The requirement to pay rent and other payments shall survive expiration or termination of this lease until all lessee's property (as defined in paragraph 14 hereof) is removed from the leased premises in accordance with this lease and the requirements of paragraph 14 of this lease are met.

(b) Additional Charges

If Lessee's presence or activities on the Leased Premises causes FDG to incur costs for cleaning, trash removal, inspections, or like expenses, Lessee agrees to pay such cost to FDG on demand, the amount of such costs incurred by FDG. Notwithstanding the foregoing, Lessee will pay on demand the greater of the actual inspection costs or $350.00 for any inspection conducted by FDG or its agents on the Leased Premises the results of which show, in FDG's sole determination, a violation of this Lease or any federal, state or municipal law or regulation. Lessee shall also pay on demand the greater of the actual inspection costs or $350.00 for any follow-up inspections related to the violation.

(c) Late Charge

If any rent or other payment due under this Lease is not received by FDG within ten (10) days of the due date of such payment, Lessee shall pay, in addition to such payment a late charge equal to the greater of five percent (5%) of the payment which is past due or Two Hundred Fifty and No/100 Dollars ($250.00). If any payment due from Lessee shall remain overdue for more than ten (10) days, interest shall accrue daily on the past due amount from the date such amount was due until paid or judgment is entered at a rate equivalent to the lesser of eighteen percent (18%) per annum or the highest rate permitted by law. Interest on the past due amount shall be

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in addition to and not in lieu of the five percent (5%) late charge or any other remedy available to FDG hereunder, at law and/or in equity.

4. Utility Charges, Taxes, Document Stamps

(a) Utility Charges

All charges on the Leased Premises for all utilities, including but not limited to water, electricity, telephone, gas, heat, storm water, and sewers and for taxes on Lessee's improvements shall be paid by the Lessee within thirty (30) days after date of invoice.

(b) Ad Valorem Taxes

Lessee agrees to pay, within thirty (30) days after presentation unto Lessee by FDG, bills for all special assessments, ad valorem taxes and any other taxes of whatsoever kind or nature levied by the United States of America, State of Florida, any county, municipality or special taxing district organized and existing under the laws of the State of Florida, upon any of the Leased Premises on a pro-rated basis. All taxes and special assessments, payable on an annual basis, are to be pro-rated by the parties hereto for the year during which this Lease is made, as well as the year in which the same may be terminated.

(c) Document Stamps

Lessee shall pay any necessary documentary stamp taxes required to be affixed to this Lease under the laws of the United States of America, the State of Florida, or both.

(d) Sales and Use Tax, Personal Property Tax

Lessee will pay all Sales and Use Taxes and all personal property taxes that may be levied or assessed against the personal property of the Lessee.

5. As Is, Maintenance

FDG MAKES NO WARRANTY, REPRESENTATION OR UNDERTAKING, EXPRESSED OR IMPLIED AS TO THE CONDITION OF THE LEASED PREMISES and Lessee, at its sole cost and expense, hereby agrees to put the Leased Premises in such condition for its proposed use and to maintain them in their entirety. The Leased Premises is leased as it currently exists in an AS IS condition and the Lessee, who has inspected the Leased Premises prior to entering into this Lease, accepts the Leased Premises AS-IS and shall henceforth be responsible for any and all repairs and maintenance to the land and any buildings, facilities and improvements located thereon. Lessee shall, at its sole cost and expense, obtain any required permits and consents and perform all work required for the preparation of the Leased Premises for occupancy by Lessee, in the absence of any special provision herein contained to the contrary, and Lessee does hereby accept the Leased Premises as now being in fit and leaseable condition for all purposes of Lessee.

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Lessee will keep the Leased Premises free and clear of any and all trash, brush and debris of any kind, so as to prevent the trash, brush and debris from becoming dangerous, inflammable or objectionable. FDG shall have no duty to inspect or maintain any of the Leased Premises during the term of this Lease.

Lessee shall have no claim of any kind or description for damages to goods, wares, personal property or merchandise on the Leased Premises from any cause whatsoever, INCLUDING FIRE, STORM, CASUALTY OR ACT OF GOD, OR NEGLIGENCE OF FDG UNLESS CAUSED BY THE WILLFUL OR INTENTIONAL ACTS OF FDG.

6. Lessee's Compliance With Law

(a) Zoning and Use Regulation

Lessee will release FDG from any loss, claim or damage which Lessee may sustain arising directly or indirectly by reason of either existing or future zoning or other regulations promulgated by any governmental agency which may adversely affect use by Lessee of the Leased Premises. Lessee shall assume all responsibility for procuring or complying with any ordinance, resolution, order, permit, consent or other such regulation, promulgated by any governmental agency whatsoever, for building or otherwise, required for the use of the Leased Premises or for the construction of any facilities upon the Leased Premises. Lessee shall indemnify, defend and hold harmless FDG from any loss, claim or damage suffered by FDG for Lessee's failure to properly and completely perform this responsibility,

(b) Other Regulation

Lessee shall comply with all federal, state and municipal regulations as to health, safety, zoning, police, nuisance, fire, water, liquid, solid waste and hazardous waste, highways, sidewalks and other matters, and with the regulations of all persons or corporations supplying water, gas, heat, electricity, telephone or steam on the premises, and shall indemnify FDG against all fines, penalties, expense, damages and costs for violation thereof. Lessee is solely responsible for obtaining any and all federal, state and local licenses, permits, or other authority for its use of the premises and shall indemnify and hold harmless FDG against all fines, penalties, expenses, damage and costs for violation of or failure to comply with any federal, state or local laws or regulations. The provisions of this Paragraph 6 shall survive the expiration or any termination of this Lease.

