

**Brickell Metromover
Parcels B, C and D
Development, Maintenance
and Easement Agreement**

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BRICKELL METROMOVER PARCELS B, C AND D
DEVELOPMENT, MAINTENANCE AND EASEMENT AGREEMENT

THIS BRICKELL METROMOVER PARCELS B, C AND D DEVELOPMENT, MAINTENANCE AND EASEMENT AGREEMENT, dated as of the 20th day of Apr., 2012, made by and between MIAMI-DADE COUNTY, a political subdivision of the State of Florida ("County"), by and through Miami-Dade Transit ("MDT" and together with the County, collectively, the "Owner"), having its principal office and place of business at 17th Floor, Overtown Transit Village, 701 N.W. 1st Court, Attn: Director, Miami-Dade Transit, Miami, Florida 33136, and Swire Properties, Inc., a Florida corporation, having an office and place of business at 501 Brickell Key, Suite 600, Miami, Florida 33131 (hereinafter called "Developer" and together with the Owner, collectively, referred to herein, as the "Parties").

WITNESSETH:

A. The Owner owns certain real property located in Miami-Dade County, Florida, as more particularly described on Schedule 1.1, attached hereto, and generally depicted on Schedule 1.2, attached hereto, and made a part hereof and located within the Metromover right-of-way, commonly referred to as Parcels B, C and D (the "Land").

B. Developer desires to improve the Station (as hereinafter defined) and develop the Property (as hereinafter defined) as part of its Project (as hereinafter defined), and the Owner desires to encourage development of the and the Project.

C. Developer agrees to maintain the Improvements (as hereinafter defined) during the Maintenance and Easement Term (as hereinafter defined) and the Owner agrees to grant to Developer certain access rights hereunder.

D. Developer desires to construct a Climate Ribbon (as hereinafter defined) and the Owner agrees to grant to Developer an easement therefor pursuant to the terms herein.

E. Owner and the Developer recognize the potential for public and private benefit through a joint use development of the Property in order to promote public transit usage, improve the appearance and maintenance of the Station in the vicinity of the Project and to further economic development in Miami-Dade County.

F. Owner and Developer agree that Owner has specialized knowledge with respect to operation and maintenance of the System, and that this Agreement (as hereinafter defined) does not obligate the Developer to operate or maintain any part of the System except for the Improvements as set forth in this Agreement.

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

Section 1.2 Term of Agreement.

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- (a) The term of this Agreement for purposes of the Development Rights, including all rights and obligations of the Developer to construct the Improvements and the Climate Ribbon, (the "Development Term") shall commence on the Effective Date and expire on the date of Completion of Construction (the "Development Term Expiration Date"), subject to any Unavoidable Delays. Upon Completion of Construction of the Improvements and the Climate Ribbon, subject to any Unavoidable Delays, the rights and obligations of the Developer to develop the Property, any Improvement or the Climate Ribbon thereon shall cease.
- (b) The term of this Agreement for purposes of the maintenance and easement obligations and rights as set forth hereunder (the "Maintenance and Easement Term" and together with the Development Term, collectively, the "Term") shall commence on the Development Term Expiration Date and shall expire on the date that is ten (10) years thereafter, after which time the Maintenance and Easement Term shall be extended automatically for successive periods of ten (10) years each, provided, that the Term shall not extend beyond ninety-nine (99) years from the Effective Date irrespective of Unavoidable Delays. This Agreement shall be recorded by the Developer, at the Developer's cost, in the public records of Miami-Dade County, Florida. This Agreement shall become effective on the Effective Date and shall for the Term constitute a covenant running with the land that shall be binding upon, and inure to, the benefit of the Parties, their successors, assigns, heirs, legal representatives, and personal representatives.
- (c) Upon the request of either the Owner or the Developer, the Owner and the Developer shall execute a certificate confirming the Effective Date, the Development Term Expiration Date, the Development Term and/or the Maintenance and Easement Term, as applicable.
- (d) The Developer agrees that it shall substantially complete the Improvements by the tenth (10th) anniversary of the Effective Date, subject to Unavoidable Delays. In the event that the

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Improvements have not been substantially completed by the tenth (10th) anniversary of the Effective Date, subject to Unavoidable Delays, the (i) the Owner shall have the right to terminate this Agreement with respect to the portion of the Improvements not completed upon written notice to the Developer within sixty (60) days after such tenth (10th) anniversary of the Effective Date, subject to Unavoidable Delays or (ii) the Owner shall have the right to extend the period of time as reasonably determined by the Owner to allow the Developer to complete the Improvements. Any such termination shall only be with respect to those Improvements that are not completed by the time periods set forth herein. If any Improvements are completed by such date, this Agreement shall continue with respect to such Improvements for purposes of the Parties' maintenance and easement rights and obligations only.

- (e) The Developer agrees that it shall substantially complete the Climate Ribbon by the twelfth (12th) anniversary of the Effective Date, subject to Unavoidable Delays. In the event that the Climate Ribbon has not been substantially completed by the twelfth (12th) anniversary of the Effective Date, subject to Unavoidable Delays, the Owner agrees to grant an extension of time, as reasonably determined by the Owner in coordination with the Developer, to allow the Developer to complete the Climate Ribbon.

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 Conditions Precedent to Commencement of Construction of Phase. The Owner accepts the Developer's proposed development as depicted in the Special Area Plan and the Proposal, which describes development of the Brickell CitiCentre project. However, given that the

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Improvements and the Climate Ribbon will be constructed on, in, under and within thirty (30) feet of the Station and the System, as applicable, the Parties agree that specific construction and development plans for the Improvements and the Climate Ribbon to be constructed on the Property shall be subject to the review and approval of MDT to assure consistency with the Special Area Plan and the Proposal, the public safety and the System's integrity and operation. Precedent to any construction, excavation, demolition, restoration, testing or staging on the Property, the Developer shall submit to the MDT Right-of-Way Division through the MDT Director or the Designated Representative (as hereinafter defined), three (3) copies of drawings and calculations showing the relationship between the proposed activities on the Property and the System. The drawings and calculations shall have sufficient detail to allow MDT to determine if such activities are likely to impact the System and the extent of that impact, if any. The drawings and calculations shall include (if applicable) the following:

- (a) Site plan;
- (b) Drainage area maps and drainage calculations;
- (c) Sheeting and shoring drawings and calculations;
- (d) Architectural drawings (all underground levels through the top floor);
- (e) Sections showing foundations and System structures;
- (f) Structural drawings;
- (g) Column load tables;
- (h) Pertinent drawings detailing possible impacts on the System;
- (i) Geotechnical report;
- (j) Settlement monitoring plan, if applicable; and
- (k) Proposed sequence of activities.

Any such proposed construction, excavation, demolition, restoration, testing or staging on the Property may commence only after MDT has completed its review and the MDT Director or the Designated Representative, or their designee(s) have issued written approval of the plans and drawings, which such approval shall be subject to Section 19.15 herein. Notwithstanding anything herein, all construction on the Property shall be in compliance with the Miami-Dade County Adjacent Construction Safety Manual, or its replacement. Prior to seeking any amendment to the Special Area Plan affecting the Property, the Developer shall notify and consult with MDT.

Section 1.5 Performance Bonds.

- (a) **Climate Ribbon.** The Parties agree that the Climate Ribbon is not a public building or public work as contemplated under Section 255.05, Florida Statutes (2011). Prior to the Commencement of Construction of the Climate Ribbon, the Developer shall deliver, or cause its contractors to deliver, to MDT executed performance bonds, or their equivalent (including without limitation, the right to deliver alternative security pursuant to Section 713.23, Florida Statutes (2011)), to guarantee the construction of the portion of the Climate Ribbon then being constructed by such contractor on the Land. The amount of such bond shall be equal to the proportionate share of the applicable hard costs of construction of the Climate Ribbon then being constructed on the Land by such contractor. Each bond shall name the Owner as beneficiary thereof and shall be issued by a surety reasonably acceptable to MDT. Developer shall have the right from time to time to substitute or replace, or cause its contractors to substitute or replace, such bonds as deemed necessary by the Developer for any portion of the work on the Land then being done. Any such performance bonds, or the equivalent, and Developer's obligations thereunder, shall terminate upon payment of such work as required under the Developer's construction contract. Notwithstanding anything in the foregoing, the

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Owner acknowledges that the entire Climate Ribbon is not being constructed on the Land and the performance bond is not and shall not be based on the amount of the hard construction costs of the entire Climate Ribbon or any portion of the Climate Ribbon that is not located on the Land.