7. Hazardous Materials

Lessee will prevent the presence, use, generation, release, discharge, storage, disposal, or transportation of any Hazardous Materials (as hereinafter defined) on, under, in, above, to, or from the Leased Premises except that Hazardous Materials may be used in the Leased Premises as necessary for the customary maintenance of the Leased Premises provided that same are used, stored and disposed of in the ordinary course of business in strict compliance with applicable laws. For purposes of this provision, the term "Hazardous Materials" will mean and refer to any wastes, materials, or other substances of any kind or character that are or

become regulated as hazardous or toxic waste or substances, or which require special handling or treatment, under any federal, state or local laws.

If Lessee's activities at the Leased Premises or Lessee's use of the Leased Premises (a) results in a release of Hazardous Materials that is not in compliance with applicable laws or permits issued thereunder; (b) gives rise to any claim or requires a response under common law or applicable laws or permits issued thereunder; (c) causes a significant public health effect; or (d) creates a nuisance, then Lessee shall, at its sole cost and expense: (i) immediately provide verbal notice thereof to FDG (with a follow-up of written notice to FDG in the manner required by this Lease), which notice shall identify the Hazardous Materials involved and the emergency procedures taken or to be taken; and (i) promptly take all action in response to such situation required by applicable laws, provided that Lessee shall first obtain FDG's approval of the non-emergency remediation plan to be undertaken. The provisions of this paragraph 7 shall survive the expiration or any termination of this lease.

8. Inspection and Access

FDG shall have the right, at reasonable times and upon reasonable prior notice to Lessee, to enter the Leased Premises for the purpose of examining and inspecting the condition of the Leased Premises and to evaluate Lessee's compliance with the terms and conditions of this Lease. FDG shall have the right at all times to enter the Leased Premises without prior notice to Lessee and take action in the event of any emergency affecting the Leased Premises, including but not limited to leakage of Hazardous Materials or other materials from or onto the Leased Premises, the detection of odors that appear to be coming from the Leased Premises, suspected illegal activity on or use of the Leased Premises for like activities or events. Lessee hereby releases and holds FDG harmless from any action taken by FDG to access the Leased Premises under the conditions set forth herein and/or to control or respond to any emergency affecting the Leased Premises.

9. Signs

Lessee shall not place any signs on the Leased Premises except with the prior written consent of FDG, including consent as to location and design, which may be withheld in FDG's sole discretion. Any and all such approved signs shall be installed and shall be maintained by Lessee, at its sole cost and expense and shall be in compliance with all applicable laws. Lessee shall be responsible to FDG for the installation, use, or maintenance of said signs and any damage caused thereby. Lessee agrees to remove said sign prior to the termination of the Lease and upon such removal to repair all damage incident to such removal.

10. INDEMNIFICATION

A. To the extent allowed by law, and subject to the limitations of Florida State Statutes 768.28, to indemnify, save and hold harmless FDG, its agents, servants and employees from and against all loss, claims, costs charges, expense, suits, damage and judgments, which they may suffer, sustain or in anywise be subjected to, or for which it may be held liable on account of the death, personal injuries, damage or loss to any person or persons, including employees, agents and officers of FDG and of Lessee, directly or indirectly arising out of or on account of the leasing to or use of the property by Lessee; whether due or claimed to be due by

the joint negligence of FDG, its employees, agents or servants, or otherwise. In the event that a loss or damage is due to or claimed to be due by the partial negligence of Lessee, then the Lessee's liability for indemnity to FDG extends only to that portion of negligence, which is attributable to the Lessee. In all cases, the Lessee's liability under this clause will be governed by the limitations and to the extent provided in Section 768.28, Florida Statutes.

B. To the extent allowed by law, and subject to the limitations of Florida Statutes 768.28, to indemnify, save and hold harmless FDG, its agents, servants and employees from and against all loss, claims, costs, charges, expense, suits, damage and judgments, which they may suffer, sustain or in anywise be subjected to, or for which it may be held liable on account of any loss or damage caused in any manner to any of Lessee's buildings, structures, works and any personal property whatsoever of Lessee, situated, placed, kept or stored on, in or near the property or premises hereby leased, as well as on account of loss or damage to any personal property whatsoever, not owned by Lessee, whether owned by FDG or by others, arising directly or indirectly out of or on account of the leasing to or use by Lessee of the property hereby leased; whether due or claimed to be due by the joint negligence of FDG, its employees, agents or servants or otherwise. In the event that a loss or damage is due to or claimed to be due by the partial negligence of Lessee, then the Lessee's liability for indemnity to FDG extends only to that portion of negligence, which is attributable to the Lessee. In all cases, the Lessee's liability under this clause will be governed by the limitations and to the extent provided in Section 768.28, Florida Statutes.

C. To the extent allowed by law, and subject to the limitations of Florida Statutes 768.28, to indemnify FDG for all loss, claims, damage, costs and expenses, including attorneys' fees and environmental cleanup costs arising from Lessee's presence upon or use of the leased premises which causes the premises to become contaminated by toxic or hazardous substances or wastes above levels which exceed the allowable levels as set forth in local, state or federal laws and regulations. FDG shall have the right, at reasonable times during the term of this Lease, upon prior notice to Lessee and accompanied by a representative of Lessee (except in cases of emergency) to enter the leased property, including any building or structure that may at any time be on the leased property, for the purpose of examining and inspecting the condition of the leased property and to ensure Lessee's compliance with the terms and conditions of this Lease.

D. Lessee acknowledges that use of FDG's property involves risk of loss or damage. Notwithstanding anything in this agreement to the contrary, Lessee hereby expressly assumes all risks of injury or death to Lessee's employees, contractors, agents and invitees and damage to or destruction of Lessee's property resulting from or arising from FDG's operations, REGARDLESS OF THE SOLE OR JOINT NEGLIGENCE OF FDG. Lessee will defend, indemnify, and save FDG harmless from and against losses from injuries or death to Lessee's employees, contractors, agents and invitees while on FDG's property or seeking ingress or egress from FDG's property leased hereunder and from damage to or destruction of Lessee's property. In all cases, the Lessee's liability under this caluse will be governed by the limitations and to the extent provided in Section 768.28, Florida Statutes.

11. <u>Purpose of Lease</u>

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The premises shall be used only for the purpose of Sidewalk and Fence.

12. Utility Notification

Lessee shall notify FDG before performing any work on the Leased Premises. Notification shall be made to c/o Flagler Development Group, LLC, Attn: Lewis W. Graham, Jr., 4601 Touchton Road East, Bldg 300, Suite 3200, Jacksonville, Florida 32246. Lessee acknowledges that the leased premises may contain fiber optic communication systems, Florida East Coast Railway signal and train control cables and other utilities. Prior to any digging or subgrade work on the leased premises, lessee must notify FDG and call Sunshine for utility locations at 1-800-432-4770 and the Railway Signal Department at 1-800-342-1131 ext. 2377 for signal and train control cable locations. Proper notification is required for cable locations and field inspections to protect against damages.

13. Termination

Either party may, in its discretion, for any reason whatsoever, terminate this Lease at any time by the giving of 30 days prior written notice to the other party as hereinafter provided. Such termination shall not in any way, however, release Lessee from its obligations to surrender the Leased Premises in accordance with the requirements set forth in this Lease and to pay rent and other payments until all property of Lessee is removed from the Leased Premises and the Leased Premises is surrendered in the condition required by this Lease. If Lessee is in compliance with all of the terms, conditions and obligations set forth in this Lease and Railway terminates this Lease without cause, Lessee shall be entitled to a prorata refund of the rent paid in advance during the Lease term.

14. Condition of Premises on Termination

The Lessee shall not mutilate, damage, misuse, or alter, the Leased Premises, but shall keep the same in good condition and repair. Any and all repairs, alterations or improvements made on the Leased Premises by FDG at Lessee's request shall be at Lessee's sole cost and expense unless otherwise expressly agreed in writing.

Except as otherwise set forth herein, upon the termination or expiration of the Lease, Lessee shall surrender the Leased Premises to FDG in condition acceptable to FDG. Prior to termination or expiration of this Lease, Lessee shall properly remove all trash, debris, and other waste materials from the Leased Premises. If Lessee is not then in default and if the personal property of Lessee on the Leased Premises (the "Lessee's Property") is not then subject to any other rights, liens or interests of FDG or if removal is not prohibited by law, Lessee shall also properly remove Lessee's Property prior to termination or expiration of this Lease. If Lessee is in default or Lessee's property is subject to any other rights, liens or interest of FDG, then Lessee shall remove only such of Lessee's property as FDG shall direct. In no event, however, shall Lessee remove any of the following materials or equipment unless FDG directs otherwise in writing: any power wiring or power panels; lighting or lighting fixtures; millwork

and cabinetry; wall coverings; drapes, blinds or other window coverings; carpets or other floor coverings; heaters, air conditioners, or any other heating or air conditioning equipment; fencing or security gates; plumbing fixtures, water fountains; or other similar building operating equipment and decorations, structures, foundations, concrete, asphalt or fencing (collectively, "Fixtures"). Should FDG direct Lessee to remove any or all of the Fixtures placed on the Leased Premises by Lessee prior to or during the Lease term, Lessee shall properly remove such Fixtures prior to termination or expiration of this Lease. The removal of Lessee's Property and the Fixtures shall be at Lessee's sole cost and expense. Lessee shall repair, at Lessee's expense, any damage to the Leased Premises caused by the removal of any of Lessee's Property or the Fixtures. If Lessee fails to remove Lessee's Property, the Additional Property or the Fixtures, in addition to the payment requirements set forth in Paragraph 3 hereof, at FDG's option all or part of Lessee's Property and/or the Fixtures will become the property of FDG and/or at FDG's option may cause removal of all or part of Lessee's Property and/or the Fixtures from the Leased Premises and/or storage thereof. The reasonable cost or expense of removal and/or storage of any of Lessee's Property or Fixtures shall be paid by Lessee to FDG forthwith upon demand for same.