- (b) **Improvements.** The Parties agree that the Improvements are public buildings or public works as contemplated under Section 255.05, Florida Statutes (2011). Prior to the Commencement of Construction of the applicable Phase or Improvements on the Land, the contractor hired by the Developer shall deliver to the Developer and MDT executed payment and performance bonds as contemplated under Section 255.05, Florida Statutes (2011), to guarantee the construction of the Improvements then being constructed by such contractor on the Land and payment of claimants as defined in Section 713.01, Florida Statutes (2011). The amount of such bond shall be equal to contract price between the Developer and the contractor. Each bond shall name both the Owner and the Developer as dual obligees thereof and shall be issued by a surety reasonably acceptable to the Developer and MDT. The Developer shall have the right from time to time to substitute or replace, or cause its contractor to substitute or replace, such bonds as deemed necessary by the Developer for any portion of the work on the Land then being done.

In addition, the Developer shall provide a letter of credit to the Owner for the Owner's benefit conditioned upon the contractor's performance of the construction work in the time and manner prescribed in the contract and the contractor's prompt payments to all persons defined in Section 713.01, Florida Statutes (2011) who furnish labor, services, or materials for the prosecution of the work provided for in the contract. The letter of credit shall be in the amount of \$100,000, the sum the Developer currently anticipates to be the amount of the

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largest progress payment requisition to be paid to the contractor for the prosecution of the work on the Land. Should any progress payment be anticipated to be in excess of \$100,000, the Developer will cause the letter of credit to be modified to such amount. The letter of credit shall remain in full force and effect until 1) a certificate of occupancy or its equivalent for the work has been issued by the permitting authority and 2) the contractor has provided the Developer with a final release. Upon occurrence of both events, the letter of credit shall automatically be terminated without the need for any notice from, nor consent of, the Owner.

ARTICLE 2

Definition of Certain Terms

Section 2.1 Terms Defined.

The terms set forth below, when used anywhere in this Agreement, shall be defined as follows:

- (a) Additional Notice Period shall have the meaning ascribed to it in Section 4.2(a) hereof.
- (b) Administrative Review Period shall have the meaning ascribed to it in Section 4.2(a) hereof.
- (c) Agreement shall mean this Agreement and all amendments, supplements, addenda or renewals thereof.
- (d) Air Rights shall mean all of the airspace and air rights above the Land and Improvements, together with all other air rights, easements, rights-of-way and all appurtenances thereto affecting the Land and deemed part of the Property as are necessary for the Improvements, the Climate Ribbon and the development of the Project, as contemplated in this Agreement.
- (e) Board shall have the meaning set forth in Section 1.3 above.
- (f) Building shall mean the buildings, facilities, structures and other improvements to be erected on, above, or below the Property or a portion thereof as part of the Project (including any replacements, additions and substitutes thereof).

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(g) Certificate of Occupancy shall mean the certificate issued by the person or agency authorized to issue a certificate of occupancy or certificate of completion, as applicable, evidencing that the applicable Improvement(s) and/or Climate Ribbon, as applicable, is (are) ready for occupancy or use in accordance with applicable Law or Ordinance.

(h) Climate Ribbon shall mean that portion of a framed structure, which is open on its sides, fixed and self-supporting to be constructed over and above the Property or a portion thereof as contemplated by this Agreement and in accordance with Article 4 below, as generally depicted on Schedule 2.2 hereof. The Parties agree and acknowledge that Schedule 2.2 is merely a general depiction of the Climate Ribbon and that it shall be constructed, subject to the terms of Section 1.4 hereof. The Climate Ribbon will serve as a unifying theme for the Project, connecting the various parcels of Brickell CitiCentre and providing protection from the elements to patrons travelling along the open air corridors of the Station, the retail center and across the pedestrian connections. The Climate Ribbon may incorporate solar panels and may assist with the collection of rainfall that can be used for various water features on-site. The Climate Ribbon is not deemed an "Improvement" as defined herein.

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

(j) Commencement of Construction and "commenced" when used in connection with construction of a Phase, Climate Ribbon or the Improvements, as the case may be, shall mean the earlier of the filing of the notice of commencement under Florida Statutes Section 713.13 or the visible start of work on the site of a Phase, the Climate Ribbon or the Improvements, including on-site utility, excavation or soil stabilization work. In order to meet the definition of "Commencement of Construction" or commenced herein, such filing of notice or visible start of

work must occur after the Developer has received a building permit for the particular Phase, Improvement or Climate Ribbon on which construction is proposed to commence.

(k) Completion of Construction shall mean, for Improvements or the Climate Ribbon, or a Phase (if applicable), the date a Temporary Certificate of Occupancy or Certificate of Occupancy is issued for such Improvements or Phase.

(l) Construction Plans shall consist of final design plans for particular improvements of a Phase 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 Section 4.4.

(m) Designated Representative shall have the meaning ascribed thereto in Section 4.14 herein.

(n) Developer shall mean, on the Effective Date, Swire Properties, Inc., a Florida corporation. Thereafter, "Developer" shall mean the owner(s) at the time in question of the Developer's interest under this Agreement, so that if Swire Properties, Inc., a Florida corporation, or any successor to its interest hereunder ceases to have any interest in this Agreement, whether by reason of assignment, transfer or sale of the Developer's interest hereunder, the assignor, transferor or seller shall, subject to the provisions of Section 14.1, be released from and relieved of all agreements, covenants and obligations of the Developer hereunder to be performed after the date of such assignment, transfer or sale. Nothing herein shall be construed to relieve the Developer from any liability or damages arising from actions or omissions occurring or agreements, covenants and obligations required to be performed prior to the date of any such assignment, transfer or sale of the Developer's interest hereunder. Notwithstanding the foregoing, Swire Properties, Inc. shall remain liable for the representations and warranties of Section 20.2.

- (o) Development Rights shall mean, for purposes of the Property and this Agreement, the rights granted to the Developer pursuant to the terms of this Agreement.
- (p) Development Term shall have the meaning ascribed to such term in Section 1.2(a) herein.
- (q) Development Term Expiration Date shall have the meaning ascribed to such term in Section 1.2(a) herein.
- (r) Effective Date shall mean the date on which the County and the Developer have both executed this Agreement.
- (s) Event(s) of Default shall have the meaning ascribed to such term in Sections 16.1 and 16.4 herein.
- (t) FDOT shall be given the meaning ascribed to such term in Section 1.3 herein.
- (u) Final Design Plans shall mean the final plans and specifications for a Phase, for certain Improvements, or for the Climate Ribbon, as applicable.
- (v) FTA shall have the meaning ascribed to such term in Section 1.3 herein.
- (w) 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, except for such taxes, assessments and charges as they relate to the Land or improvements of the Owner located on the Property which shall be the responsibility of the Owner, and the Developer shall be held harmless by the County for any claims therefor.
- (x) Improvement(s) shall mean the enhanced vertical transportation to the Station, the horizontal connection to Brickell CitiCentre and the supplemental landscaping which Developer intends to install, subject to Unavoidable Delays. Such Improvements are generally depicted on the renderings attached on Schedule 2.1 hereof; however, the Parties agree and acknowledge that Schedule 2.1 is merely a general depiction of the Improvements and that modifications may occur to same, subject to

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the terms of Section 1.4 hereof. Improvements may also include other buildings or structures (as the context indicates) and other additions to be erected or installed on, above, or below the Property or a portion thereof as contemplated by this Agreement and in accordance with Article 4 below. The Climate Ribbon is not an "Improvement" as defined herein.

(y) Land shall mean the real property described in Schedule 1.1 hereto, and generally depicted on Schedule 1.2, 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, the Climate Ribbon and development of the Project.

(z) 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.

(aa) Maintenance and Easement Term shall have the meaning ascribed to such term in Section 1.2(b) herein.

(bb) MDT shall have the meaning set forth in the Preamble of this Agreement.

(cc) Notice shall have the meaning ascribed to such term in Section 17.2 herein.

(dd) Owner shall mean, on the Effective Date, the County, by and through MDT. Thereafter, "Owner" shall mean the owner at the time in question of the County's interest in the Property, so that if the County or any successor to its interest hereunder ceases to have any interest in the Property or if there is any sale or transfer of the County's interest in the Property, the seller or transferor shall be entirely freed and relieved of all agreements, covenants and obligations of the County hereunder to {23685536;1}

be performed after the date of such sale or transfer provided that the purchaser, successor or transferee of the County's interest in the Property assumes in writing all such agreements, covenants and obligations of the County. Nothing herein shall be construed to relieve the County or any subsequent Owner from any liability or damages arising from actions or omissions occurring or agreements, covenants and obligations required to be performed prior to the date of any such assignment, transfer or sale of the County's or such applicable Owner's interest hereunder. Notwithstanding the foregoing and without limiting the previous sentence, the County shall remain liable for the representations and warranties of Section 20.1.

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

(ff) Phase or Phases shall have the meaning ascribed to such term(s) in Section 3.1.

(gg) Plans and Specifications shall mean the plans and specifications for all the work in connection with the alteration, construction and reconstruction of the Climate Ribbon, the Improvements, and all Phases, as applicable, of the Project on the Property pursuant to the Special

Area Plan and the Proposal, including any changes, additions or modifications thereof, provided the same are approved pursuant to applicable Laws and Ordinances and Section 1.4 hereof.