15. Lessee Improvements

Lessee will not erect or cause to be erected any building or other structure, and will not make or allow to be made any alterations in or to the Leased Premises (collectively, the "Alterations") without first obtaining the written consent of FDG, which consent may be granted or withheld in FDG's sole discretion. FDG may require Lessee to provide demolition and/or lien and completion bonds in form and amount satisfactory to FDG. All Alterations shall be accomplished in a good and workmanlike manner at Lessee's sole expense, in conformity with all applicable laws by a licensed and bonded contractor approved in advance by FDG, such approval of contractor not to be unreasonably withheld. All contractors working on alterations shall carry workers' compensation insurance, commercial general liability insurance, automobile insurance and excess liability insurance in amounts reasonably acceptable to FDG and shall deliver a certificate of insurance evidencing such coverages to FDG prior to commencing work on the leased premises. Upon completion of any such work, Lessee shall provide FDG with "as built" plans, copies of all construction contracts, and proof of payment for all labor and materials. All legal and consulting' fees and expenses incurred by FDG in connection with Lessee's improvement plans, pursuant to this paragraph, together with any legal and consulting' fees and disbursements incurred in the review of any improvement plans, "as-built" plans, construction contracts or any other documentation, will be paid by lessee within thirty (30) days of invoice for payment thereof, as additional rent. Any Alterations to the Leased Premises made by or installed by either party hereto will remain upon and be surrendered with the Leased Premises and become the property of FDG upon the expiration or earlier termination of this Lease without credit to Lessee; provided, however, FDG, at its option, may require Lessee to remove or repair any Alterations to restore the Leased Premises to the condition existing at the time Lessee took possession, with all costs of removal, repair, restoration, or alterations to be borne by Lessee. This clause will not apply to moveable equipment, furniture, moveable trade fixtures, or other personal property owned by Lessee, which may be removed by Lessee at the end of the Lease term if Lessee is not then in default and if such equipment and furniture are not then subject to any other rights, liens and interest of FDG. Lessee will have no authority or power, express or implied, to create or cause any construction lien or mechanics' or materialmen's lien or claim of any kind against the Leased Premises or any portion thereof.

Lessee will promptly cause any such liens or claims to be released by payment, bonding or otherwise, but in any event not more than thirty (30) days after request by FDG, and will indemnify FDG against losses arising out of any such claim including, without limitation, legal fees and court costs. NOTICE IS HEREBY GIVEN THAT FDG WILL NOT BE LIABLE FOR ANY LABOR, SERVICES OR MATERIAL FURNISHED OR TO BE FURNISHED TO LESSEE, OR TO ANYONE HOLDING THE PREMISES THROUGH OR UNDER LESSEE, AND THAT NO MECHANICS' OR OTHER LIENS FOR ANY SUCH LABOR, SERVICES OR MATERIALS WILL ATTACH TO OR AFFECT THE INTEREST OF FDG IN THE PREMISES. LESSEE WILL DISCLOSE THE FOREGOING PROVISIONS TO ANY CONTRACTOR ENGAGED BY LESSEE PROVIDING LABOR, SERVICES OR MATERIAL TO THE LEASED PREMISES.

16. Assignment

Lessee will not assign this Lease, in whole or in part, or sublease the Leased Premises, in whole or in part, without the prior written consent of FDG, which consent may be granted or withheld in FDG's sole discretion, and in no event will Lessee be released from any obligation or liability under this Lease following any such assignment or sublease. Along with Lessees's request to FDG to assign this Lease or sublease the Leased Premises, Lessee shall provide, along with any other information and documentation that FDG may request, a copy of the proposed assignment or sublease. No assignee or sublessee of the Leased Premises or any portion thereof, may further assign or sublease its interest in the Leased Premises or any portion thereof. All legal fees and expenses incurred by FDG in connection with the review by FDG of Lessee's requested assignment or sublease pursuant to this paragraph, together with any legal fees and disbursements incurred in the preparation and/or review of any documentation, will be paid by Lessee within thirty (30) days of invoice for payment thereof, as additional rent, but in any event, prior to the execution by FDG of the assignment. If the rent due and payable by any assignee or sublessee under any permitted assignment or sublease exceeds the rent payable under this Lease for such space, Lessee will pay to FDG all such excess rent and other excess consideration within ten (10) days following receipt thereof by Lessee.

17. Fencing

Intentionally left blank

18. Destruction or Damage to Leased Premises

If the Leased Premises (which shall not include Lessee's Property) are at any time materially damaged or destroyed by fire or other Acts of God preventing all use of the Leased Premises by Lessee for the purposes set forth in this Lease and the extent of such damage or destruction does not in any way result or arise from the acts or failure to act of Lessee, its employees, agents, invitees, visitors, customers, assignees, sublessees, contractors or subcontractors, FDG shall have sixty (60) days from such damage or destruction to determine in its sole discretion and inform Lessee whether FDG will restore the Leased Premises (excluding any Alterations and/or other improvements constructed by Lessee) to substantially the condition that existed immediately prior to the occurrence of the casualty. If FDG determines not to restore the Leased Premises, it will notify Lessee and Lessee's sole remedy shall be to terminate the Lease upon 30 days prior written notice to FDG. If FDG elects to restore the Leased

Premises (excluding any Alterations and/or other improvements constructed by Lessee), it will give Lessee its reasonable estimation of the time it will take to restore the Leased Premises. If in FDG's reasonable estimation, the Leased Premises cannot be restored within two hundred forty (240) days of such damage or destruction, then either party may terminate this Lease by written notice to the other party. Subsequent to FDG's determination to restore the Leased Premises as set forth herein, and until such restoration of the Leased Premises is complete, there shall be an abatement of the rent. If all or part of the Leased Premises may be used by Lessee for the purposes set forth in this Lease during the period of such restoration, there will be no abatement of rent. In addition, if the damage or destruction was caused by or increased in any way by the acts or failure to act of Lessee, its employees, agents, invitees, visitors, customers, assignees, sublessees, contractors or subcontractors, then Lessee shall be solely responsible for promptly returning the Leased Premises to their former condition and there will be no abatement of rent.

19. Default

(a) DEFAULT. The following will be events of default by Lessee under this Lease:

(1) Failure to pay when due any installment of rent or any other payment required pursuant to this Lease;

(2) Failure to deliver, maintain and/or timely restore the Security Deposit required under this Lease;

(3) Failure to obtain and maintain the insurance required under this Lease;

(4) The filing of a petition for bankruptcy or insolvency under any applicable federal or state bankruptcy or insolvency law; an adjudication of bankruptcy or insolvency or an admission by Lessee that it cannot meet its financial obligations as they become due, or the appointment of a receiver or trustee for all or substantially all of the assets of Lessee; the foregoing shall also apply to any guarantor of this Lease (a "Guarantor"), if any;

(5) A transfer in fraud of creditors or an assignment for the benefit of creditors, by Lessee or any Guarantor;

(6) Any act which results in a lien being filed against all or a portion of the Leased Premises;

(7) The liquidation, termination or dissolution of Lessee or any Guarantor of this Lease, or, if Lessee or any Guarantor is a natural person, the death of Lessee or such Guarantor; and

(8) Failure to cure any breach or default of any provision of this Lease (excluding any provision dealing with payment of rents or any other payments hereunder and/or any other provisions dealing with the matters contemplated by subsections (1)-(7) above) within 20 days after written notice thereof to Lessee.

(b) REMEDIES. In the event of any default hereunder by Lessee, then without prejudice to any other rights which it has pursuant to this Lease or at law or in equity, FDG shall have the

following rights and remedies, which are cumulative and not alternative:

(1) FDG may terminate this Lease by notice to Lessee and retake possession of the Leased Premises for FDG's account. Lessee shall then quit and surrender the Leased Premises to FDG in accordance with the requirements of this Lease. Lessee's liability under all of the provisions of this Lease shall continue notwithstanding any expiration and surrender, or any re-entry, repossession, or disposition hereunder, including to the extent legally permissible, payment of all rent and other charges until the date this Lease would have expired had such termination not occurred and the surrender of the Leased Premises in accordance with the requirements of this Lease. If FDG so elects, rent may be accelerated and Lessee shall pay FDG damages in the amount of any and all sums that would have been due for the remainder of the Initial Term and/or any Renewal Term.

(2) FDG may enter the Leased Premises as agent of the Lessee to take possession of any property of the Lessee on the Leased Premises, to store such property at the expense and risk of Lessee or to sell or otherwise dispose of such property in such manner as FDG may see fit without notice to Lessee. FDG shall not be liable in any way in connection with its actions pursuant to this section, to the extent that its actions are in accordance with applicable law.

(3) FDG may relet all or any part of the Leased Premises for all or any part of the unexpired portion of the term of this Lease or for any longer period, and may accept any rent then attainable; grant any concessions of rent, and agree, at Lessee's expense, to paint or make any special repairs, alterations, and decorations for any new lessee as it may deem advisable in its sole and absolute discretion. FDG shall be under no obligation to relet or to attempt to relet the Leased Premises greater than that imposed by applicable law.