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

(ii) Project shall mean the development on the Property contemplated by the response by the Developer to the request for proposal for the Development of Brickell Metromover Property RFP No. 798, as such proposed development may be amended and/or revised from time to time ("Proposal") (except that any material amendment to the Project as it may expressly effect the Property, shall require the consent of the parties) specifically as it pertains to the construction on the Property, including, but not limited to the development and integration of the Climate Ribbon and Improvements contemplated hereunder.

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

(i) the Land;

(ii) the Improvements, the Climate Ribbon and any other improvements now or hereafter existing; and

(iii) the Air Rights;

TOGETHER WITH:

(A) all the right, title and interest of the Owner in and to the sidewalks, streets, avenues, curbs and roadways fronting on and abutting the Property except to the extent expressly reserved herein to the Owner;

(B) the drains, utility lines, utility or other easements, stairwells, escalators, elevator shafts and pits and headhouses, and other improvements of the Owner

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located on, in, beneath or in areas adjacent to the Property to be used in connection with the Project, substantially as contemplated and to the extent set forth in the Proposal and the Special Area Plan and as shall be set forth in the Plans and Specifications;

(C) all such rights of support and rights of use for the support of the Climate Ribbon, the Improvements and any other improvements and the Project thereon;

(D) the right of access to erect, maintain, repair, renew and replace such stairwells, escalators, elevators and other facilities; and

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

RESERVING UNTO THE COUNTY, subject to the remaining provisions of this Agreement, the following:

- (i) the permanent and perpetual non-exclusive right for the term of this Agreement of ingress, egress and passageway in, over, through and across the Public Areas of the Property which shall be necessary or desirable for entrance, exit and passageway of persons and property, including vehicles, to and from the Station and the System;
- (ii) all subsurface rights under the Land, sidewalks, streets avenues, curbs and roadways fronting on and abutting the Property;
- (iii) the permanent and perpetual non-exclusive right to use the space located in the Public Areas of the Property; and

- (iv) the permanent and perpetual non-exclusive right to use and occupy the space located in the Public Areas of the Property to be occupied by Station signs.

IT BEING UNDERSTOOD between the parties hereto that no portion of the Station or the System is being leased, conveyed or granted or intended to be leased, conveyed or granted to the Developer and that all portions or areas of the Station and the System are expressly EXCEPTED AND RESERVED unto the County, except to the extent that rights in respect thereof and to the Climate Ribbon and Improvements are granted to the Developer as hereinbefore provided.

(kk) Proposal shall have the meaning ascribed to such term in the definition of "Project" above.

(ll) Public Areas shall mean those areas of the Property both enclosed and unenclosed, generally available and open to the public during normal business hours, but shall not include common areas in the respective residential, office or the commercial components of other areas of the Project or access or entranceways thereto.

(mm) Special Area Plan shall mean the plans for the improvements to be constructed on the Property set forth in that certain "Special Area Plan" for Brickell CitiCentre approved on July 29, 2011 by the City of Miami, as amended from time to time.

(nn) Station shall mean the existing Eighth Street Metromover Station portion of the System.

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

(pp) Taking shall mean the exercise of the power of eminent domain as described in Article 15.

(qq) Temporary Certificate of Occupancy shall mean the temporary certificate issued by the person or agency authorized to issue a temporary certificate of occupancy or temporary certificate of

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completion, as applicable, evidencing that the applicable Improvement(s) or Climate Ribbon, as applicable, is (are) ready for occupancy in accordance with applicable Law or Ordinance.

(rr) Term shall have the meaning ascribed to such term in Section 1.2(b) herein.

(ss) Unavoidable Delays are delays beyond the control of a party required to perform, such as, but not limited to, delays due to strikes; acts of God; floods; fires; any act, neglect or failure to perform of or by the Owner; enemy action; civil disturbance; sabotage; restraint by court or public authority; litigation or administrative challenges by third parties to the execution or performance of this Agreement or the procedures leading to its execution; moratoriums; or any release, discharge or presence of hazardous substances or other environmental contamination or hazard. The obligated party shall be entitled to an extension of time because of its inability to meet a time frame or deadline specified in this Agreement where such inability is caused by an Unavoidable Delay, provided that such party shall, within fifteen (15) days after it has become aware of such Unavoidable Delay, give notice to the other party in writing of the causes thereof and the anticipated time extension necessary to perform. Neither party shall be liable for loss or damage or deemed to be in default hereof due to any such Unavoidable Delay(s), provided that party has notified the other as specified in the preceding sentence and further provided that such Unavoidable Delay did not result from the fault, negligence or failure to act of the party claiming the delay. Failure to notify a party of the existence of Unavoidable Delays within the fifteen (15) days of its discovery by a party shall not void the Unavoidable Delays, but the time period between the expiration of the fifteen (15) days period and the date actual notice of the Unavoidable Delays is given shall not be credited to the obligated party in determining the anticipated time extension. In no event shall a delay by the Owner or any agency thereof in issuing an approval, consent, joinder, Permit or certificate be deemed an Unavoidable Delay by which the Owner may benefit or receive an extension of time.

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ARTICLE 3

Phased Development

Section 3.1 Phased Development. the extent desired by the Developer, the development of the Property, the Improvements and the Climate Ribbon may be done in phases pursuant to the Plans and Specifications of the Developer. Each of the phases, if any, is hereinafter referred to as a "Phase" and are collectively referred to as the "Phases". Each Phase may be constructed and developed independently of the other Phases and in any sequence.

Section 3.2 Discontinued Use of Station or System. The Owner covenants and agrees with the Developer that the Owner will not discontinue, substantially curtail, or cease the operation of the Station or the System during the Term of this Agreement. In the event the Owner, directly or indirectly, determines to discontinue, substantially curtail, or cease the operation of the Station or the System, which under the terms of this Agreement and otherwise it has agreed to operate, in addition to any other rights the Developer has hereunder, (a) the Developer shall have the right to terminate this Agreement and its obligations hereunder by giving written notice to the County within six (6) months 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; (b) in the event the Developer does not terminate this Agreement as set forth above, the Developer shall have the right after a discontinuance, curtailment, or cessation of the Station and/or System, that is continuous for ninety (90) consecutive days, excluding any Unavoidable Delays, to cease its obligations to maintain the Improvements as required hereunder; and (c) any time period under this Agreement shall be tolled for such period of discontinuance, substantial curtailment and/or cessation.

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Section 3.3 Approved Restriction Adjustments. In the event, due to Laws and Ordinances and/or Unavoidable Delays, the Developer is not able to build the Project as originally described in the Proposal and the Special Area Plan or the Developer cannot obtain its Permits (as reasonably determined by the Developer), then in addition to any other rights the Developer has hereunder, the Developer shall have the right to terminate this Agreement and its obligations hereunder by giving written notice to the County within six (6) months 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.

ARTICLE 4

Development of Land and Construction of Improvements and Climate Ribbon

Section 4.1 Land Uses.

- (a) The Parties agree, for themselves and their successors and assigns, to devote the Property to the uses specified in this Agreement, including temporary construction staging and parking, and for other or additional uses, which subject to Section 1.4, are consistent with the Proposal and the Special Area Plan.
- (b) The Parties recognize and acknowledge that the manner in which the Property, Improvements and Climate Ribbon are developed, used and operated are matters of critical importance to the County and to the general welfare of the community. The Developer agrees that during the Development Term, the Developer will use reasonable efforts to develop the Climate Ribbon and the Improvements substantially consistent with the Proposal and the Special Area Plan and during the Maintenance and Easement Term, maintain such Improvements and the Climate

Ribbon as set forth herein, the intent of which is to (i) enhance the ridership and usage of the System and (ii) create strong access links between the Project and the System.

Section 4.2 Development Rights and Phases. During the Development Term, the Developer shall have the right to develop the Property, to construct the Climate Ribbon and to construct the Improvements required in connection with such development, subject to the terms and conditions of this Agreement, including the following:

- (a) Development Rights of Land. It is intended that the Property will be developed pursuant to the Proposal and the Special Area Plan. Except as provided in Section 1.4 and subject to the terms set forth in this Section 4.2, in connection with the construction of the Project, the Owner will join in such Permits or other permits, licenses, approvals, or other administrative documents as provided in this Agreement, as may be necessary for the Developer to develop and use the Property in accordance with the Special Area Plan and the Proposal and in a manner otherwise permitted hereunder, provided that (i) such joinder by the Owner shall be at no cost to the Owner other than its costs of review; (ii) 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 (iii) the Owner agrees to use best efforts to review and approve (or disapprove with an explanation for such disapproval) any such requests within seven (7) business days of such request from the Developer (the "Administrative Review Period") (except in the event that Board approval is required under applicable Laws and Ordinances for such approval, in which case Section 19.15 shall prevail). In the event that Board approval is not required under applicable Laws and Ordinances, the Owner agrees that if the Owner has not provided the Developer with written notice of its approval or disapproval within the Administrative Approval Period, the Developer shall have the right to deliver written notice to

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the Owner advising the Owner that the Owner has not responded to the Developer within the Administrative Review Period and the Owner shall have an additional three (3) business days thereafter to respond to the Developer with such approval or disapproval (the "Additional Notice Period"). In the event that the Owner fails to respond after the expiration of the Additional Notice Period, the Owner shall be deemed to have consented to the applicable request of the Developer that is then at issue under such request.

- (b) Easement, Climate Ribbon. Owner hereby grants Developer a perpetual non-exclusive easement over and above Parcel C and Parcel D, as legally described in Schedule 1.1 hereto, to construct, access, maintain and repair the Climate Ribbon, and to the Property for purposes of construction support and accessing, maintaining and repairing the Climate Ribbon.
- (c) Easements, Rights to Land. Notwithstanding anything in Section 4.2(a) to the contrary, nothing herein shall be construed to limit the rights of the Owner under Section 4.2(d) herein or to require the Owner, subject to Section 19.15, to agree to any easements, restrictive covenants, easement vacations or modifications or such other documents that require the consent of the Board pursuant to applicable Laws and Ordinances.
- (d) Miami-Dade County's rights as sovereign. It is expressly understood that notwithstanding any provision of this Agreement and the County's status as owner thereunder:
 - (i) The County retains all of its sovereign prerogatives and rights as a county under Florida laws (but not in regard to the performance of its contractual duties hereunder) and shall in no way be estopped from withholding or refusing to issue any approvals of applications for building or zoning; from exercising its planning or regulatory duties and authority; and from requiring development under present or future (as applicable) Laws and

Ordinances of whatever nature applicable to the design, construction and development of the Improvements and Climate Ribbon provided for in this Agreement; and

- (ii) The County shall not by virtue of this Agreement be obligated to grant the Developer, the Property or the Project any approvals of applications for building, zoning, planning or development under present or future (as applicable) Laws and Ordinances of whatever nature applicable to the design, construction and development of the Buildings and other Project improvements provided for in this Agreement.

Section 4.3 Conformity of Plans. Preliminary Plans and Construction Plans and all work by the Developer with respect to the Property and to the Developer's construction of or installation thereon shall be in conformity with this Agreement, applicable Laws and Ordinances, all as subject to Section 1.4.

Section 4.4 Design Plans; Construction Plans; MDT Review and Approval Process.

- (a) The Developer shall submit design and construction documents to MDT for review, coordination and approval of each Phase, if applicable, of the Project, pursuant to the terms of Section 1.4. For each submittal, the Developer shall submit eight sets of prints with the date noted on each print.
- (b) At 100% design completion of any Phase the Developer shall submit to MDT the Final Design Plans. MDT shall review these plans to ensure that all previous MDT comments to which the parties have agreed have been incorporated therein. However, the Developer may request reconsideration of any comments made by MDT.

- (c) Upon receipt of each of the above-mentioned submittals (and excluding any Permits or other administrative reviews under Section 4.2 above), MDT shall review same, subject to Section 19.15 and shall, within no later than thirty (30) days after receipt thereof, advise the Developer in writing of its approval or disapproval, setting forth in detail its reasons for any disapproval. Any resubmission shall be subject to review and approval by MDT, in accordance with the procedure hereinabove provided for an original submission, until the same shall receive final approval by MDT. MDT and the Developer shall in good faith attempt to resolve any disputes concerning the Plans in an expeditious manner pursuant to Section 19.15.
- (d) Upon the approval of the Final Design Plans for any Phase, such design shall be the Construction Plan for that Phase. MDT'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 significant change occurs after approval of the Final Design Plan for a Phase, then the Developer must resubmit the changed portion of the construction plans for MDT's reasonable approval (unless the change is required by another Miami-Dade County department as part of the permitting process).

Section 4.5 As-Built Plans. At the completion of the Improvements and the Climate Ribbon constructed or installed in or on the Property, the Developer shall provide to the County eight sets of "as-built" construction plans for the Improvements and the Climate Ribbon.

Section 4.6 Developer Obligations. MDT approval of any concept plans pursuant to this Article 4 and Section 1.4 shall not relieve the Developer of its obligations under applicable Laws and 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 19.15 and join in (if applicable), with the Developer in

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connection with the obtaining of such approvals and Permits, and that the Developer shall have the right to execute any and all applications, approvals and consents for any Permits relating to the Climate Ribbon and the Improvements of the Property and the Project without any further joinder, consent or approval from the Owner as long as the Climate Ribbon and contemplated Improvements are consistent with the Proposal and the Special Area Plan, but in the event that the Owner's authorization or signature is required for any Permit and Board approval thereof is not required under applicable Laws and Ordinances, the Owner agrees to execute any such Permit, approval or consent within the Administrative Review Period. The Developer acknowledges that any approval given by the Owner, as owner, pursuant to this Article 4, shall not constitute an opinion or agreement by the Owner that the plans are structurally sufficient or in compliance with any Laws or Ordinances, and no such approval shall impose any liability upon the Owner.

Section 4.7 Facilities to be Constructed. The Owner shall not be responsible for any costs or expenses of construction or installation of the Climate Ribbon and the Improvements, except as otherwise provided herein or agreed to by the Parties.

Section 4.8 Progress of Construction. From the Commencement of Construction and until Completion of Construction, upon written request of the Designated Representative, which such request shall not occur more than quarterly, the Developer shall submit a report to the Designated Representative of the progress of the Developer with respect to development and construction of the Climate Ribbon and the Improvements. 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 site under sound and prudent engineering practices, and will correlate the results of the test borings

and subsurface engineering and other available studies and its observations with the requirements of the construction and development of the Improvements and the Climate Ribbon.

Section 4.9 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 Project located on the Property (excepting all of the System facilities) shall, upon being added thereto or incorporated therein, and the Project itself, be and remain the property of the Owner, not including personal property of the Developer such as the Climate Ribbon.

Section 4.10 Ownership of Climate Ribbon. The Climate Ribbon is a proprietary name and concept of the Developer, and the Climate Ribbon, as well as all material and equipment provided by the Developer or on its behalf which is incorporated into the Climate Ribbon shall be and remain the property of the Developer.

Section 4.11 Mutual Covenants of Non-Interference. The Developer's development and construction of the Project 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 for construction, maintenance or repairs to the Improvements and the Climate Ribbon and the Owner agrees to reasonably cooperate with such interruption in order to enable such construction, maintenance or repairs, and such interruption, if at the request of the Developer for purposes of construction, maintenance or repairs of the Improvements or Climate Ribbon, shall not be deemed an Unavoidable Delay or result in an extension of the Term to the Developer. Similarly, the Owner's use of the Station area and the System shall not materially and adversely interfere with the Developer's development and construction of the Project (including, the development of the Project adjacent to the Property) and

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its use and operation of the Property, the Climate Ribbon and the Improvements to be constructed thereon, unless prior arrangements have been made in writing between the Parties. The Owner may at any time during the Development Term of this Agreement, stop or slow down construction 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. Any such slowdown or stoppage shall be deemed to be an Unavoidable Delay and shall entitle the Developer to appropriate extensions of time hereunder, provided that such safety hazard which caused the slowdown or stoppage is not the result of the Developer's negligence or willful act.

Section 4.12 Connection to Utilities. During the Development Term, the Developer, at its sole cost and expense, shall install or cause to be installed all necessary connections between the Climate Ribbon and 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 19.15 hereof to the extent that the Developer needs the Owner to join in any agreements or documents for installation of any connections necessary for the Project or required by the Developer. The cost of all utilities relating to the Improvements, including, without limitation, gas, water, sewer and electric utilities and services shall be borne by and shall be the sole responsibility of the Owner.

Section 4.13 Signage and 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 and signage. All costs of developing such plans shall be paid by the Developer.

Section 4.14 Designation of the Owner's Representative. The Miami-Dade Transit Director or his/her designee, or such person as subsequently designated by the Miami-Dade Transit Director {23685536;1}

upon written notice to the Developer, shall have the power, authority and right, on behalf of the Owner, in its capacity as Owner hereunder, and without any further resolution or action of the Board, FTA or FDOT, to the extent allowed by applicable Laws and Ordinances, to:

- (a) review and approve (if required) documents, plans, applications, lease assignments and requests required or allowed by the Developer to be submitted to the Owner pursuant to this Article and this Agreement;
- (b) consent to actions, events, and undertakings by the Developer for which consent is required by the Owner;
- (c) make appointments of individuals or entities required to be appointed or designated by the Owner in this Agreement;
- (d) execute non-disturbance agreements and issue estoppel statements 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 Climate Ribbon and any and all Improvements in and refurbishments of the Property, and to amend this Agreement to correct any typographical or non-material errors.