(4) FDG may remedy or attempt to remedy any default of the Lessee under this Lease for the account of the Lessee and FDG (and its agents and/or representatives) may enter upon the Leased Premises for such purposes. No notice of FDG's intention to perform such covenants need be given. FDG shall not be liable to Lessee for any loss or damage caused by acts of FDG in remedying or attempting to remedy such default and Lessee shall pay to FDG all expenses incurred by FDG in connection with remedying or attempting to remedy such default. Any expenses incurred by FDG shall accrue interest from the date of payment by FDG until repaid by Lessee at the highest rate permitted by applicable law.

(c) COSTS.

Lessee shall pay to FDG on demand all costs incurred by FDG, including reasonable attorneys' fees and costs, (whether incurred in preparation for or at trial, on appeal, or in bankruptcy), incurred by FDG in enforcing any of the obligations of Lessee under this Lease. In addition, upon any default by Lessee, Lessee shall also be liable to FDG for the expenses incurred by FDG in connection with re-entering the Leased Premises, reletting the Leased Premises and putting the Leased Premises into the condition necessary for such reletting (including attorneys' fees and disbursements, marshall's fees, and brokerage fees, in so doing), and any other expenses reasonably incurred by FDG.

(d) WAIVER.

No delay or omission by FDG in exercising a right or remedy shall exhaust or impair the same or constitute a waiver of, or acquiescence to, a default.

(e) DEFAULT BY FDG.

In the event of any default by FDG of any material term of this Lease, Lessee will give FDG written notice specifying such default with particularity, and FDG shall have a period of thirty (30) days following the date of such notice in which to commence the appropriate cure of such default. If FDG fails to commence and diligently pursue the appropriate cure of such default after such notice or complete same within a reasonable period of time, Lessee may terminate this Lease upon written notice to FDG. Notwithstanding any provision of this Lease, FDG shall not at any time have any personal liability under this Lease, and Lessee's sole remedy with respect thereto shall be termination of the Lease

20. Hold Over

If Lessee remains in possession of the Premises after expiration of the Initial Term or any Renewal Term, without Landlord's written consent and without any express written agreement between the parties on an extension of the Initial Term or Renewal Term, Lessee shall be a tenant at sufferance as provided in § 83.04, Florida Statutes, and such tenancy shall be subject to the provisions thereof, except that Base Rent during the holdover period shall be one hundred fifty percent (150%) of the final payment of Base Rent in effect during the final month of the Initial Term or Renewal Term. Nothing in this paragraph shall be construed as the consent of Landlord to Lessee's possession of the Premises after the expiration of the Initial Term or Renewal Term. In addition to and not limiting any other rights or remedies which Landlord may have on account of Lessee holding over without written consent of Landlord, Lessee shall be liable for any and all direct and consequential damages incurred by Landlord on account of such unapproved holding over including claims by tenants entitled to future possession.

21. Condemnation

If all or a portion of the Leased Premises shall be taken by public or quasi-public authority under any power of eminent domain or condemnation, this Lease, at the option of FDG, shall forthwith terminate and the Lessee shall have no claim or interest in or to any award of damages for such taking.

22. Quiet Enjoyment

If Lessee pays the rent and all other charges and fully performs all of its obligations under this Lease, Lessee shall be entitled to peaceful and quiet enjoyment of the Leased Premises for the full term without interruption or interference by FDG or any person claiming through FDG.

23. No Waiver or Modification

NONE OF THE PROVISIONS HEREOF SHALL BE WAIVED OR MODIFIED, EXCEPT BY MUTUAL AGREEMENT, IN WRITING, AND NO ALLEGED

VERBAL OR WRITTEN INDUCEMENT PRIOR TO EXECUTION NOR SUBSEQUENT VERBAL WAIVER, OR MODIFICATION, SHALL BE BINDING UNDER ANY CIRCUMSTANCES. THIS LEASE CONSTITUTES THE ENTIRE UNDERSTANDING OF THE PARTIES AND NEITHER THE FAILURE OF FDG TO ENFORCE EACH AND EVERY PROVISION, NOR ANY COURSE OF CONDUCT BY FDG SHALL BE CONSIDERED AS A WAIVER OF THESE PROVISIONS.

24. Successors and Assigns

The provisions hereof shall be binding upon and inure to the benefit of the successor, executors, administrators and permitted assigns of the respective parties.

25. Special Notice Regarding Radon Gas

Lessee is hereby notified that radon gas is a naturally occurring radioactive gas that, when accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over a period of time. Levels of radon that exceed federal and state guidelines have been found in buildings in the State of Florida. Lessee is further notified that additional information regarding radon gas, and the testing for radon gas, may be obtained from the Public Health Units of the various counties.

26. Restrictions

No plants, shrubbery, trees or other vegetation of a hazardous or noxious nature that might produce injury to any person coming in contact with said plants, shrubbery, trees or other vegetation will be placed upon the Leased Premises, or any adjacent property by Lessee. The placement of any wells by Lessee on the Leased Property, or any adjacent property is strictly prohibited.