Notwithstanding anything herein to the contrary, the Owner agrees that within three (3) business days after the Effective Date to deliver written notice to the Developer designating the Owner's designated representative (the "Designated Representative"). The Designated Representative shall have the rights as set forth in clauses (a)-(f) above and will be the primary contact for the Developer in {23685536;1}

connection with this Agreement and any submissions, approvals, consents, joinders or inquiries with respect to this Agreement, the Property, the Climate Ribbon and the Improvements.

Section 4.15 Additional Work. The Parties hereby acknowledge, that if both Parties agree, that the Owner may contract for certain work or services to be provided by the Developer in the Station, including but not limited to, construction and maintenance items (excluding those construction and maintenance obligations expressly set forth in this Agreement). If such work is not part of the Project, the Proposal or the Special Area Plan, it shall be done at the cost of the Owner.

ARTICLE 5

Payment of Taxes, Assessments

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

ARTICLE 6

Insurance

The Parties hereby agree that the terms and provisions governing the insurance required pursuant to this Agreement are contained in Schedule 6 hereto, which is hereby incorporated herein by reference.

ARTICLE 7

Operation

Section 7.1 Control of the Property; Improvements and Climate Ribbon. During the Development Term and the construction of the Climate Ribbon and the Improvements, the Developer shall have the right to develop, direct and manage the development of the Climate Ribbon and the Improvements. The Owner covenants and agrees to use reasonable efforts to continuously operate the Property consistent with prudent business practices. After Completion of Construction, the Developer shall throughout the Maintenance and Easement Term continue to maintain the

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Climate Ribbon and Improvements in accordance with prudent business practices, unless separately contracted in writing with the Owner to do any maintenance or repairs.

Section 7.2 Non-Interference. The Parties hereby mutually agree not to unreasonably interfere with the free flow of pedestrian or vehicular traffic to and from the Public Areas and to and from the Station. They further agree that, except for those structures reasonably necessary for security and safety purposes, no fence, or any other structure of any kind (except as may be specifically permitted or maintained under the provisions of this Agreement, indicated on approved Construction Plans or otherwise mutually agreed upon in writing) shall be placed, kept, permitted or maintained in such fashion as to materially or adversely interfere with pedestrian or vehicular traffic to and from the Public Areas and to and from the Station. The foregoing shall not prohibit the Developer from closing the Improvements or the Climate Ribbon and denying access to the public at such times and in such manner as deemed necessary by the Developer during the development or construction of the Climate Ribbon or any portion of the Improvements, the repair and maintenance of the Property, during the operation of the Property or the operation of the adjacent Project, provided such closing does not materially and adversely interfere with

- (a) the public's reasonable access to the Station, or
- (b) Owner's customary operation of the System, unless the Developer obtains MDT's prior written consent.

Section 7.3 Repair and Relocation of Utilities. The Parties hereby agree to maintain and repair, and each party is given the right to replace, relocate, and remove, as necessary, utility facilities within the Property required for the operation of the Climate Ribbon, the Project, the Property or of the System, provided:

- (a) Such activity does not materially or adversely interfere with the other party's operations;

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- (b) All costs of such activities are promptly paid by the party causing such activity to be undertaken;
- (c) Each of the utility facilities and the Property are thereafter restored to their former state; and
- (d) Each party complies with the provisions of all Permits and licenses which have been issued and are affected by such repair and relocation.
- (e) The Owner agrees to cooperate with the Developer in relocating existing utility lines and facilities on the Property which need to be relocated to develop the Project, including reasonable use of existing easements benefiting the Land and adjoining rights of way to the Land.

Section 7.4 Rights to Erect Signs; Revenues Therefrom.

- (a) The Owner hereby agrees that, to the extent permitted by law, the Developer shall have, subject to MDT approval, the right, during the Term, to place, erect, maintain and operate, or cause the placement, erection, maintenance and operation of any signs or advertisements in accordance with Section 7.4 of this Agreement, in or on the Property. It is explicitly agreed and understood that this Agreement does not provide any rights for the Developer to place signs or advertisements within the Station other than those signs or advertisements placed according to Section 7.6. The Developer shall be responsible for obtaining any and all permits and licenses which may be required from time to time by any governmental authority for such signs and advertisements, and the Owner agrees to execute any consents reasonably necessary or required by any governmental authority as part of the Developer's application for such Permits or licenses.

- (b) The Developer shall be allowed, subject to MDT approval, the right, during the Term, to place, erect, maintain and operate, or cause the placement, erection, maintenance and operation of:
- (i) Signs or advertisements identifying the CitiCentre Buildings and Improvements and in particular office, hotel, residential, retail, and commercial uses therein;
 - (ii) Signs or advertisements offering all or any portion of the CitiCentre Buildings or Improvements for sale or rent; and
 - (iii) All signs required by applicable Laws and Ordinances.
- (c) Signs and advertisements advertising any product, company, or service operating in CitiCentre or other commercial speech related thereto may be placed only in the area described in the Proposal and the Special Area Plan as a pedestrian overpass connecting CitiCentre Buildings to the Station.
- (d) The Developer shall have the right to remove any signs the Developer installed which, from time to time, may have become obsolete, unfit for use or which are no longer useful, necessary or profitable in the conduct of the Developer's business, or in the occupancy and enjoyment of the Property by the Developer.
- (e) As used in this Agreement, "sign(s)" shall be deemed to include any display of characters, letters, illustrations, logos, or any ornamentation designed or used as an advertisement or to indicate direction, irrespective of whether the same be temporary or permanent, electrical, illuminated, stationary or otherwise.

(f) 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 on the Property.

Section 7.5 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 in the area described in the Proposal and the Special Area Plan as a pedestrian overpass connecting CitiCentre Buildings and Improvements to the Station at the sole expense of the County and at locations and in sizes mutually agreed upon by the Parties. Nothing in this Section limits the County's right as Owner to place signs or advertisements on any other portion of the Property.

Section 7.6 Developer's Signs in Station. The Developer shall be permitted to place signs providing directional information related to CitiCentre Buildings within the station consistent with Laws and Ordinances and MDT rules and regulations, at the sole expense of the Developer, and at locations and in sizes mutually agreed to by the Parties. No such placement of signs shall interfere with ongoing System or Station operations.

ARTICLE 8

Repairs and Maintenance of the Premises

Section 8.1 Owner Repairs and Maintenance. Throughout the Term, the Owner, at its sole cost and expense, shall keep the Station and the Property in good order and condition, make all necessary repairs thereto and ensure that there is no net decrease in the levels of maintenance and security allocated to the Station on the Effective Date. 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, ordinary wear and tear and loss by fire or other casualty excepted. 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. The Developer, at its option, and after thirty (30) days written notice to the Owner, may perform any maintenance or repairs required of the Owner hereunder which have not been performed by the Owner following the notice described above, and may seek reasonable cost and expenses thereof from the Owner.

Section 8.2 Developer Repairs and Maintenance. Throughout the Maintenance and Easement Term, the Developer, at its sole cost and expense, shall keep the Climate Ribbon and the Improvements in good order and condition, and make all necessary repairs thereto. The term "repairs" shall include all replacements, renewals, alterations, additions and betterments deemed necessary by 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, ordinary wear and tear and loss by fire or other casualty excepted. The Developer shall keep and maintain all portions of the Climate Ribbon and the Improvements in a clean and orderly condition, reasonably free of dirt, rubbish, graffiti, and unlawful obstructions. In addition, the Developer shall have the right to provide enhanced security, maintenance, and/or repairs to the Property, at its option, and after thirty (30) days written notice to the Owner. The Owner, at its option, and after thirty (30) days written notice to the Developer, may perform any maintenance or repairs required of the Developer hereunder which have not been performed by the Developer following the notice described above, and may seek reasonable cost and expenses thereof from the Developer.

ARTICLE 9

Compliance with Laws and Ordinances

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Section 9.1 Compliance by the Parties. Throughout the Term, the Parties, at their own cost and expense, shall promptly comply with all applicable Laws and Ordinances. To the extent that the Developer's compliance shall require the cooperation and participation of the County, the County agrees to use its best efforts to cooperate and participate in accordance with the Joint Use Policy for Joint Development Projects, as set forth in County Commission Resolution R-1443A-81, adopted September 28, 1981.

Section 9.2 Contest by the Developer. The Developer shall have the right, after prior written notice to the Owner, to contest the validity or application of any Law or Ordinance by appropriate legal proceedings diligently conducted in good faith, in the name of the Developer without cost or expense to the Owner, except as may be required in the Owner's capacity as a party adverse to the Developer in such contest. If counsel is required, the same shall be selected and paid by the Developer, except to the extent that the Owner is an adverse party to the Developer, in which case the Developer shall have no obligation to pay for the Owner's counsel. The Owner hereby agrees to execute and deliver any necessary papers, affidavits, forms or other such documents necessary for the Developer to confirm or acquire status to contest the validity or application of any Law or Ordinance, which instrument shall be subject to the reasonable approval of counsel for the Owner, which approval shall not be unreasonably withheld or delayed. The Owner shall not be required to join in any such contest unless its joinder is required for a contest to be valid.

ARTICLE 10

Changes and Alterations to Improvements and Climate Ribbon by the Developer

Section 10.1 Developer's Right. The Developer, with the Owner's approval, shall have the right, subject to Section 1.4, at any time and from time to time during the Term, at its sole cost and expense, to expand, rebuild, alter and/or reconstruct the Climate Ribbon and the Improvements and {23685536;1}

to raze the Climate Ribbon and the Improvements in accordance with applicable Laws and Ordinances and provided any such razing shall be preliminary to and in connection with the rebuilding of a new Climate Ribbon or Improvements. Notwithstanding anything herein to the contrary, any future development to the Climate Ribbon, the Improvements or the Property shall be subject to Section 1.4 herein and consistent with the Proposal and the Special Area Plan.

ARTICLE 11

Discharge of Obligations

Section 11.1 Developer's Duty. During the Term, the Developer will discharge any and all obligations incurred by the Developer to third parties, it being understood and agreed that the Developer shall have the right to withhold any payment (or to transfer any such lien to a bond in accordance with applicable Florida law) so long as it is in good faith disputing liability therefor or the amount thereof. In the event that the Developer withholds any payment as described herein, it shall give written notice to the Owner of such action and the basis therefor. The Developer shall record the applicable notice of commencement with the Section 255, Florida Statutes performance bond information attached thereto as required under Section 713 and Section 255, Florida Statutes.

Section 11.2 Owner's Duty. During the Term, the Owner will discharge any and all obligations incurred by the Owner to third parties, it being understood and agreed that the Owner shall have the right to withhold any payment so long as it is in good faith disputing liability therefor or the amount thereof.

ARTICLE 12

Limitation of Liability

Section 12.1 Limitation of Liability of the Owner. The Owner shall not be liable to the Developer for any incidental or consequential loss or damage whatsoever arising from the rights of the Owner hereunder.

Section 12.2 Limitation of Liability of the Developer. The Developer shall not be liable to the Owner for any incidental or consequential loss or damage whatsoever arising from rights of the Developer hereunder. Excluding damage to the System caused by the Developer, any liability of the Developer hereunder is limited to the fair market value of the Improvements made by the Developer to the Land.

ARTICLE 13

Damage and Destruction

Section 13.1 Developer's Right to Restore. If, at any time during the Term of this Agreement, the Climate Ribbon or the Improvements on the Property affecting the Developer's Project as a whole or any part thereof shall be damaged or destroyed by fire or other casualty, the Developer, at its option and its sole cost and expense, and provided that the insurance proceeds related to such casualty are made available to the Developer for use in connection therewith, shall have the right to (a) terminate this Agreement and, if requested by the Owner, remove the Climate Ribbon or the Improvements and repair any damage as a result of such removal, from the Property; or (b) repair, alter, restore, replace or rebuild the same as nearly as reasonably possible to its value, conditions 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 consistent with the Special Area Plan, the Proposal or such

other Construction Plans or other plans previously approved by the Owner pursuant to Section 1.4 herein.

Section 13.2 Owner's Right to Repair and Rebuild Station. If, at any time during the Term, the Station or System affecting the Property and the Project are damaged or destroyed by fire or other casualty, the Owner, at its option and its sole cost and expense, and provided that the insurance proceeds related to such casualty are made available to the Owner for use in connection therewith, shall have the right to repair, alter, restore, replace or rebuild the same as nearly as reasonably possible to its value, conditions 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 Special Area Plan, the Proposal or such other Construction Plans or other plans previously agreed upon by the Owner and the Developer. If the Owner does not elect to restore or rebuild, the Developer shall have the right to terminate this Agreement.

Section 13.3 Interrelationship of Agreement Sections. Except as otherwise provided in this Article 13, the conditions under which any Work is to be performed and the method of proceeding with and performing the same shall be governed by all the provisions of Article 4 herein.

Section 13.4 Loss Payees of Developer -Maintained Property Insurance. With respect to all policies of property insurance required to be maintained by the Developer in accordance with Schedule 6 attached,

- (a) the County shall be named as an additional insured as its interest may appear, and
- (b) the loss thereunder shall be payable to the Developer.

The Owner shall not unreasonably withhold its consent to a release of the proceeds of any fire or other casualty insurance for any loss which shall occur during the Term for repair or rebuilding. Any

proceeds remaining after completion of rebuilding or repair under this Article, shall be paid to the Developer.

Section 13.5 Repairs Affecting Station or Property. Before beginning any repairs or rebuilding, or letting any contracts in connection therewith, as necessitated by any damage to or destruction of the Property which adversely affects the entranceways to the Station or System or the Developer's Climate Ribbon or 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 14

Transfers

Section 14.1 Developer's Right to Transfer. During the Term, 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) In the event of a transfer of all of the Developer's rights hereunder, the Developer shall deliver written notice to the Owner of such transfer, together with a copy of the transfer agreement (if applicable) and the address for the transferee thereunder;
- (b) Upon the transfer by the Developer, the Developer shall be released and discharged from all of its duties and obligations hereunder which pertain to this Agreement for the then unexpired Term;

- (c) Any sale, assignment or transfer of all or any part of the Developer's interest in this Agreement and the Property 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 applicable to that portion of the Property being sold, assigned or transferred, and agree to be subject to all conditions and restrictions to which the Developer is subject, but only for matters accruing while such assignee or transferee holds, and only related to, the sold, assigned, or transferred interest. However, nothing in this subsection or elsewhere in this Agreement shall abrogate (i) the Developer's right to payment of any sums due to the Owner which accrued prior to the effective date of such transfer, and the Owner shall always have the right to enforce collection of such sums due in accordance with the terms and provisions of this Agreement; and (ii) the obligation for the development, use and operation of every part of the Climate Ribbon or the Improvements to be in compliance with the requirements of this Agreement; and
- (d) The Developer shall not have the right to assign this Agreement or its rights and obligations under this Agreement to a party that is on the Miami-Dade County Delinquent Vendor List or Disbarment List, or its then equivalent, without the prior consent of the Owner.

Section 14.2 Owner's Right to Transfer. During the Term, 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) Owner shall deliver written notice to Developer of such transfer, together with a copy of the transfer agreement (if applicable) and the address for the transferee thereunder;
- (b) Upon the transfer by Owner pursuant to the terms of this Agreement, Owner shall be released and discharged from all of its duties and obligations hereunder from and after the effective

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date of such transfer and only those which pertain to the portion of the Property or the Improvements transferred;

- (c) Any sale, assignment or transfer of all or any part of Owner's interest in the 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 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 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) Any successor, assignee or transferee of Owner shall be prohibited from using the Property, the Climate Ribbon or the Improvements or any portion hereof for any of the prohibited uses as described in Article 16 herein or in a manner that will adversely impact Developer or the Project.

ARTICLE 15

Eminent Domain

Section 15.1 Taking of Entire Property If at any time during the Term, the power of eminent domain shall be exercised by any federal or state sovereign or their proper delegates, by condemnation proceeding (a "Taking"), to acquire the entire Property, such Taking shall be deemed to have caused this Agreement to terminate and expire on the date of such Taking. The Developer's right to recover a portion of the award for a Taking, as hereinafter provided, is limited to the fair market value of the Climate Ribbon, and any Improvements which the Developer owns, and in no event shall the Developer be entitled to compensation for any fee interest in the Land.

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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, subject to the Agreement, and as if vacant and assuming no Improvements existed on the Property, at the time of taking. For the purpose of this Article 15, 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 Owner shall, in all other respects, keep, observe and perform all the terms of this Agreement up to the date of such Taking.

Section 15.2 Partial Taking; Termination of Agreement. If, in the event of a Taking of less than the entire Property during the Term, the remaining portion of the Property not so taken cannot be adequately restored as required by the Developer, in the Developer's sole discretion, then the Developer shall have the right, to be exercised by written notice to the Owner within one hundred twenty (120) days after the date of Taking, to terminate this Agreement on a date to be specified in said notice, which date shall not be earlier than the date of such Taking, in which case this Agreement shall be terminated and the term herein demised shall cease and terminate.

Section 15.3 Partial Taking; Continuation of Agreement. If following a partial Taking during the Term, this Agreement is not terminated as hereinabove provided then, this Agreement shall terminate as to the portion of the 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 Climate Ribbon or 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 15.1 herein.

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Section 15.4 Inverse Condemnation or Other Damages. In the event of damage to the value of the Property by reason of change of grade, access rights, street alignments or any other governmental or quasi-governmental act (not involving the Owner) which constitutes an inverse condemnation of any portion of the Property creating a right to full compensation therefor, then the Parties shall each be entitled to claim and receive from the net payment or award made on account thereof, the compensation for their respective estates and interests as set forth in Section 15.1.

Section 15.5 Taking by the County.