27. Notices

Any notice, request or communication (a "Notice") to be given or to be served upon any party hereunder, in connection with this Lease, must be in writing and must be given by certified or registered mail and shall be deemed to have been given and received when a certified or registered letter, containing such Notice, properly addressed, with postage prepaid, is deposited in the U.S. Mail; or, if given otherwise than by certified or registered mail, it shall be deemed to have been given when delivered to and received by the party to whom it is addressed. Such Notices shall be addressed to the parties herein at the following addresses:

TO FDG:	4601 Touchton Road East Building 100, Suite 330 Jacksonville, Florida 32256 Attn: Lewis W. Graham, Jr. Corridor Marketing and Management
WITH A COPY TO:	c/o Flagler Development Group 2855 LeJeune Road, 4th Floor Coral Gables, Florida 33134

Attn: Legal Department

TO LESSEE: Miami Dade County
Public Works Department
111 N.W. 1st Street
Suite 1510
Miami, Florida 33128-1970
Attn: Mr. Octavio Marin

WITH A COPY TO: N/A

28. Governing Law

This Lease shall be governed by the laws of the State of Florida. In the event any suit, action or proceeding is brought by either party with respect to this Lease, such action, suit or proceeding shall be brought in any federal or state court located in Miami-Dade County, Florida.

29. Cancel and Supersede

As of the date of this Lease, this Lease supersedes that certain Lease Agreement by and between Florida East Coast Railway, L.L.C. and Metropolitan Dade County, Florida dated September 4, 2006.

30. Illegality

If any provision of this Lease shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

31. Security Deposit

Intentionally left blank

32. Time is of the Essence. TIME IS OF THE ESSENCE OF THIS LEASE AND ALL PROVISIONS CONTAINED HEREIN.

33. Waiver of Trial by Jury. FDG AND LESSEE HEREBY KNOWINGLY, INTENTIONALLY AND VOLUNTARILY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER OF THE PARTIES HERETO AGAINST THE OTHER ON ANY MATTER WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS LEASE.

//

Signed, sealed and delivered
in the presence of:

Witness as to FDG Susan Blount

Witness as to FDG Tracy L. Mickey

FDG FLAGLER STATION II LLC,
a Delaware Limited Liability Company

By: _____ (SEAL)
Keith A. Tickell

Title: Vice President

Date of Execution: 12-8-11

MIAMI-DADE COUNTY
A Political Subdivision of the State of Florida

By: _____ (SEAL)

Title: _____

_____
(Print Name)

_____
Witness as to Lessee

_____
(Print Name)

_____
Witness as to Lessee

_____
(Print Name)

Date of Execution: _____

20

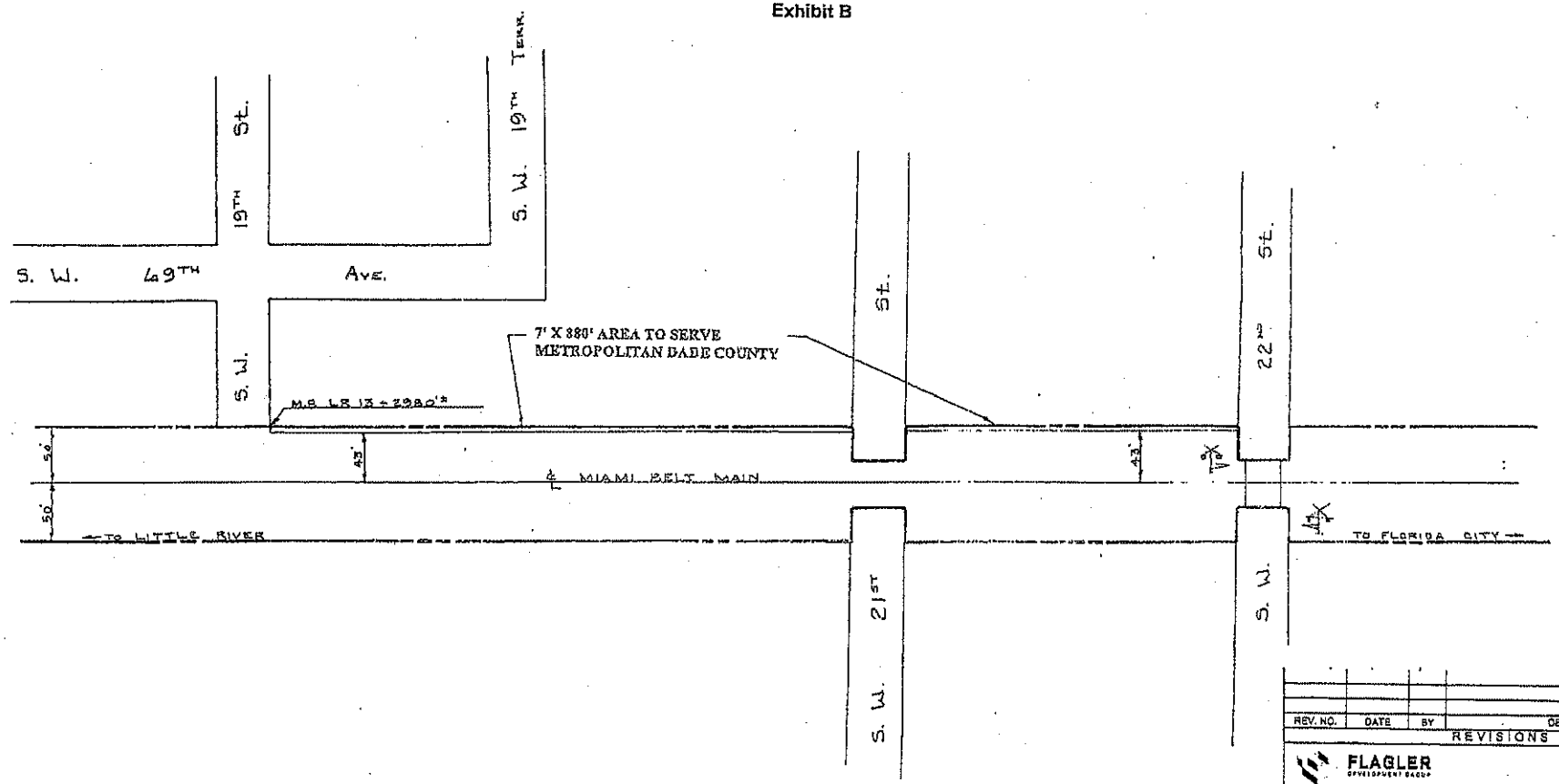
EXHIBIT A

DESCRIPTION OF LEASED PREMISES

A 7-foot wide, easterly and westerly, by 880-foot long, northerly and southerly, strip of land on the easterly side of Florida East Coast Railway, L.L.C. (Railway's) Miami Belt Line right of way in Dade County, Florida, with northerly and easterly lines of said strip commencing at a point on Railway's easterly right of way limit located 2980 feet, more or less, southerly (timetable direction) from Railway's Mile Post LR-13, as measured from Little River Junction, Florida, said point being also located on the northerly line of S. W. 19th Street, Dade County, Florida; easterly line of said strip continuing southerly coinciding with Railway's easterly right of way limit for a distance of 880 feet, more or less, to point of intersection with the northerly line of S. W. 22nd Street; northerly line of said strip continuing westerly, at right angles to Railway's easterly right of way limit for a distance of 7 feet; westerly line of said strip of land being parallel with and 7 feet distant westerly from said easterly line; southerly line of said strip being parallel with and 880 feet, more or less, distant southerly from said northerly line.

DADE COUNTY, FLORIDA ~ SECTION 11 ~ T. 54S. ~ R.40E.

Exhibit B



REV. NO.	DATE	BY	DESCRIPTION

REVISIONS

FLAGLER DEVELOPMENT GROUP

FDG FLAGLER STATION II LLC

FDG LEASE OF SPACE TO:
MIAMI-DADE COUNTY

DRAWN BY DWO	M.P. LR13+2980	Scale 1"= 100'
CHECKED BY	VAL. MAP.	DATE 2/18/2011
FILE NO. MB-151-3	DWG. NO. FDG038	

Other Parcels - Dade County

FLAGLER™

♦ INVOICE ♦

	8/23/2011	ACCOUNT NUMBER	
		00000155	1

Metropolitan Dade County
Mr. Octavio Marin, M.S., P.E.
111 NW 1st Street
Miami, FL 33128-1970

MAKE CHECKS PAYABLE TO: FDG Flagler Station II LLC

BALANCE DUE 16,710.00

Date	Code	Description	File No.	Mile Post #	Charges	Payments/Adjsts	Amount Due
9/4/2009	GAN	GROUND LEASE (N/T) - VARIOUS	MB-151-3	LR13-2980	4,305.00	.00	4,305.00
9/26/2009	GAN	GROUND LEASE (N/T) - VARIOUS	366-22-19	0365-0000	1,155.00	.00	1,155.00
9/4/2010	GAN	Ground Lease (n/t) - var	MB-151-3	LR13-2980	4,305.00	.00	4,305.00
9/26/2010	GAN	Ground Lease (n/t) - var	366-22-19	0365-0000	1,155.00	.00	1,155.00
9/4/2011	GAN	Ground Lease (n/t) - var	MB-151-3	LR13-2980	4,520.00	.00	4,520.00
9/26/2011	GAN	Ground Lease (n/t) - var	366-22-19	0365-0000	1,270.00	.00	1,270.00

	8/23/2011	ACCOUNT NUMBER	
Please send this portion of the statement with your remittance.	Metropolitan Dade County	00000155	1

REMIT TO:
FDG Flagler Station II LLC
P.O. Box 864638
Orlando, FL 32886-4638

If Payment has already been sent, please disregard that item. Mail **payments only** to P.O. Box indicated.

Billing inquires only should be directed to our Accounting Dept. at the address below.
4601 Touchton Road East/
Building 300/Suite 3200/Jacksonville, FL 32246
Phone: (904) 565-4100

PLEASE WRITE ACCOUNT NUMBER ON CHECK

Current	30	60	90	120	BALANCE DUE
5,790.00	0.00	0.00	0.00	10,920.00	16,710.00

23