- (a) Should the County condemn the Property or any portion thereof within the first thirty (30) years of the term of this Agreement, it is expressly agreed by the County that full compensation to the Developer shall be:
 - (i) Those factors set forth in Section 15.1 above, including full and just compensation for the Climate Ribbon; and
 - (ii) The pro rata costs expended by the Developer in the development of the condemned portion of the Property other than the costs to construct any Improvements located thereon; and
 - (iii) Any and all penalties, taxes (including penalties and interest thereon).
- (b) Should the County condemn the Property or any portion thereof in such a manner as would adversely impact the Climate Ribbon during the Term, it is expressly agreed by the County that full compensation to the Developer shall be:
 - (i) Those factors set forth in Section 15.1 above, including full and just compensation for the Climate Ribbon; and
 - (ii) The pro rata costs expended by the Developer in the development of the Climate Ribbon; and

(iii) Any and all penalties, taxes (including penalties and interest thereon).

The provisions of this Section regarding the Developer's compensation under Section 15.5(a) shall not be applicable to any proceeding other than a Taking by the Owner within the thirty (30) years of the term of this Agreement, but the provisions of this Section regarding the Developer's compensation under Section 15.5(b) shall be applicable to any proceeding occurring during the Term of this Agreement. The costs referred to in Sections 15.5(a)(ii) and 15.5(b)(ii) above include but are not limited to legal fees; architectural, engineering, surveying, planning, and other consulting fees; accounting fees; brokerage fees in connection with leasing and financing; other financing costs; costs of infrastructure such as water, sewer, other utilities and road, drainage and other land improvements; a reasonable and fairly allocable share of the Developer's overhead costs related to the portion of the Property that is taken; and interest from the date such costs were expended to the date of compensation at the prime rate from time to time in effect of Wells Fargo Bank or its successor. The Owner agrees that the Owner shall not condemn the Property or any portion thereof except (i) in good faith, (ii) when no other property is reasonably suitable for the public use the Owner needs, and (iii) for a purpose other than either leasing or selling the condemned property to another person or entity engaging in the Developer's business of leasing office, commercial or residential space (or a combination of such uses). If there is a taking by the County of a portion of the Property, the County shall not use the property it so acquires for any use detrimental to the Developer's remaining property, which prohibited uses include but are not limited to a trash transfer station, Metromover turning or switching yard, train repair or storage, bus storage or repair, warehouse having a truck parking area or loading dock visible from the road, jail or other use with the clear likelihood of diminishing the Developer's use and enjoyment of the remainder of the Property. The Owner shall consult with and coordinate design of any improvements upon the land {23685536;1}

referred to in this paragraph with the Developer, so as to maintain architectural compatibility with the balance of the Improvements located on the Property, and so as to coordinate traffic.

Section 15.6 Involuntary Conversion. In the event any Taking or other like proceeding or threat or imminence thereof shall occur as provided for hereinabove or otherwise, the Parties agree to cooperate with each other (especially in the event of a Taking under Section 15.5) in order to provide proper evidence of communication of the proceeding or threat or imminence thereof to the Internal Revenue Service for purposes of determining whether property has been voluntarily converted within the meaning of the Internal Revenue Code.

Section 15.7 Condemnation of Fee Interest. Notwithstanding anything in Article 15 to the contrary, the County hereby covenants and agrees with the Developer that (i) it will not agree to any Taking by any party without the consent of the Developer which may be withheld in the Developer's sole direction, (ii) it will contest such Taking, and (iii) it will as part of its defense against a Taking will avail itself of the defense, if available, that one entity with condemnation powers cannot condemn the property of another entity with similar powers.

ARTICLE 16

Default by the Developer or Owner

Section 16.1 Events of Default of Developer. It shall be an "Event of Default of Developer" if the Developer fails to keep, observe, or perform any of its obligations or duties imposed upon the Developer under this Agreement and such failure shall continue for a period of thirty (30) days after written notice thereof from the Owner to the Developer 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 Developer fails within said thirty

(30) day period to proceed promptly and with due diligence and in good faith to pursue curing said default.

Section 16.2 Failure to Cure Default by the Developer. If an Event of Default of Developer shall occur, the County, at any time after the periods set forth in Section 16.1 and provided the Developer 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 Owner may have against the Developer:

- (a) to sue the Developer for all damages (as limited by Section 12.2), costs and expenses arising from the Developer's committing an Event of Default hereunder and to recover all such damages, costs and expenses, including reasonable attorneys' fees at both trial and appellate levels, as limited by Section 12.2; and
- (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 the Agreement; and
- (c) to terminate any and all obligations that the Owner may have under this Agreement, in which event the Owner shall be released and relieved from any and all liability under this Agreement.

Section 16.3 No Waiver by the County. No failure by the County 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 County. No waiver of any breach shall affect or alter this Agreement, but

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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 the Developer hereunder shall be implied from any omission by the County 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 the County shall not be construed as a waiver of a subsequent breach of the same covenant, term or conditions.

Section 16.4 Events of Default of the Owner. It shall be an "Event of Default of Owner" if the Owner fails to keep, observe, or perform any of its obligations or duties imposed upon Owner under this Agreement and such failure shall continue for a period of thirty (30) days after written notice thereof from the Developer to the Owner 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 Owner fails within said thirty (30) day period to proceed promptly after such notice and with due diligence and in good faith to cure said Event of Default.

Section 16.5 Failure to Cure Default by the Owner. If an Event of Default of Owner shall occur, the Developer, at any time after the period set forth in Section 16.4 and provided the Owner 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 Developer may have against the Owner:

- (a) to sue the Owner for all damages (as limited by Section 12.1 above), costs and expenses arising from the Owner's committing an Event of Default hereunder and to recover all such damages, costs and expenses, including reasonable attorneys' fees at both trial and appellate levels, as limited by Section 12.1;

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- (b) to restrain, by injunction, the commission of or attempt or threatened commission of an Event of Default of the County and to obtain a decree specifically compelling performance of any such term or provision of the Agreement; and
- (c) to terminate any and all obligations that the Developer may have under this Agreement, in which event the Developer shall be released and relieved from any and all liability under this Agreement and shall surrender possession of the Property to the Owner.

Section 16.6 No Waiver by the Developer. Failure by the Developer to insist upon the strict performance of any of the terms of this Agreement or to exercise any right or remedy upon a breach thereof, shall not constitute a waiver of any such breach or of any of the terms of this Agreement. None of the terms of this Agreement to be kept, observed or performed by the County, and no breach thereof, shall be waived, altered or modified except by written instrument executed by the Developer. No waiver of any default of the County hereunder shall be implied from any omission by the Developer to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default specified in the express waiver and then only for the time and to the extent therein stated. One or more waivers by the Developer shall not be construed as a waiver of a subsequent breach of the same covenant, term or condition.

ARTICLE 17

Notices

Section 17.1 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 Swire Properties, Inc., 501 Brickell Key, Suite 600, Miami, Florida 33131; Attention Christopher Gandolfo, with a copy to Akerman Senterfitt, One SE Third Avenue, 25th Floor, Miami, Florida 33131, Attention: Neisen Kasdin, and to such other address and to the attention of such other party as the Developer

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may, from time to time, designate by written notice to the Owner. If the Developer at any time during the term hereof changes its office address as herein stated, the Developer will promptly give notice of same in writing to the Owner. All notices, demands or requests by the Developer to the Owner shall be deemed to have been properly served or given if addressed to the Miami-Dade Transit, Director, or his designee, 17th Floor, 701 NW First Court, 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 17.2 Method of Transmitting Notice. All such notices, demands or requests (a "Notice") shall be sent by: (a) United States registered or certified mail, return receipt requested, (b) hand delivery, (c) nationally recognized overnight courier, or (d) telefacsimile, provided the transmitting telefacsimile electronically confirms receipt of the transmission by the receiving telefacsimile and the original of the Notice is sent by one of the foregoing means of transmitting Notice within 24 hours of the transmission by telefacsimile. 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 18

Certificates by the County and the Developer

Section 18.2 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

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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 18.1 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 18.3 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 18.2 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 18.2 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.

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ARTICLE 19

Construction of Terms and Miscellaneous

Section 19.1 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 19.2 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 19.3 Relationship of Parties. This Agreement does not create the relationship of principal and agent or of mortgagee and mortgagor or of partnership or of joint venture or of any association between the Parties, the sole relationship between the Parties being that of the Owner and the Developer.

Section 19.4 Recording. This Agreement shall be recorded among the Public Records of Miami-Dade County, Florida, at the sole cost of the Developer.

Section 19.5 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 19.6 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 as the Owner shall be made by the County Mayor or its designee on behalf of the County 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.

Section 19.7 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.

Section 19.8 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 19.9 Station and System Plans. The Owner agrees, at the request of the Developer, to make available to the Developer for inspection all plans, specifications, working drawings and engineering data in the possession of the County, 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 19.10 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 19.11 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 19.12 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 19.13 Protest Payments. If at any time a dispute shall arise as to any amount or sum of money to be paid by the Developer to Owner, if any, under the provisions of this Agreement, in addition to the rights set forth in Article 16 herein, the Developer shall have the right to make payment "under protest" and such payment shall not be regarded as a voluntary payment, and there shall survive the right on the part of the Developer to seek the recovery of such sum, and if it should be adjudged that there was no legal obligation on the Developer to pay such sum or any part thereof, the Developer shall be entitled to recover such sum or so much thereof as it was not legally required to pay under the provisions of this Agreement; and if at any time a dispute shall arise between the parties hereto as to any work to be performed by either of them under the provisions of this Agreement, the party against whom the obligation to perform the work is asserted may perform such work and pay the cost thereof "under protest" and the performance of such work shall in no event be

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regarded as a voluntary performance and there shall survive the right upon the part of said Developer and/or the Owner to seek the recovery of the cost of such work, and if it shall be adjudged that there was no legal obligation on the part of said Developer and/or the Owner to perform the same or any part thereof, said Developer and/or the Owner shall be entitled to recover the cost of such work or the cost of so much thereof as the Developer or the Owner was not legally required to perform under the provisions of this Agreement.

Section 19.14 Governing Law This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

Section 19.15 Cooperation; Expedited Permitting and Time is of the Essence. The Parties agree to 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. The Owner shall use its best efforts to expedite the permitting and approval process in an effort to assist the Developer in obtaining its Permits and achieving its development and construction milestones for the Project.

Section 19.16 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 19.17 Order of Precedence. If there is a conflict between or among the provisions of this Agreement, the Scope of Services (as set forth on Schedule 19.17), the Proposal and the Special Area Plan, the order of precedence is as follows: (i) the terms of this Agreement; (ii) the Scope of the Services; (iii) the Proposal; (iv) the Special Area Plan; and (v) the request for proposal for the Development of Brickell Metromover Property RFP No. 798.

Section 19.18 Proposal Incorporated. The Parties acknowledge that, in response to a Request for Proposal advertised by Miami-Dade County, the Developer submitted the Proposal and that such Proposal was the basis for award of this Agreement and upon which the Owner has relied. The Proposal and the Special Area Plan are incorporated herein by this reference.

Section 19.19 Vendor Registration and Forms/Conflict of Interest .

- (a) Conflict of Interest. Section 2-11.1(d) of Miami-Dade County Code as amended by Ordinance 00-1, requires any county employee or any member of the employee's immediate family who has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County that is competing or applying for any such contract as it pertains to this solicitation, must first request a conflict of interest opinion from the County's Ethic Commission prior to their or their immediate family member's entering into any contract or transacting any business through a firm, corporation, partnership or business entity in which the employee or any member of the employee's immediate family has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County and that any such contract, agreement or business engagement entered in violation of this subsection, as amended, shall render this Agreement voidable. For additional information, please contact the Ethics Commission hotline at (305) 579-2593.
- (b) Vendor Registration. The Developer shall be a registered vendor with the County – Department of Procurement Management, for the duration of this Agreement. In becoming a Registered Vendor with Miami-Dade County, the Contractor confirms its knowledge of and commitment to comply with the following:

1. **Miami-Dade County Ownership Disclosure Affidavit** (Section 2-8.1 of the County Code)
2. **Miami-Dade County Employment Disclosure Affidavit** (Section 2-8.1(d)(2) of the County Code)
3. **Miami-Dade County Employment Drug-free Workplace Certification** (Section 2-8.1.2(b) of the County Code)
4. **Miami-Dade Disability and Nondiscrimination Affidavit** (Section 2-8.1.5 of the County Code)
5. **Miami-Dade County Debarment Disclosure Affidavit** (Section 10.38 of the County Code)
6. **Miami-Dade County Vendor Obligation to County Affidavit** (Section 2-8.1 of the County Code)
7. **Miami-Dade County Code of Business Ethics Affidavit** (Section 2-8.1(j) and 2-11(b)(1) of the County Code through (6) and (9) of the County Code and Section 2-11.1(c) of the County Code)
8. **Miami-Dade County Family Leave Affidavit** (Article V of Chapter 11 of the County Code)
9. **Miami-Dade County Living Wage Affidavit** (Section 2-8.9 of the County Code)
10. **Miami-Dade County Domestic Leave and Reporting Affidavit** (Article 8, Section 11A-60 11A-67 of the County Code)
11. **Subcontracting Practices** (Ordinance 97-35)
12. **Subcontractor /Supplier Listing** (Section 2-8.8 of the County Code)
13. **Environmentally Acceptable Packaging** (Resolution R-738-92)
14. **W-9 and 8109 Forms** (as required by the Internal Revenue Service)
15. **FEIN Number or Social Security Number**
 In order to establish a file, the Contractor's Federal Employer Identification Number (FEIN) must be provided. If no FEIN exists, the Social Security Number of the owner or individual must be provided. This number becomes Contractor's "County Vendor Number". To comply with Section 119.071(5) of the Florida Statutes relating to the collection of an individual's Social Security Number, be aware that the County requests the Social Security Number for the following purposes:
 - Identification of individual account records
 - To make payments to individual/Contractor for goods and services provided to Miami-Dade County
 - Tax reporting purposes
 - To provide a unique identifier in the vendor database that may be used for searching and sorting departmental records
16. **Office of the Inspector General** (Section 2-1076 of the County Code)
17. **Small Business Enterprises** The County endeavors to obtain the participation of all small business enterprises pursuant to Sections 2-8.2, 2-8.2.3 and 2-8.2.4 of the County Code and Title 49 of the Code of Federal Regulations.

Antitrust Laws By acceptance of any contract, the Contractor agrees to comply with all antitrust laws of the United States and the State of Florida

ARTICLE 20

Representations and Warranties

Section 20.1 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 parties 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 Land and the Property to the Developer as contemplated in this Agreement.
- (c) Throughout the Term, the County will endeavor to continue transit service to and from the Station on a daily basis. The parties acknowledge that service disruptions occur occasionally and such disruptions shall not be considered termination of service under this Agreement.
- (d) The Developer acknowledges that in accordance with Florida Statutes Section 125.411(3) (1990), the County 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 20.2 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 21

Equal Opportunity

Section 21.1 Equal Opportunity. The Developer will not discriminate against any employee or applicant for employment because of race, religion, color, sex, sexual orientation, age, ancestry, marital status, handicap, place of birth, or national origin. The Developer shall take affirmative action to ensure that applicants are employed and that employees are treated during their

{23685536;1}

employment, without regard to their race, religion, color, sex, sexual orientation, age, ancestry, marital status, handicap, place of birth or national origin. Such actions shall include, but not be limited to, the following: employment; upgrading; transfer or demotion; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation and selection for training, including apprenticeship. The Developer agrees to post in conspicuous places, available to employees and applicants for employment notices to be provided by Miami-Dade County setting forth the provisions of this Equal Opportunity clause. The Developer will comply with all of the following statutes, rules, regulations and orders to the extent that these are made applicable by virtue of the grant to the Owner under the Urban Mass Transportation Act of a Section 3 capital grant for Metromover:

- (a) all regulations of the U.S. Department of Transportation;
- (b) all applicable provisions of the Civil Rights Act of 1964;
- (c) Executive Order 11246 of September 24, 1964 as amended by Executive Order 11375;
- (d) Executive Order 11625 of October 13, 1971;
- (e) the Age Discrimination Employment Act effective June 12, 1968;
- (f) the rules, regulations and orders of the Secretary of Labor;
- (g) Florida Statute 112.042;
- (i) the applicable Federal Transit Administration regulations, including but not limited to the requirements found in 49 CFR Part 23.7 regarding non-discrimination based on race, color, national origin or sex; in 49 CFR Parts 27.7 and 27.9(b) regarding non-discrimination based on disability and complying with the Americans With Disabilities Act with regard to any improvements constructed; and in the Federal Transit Administration Master Agreement dated

October 1, 1999, in Section 3, Subparagraphs (a)(1), (a)(2), and (b) thereof relating to conflicts of interests and debarment.

(k) Articles 3 and 4 of Chapter IIA of the Code of Metropolitan Miami-Dade County.

The Developer does hereby covenant and agree that in the event facilities are constructed, maintained or otherwise operated by the Developer on the Property for a purpose for which the State of Florida Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, the Developer shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A., Office of the Secretary, Part 21, Non-discrimination of Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964 and said Regulations may be amended.

The Developer does hereby covenant and agree (1) that no person on the grounds of race, color, gender, sexual orientation, disability or national origin shall be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over or under such land and the furnishing services thereon, no person on the grounds of race, color, gender, sexual orientation, disability or national origin shall be excluded from the participation in, be denied the benefits of, or be otherwise subjected to discrimination, and (3) that the Developer shall use the premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

Section 21.2 Discrimination Prohibited No person shall be excluded from participation in, denied the benefits of, or otherwise discriminated against in connection with the award and performance of any contract covered by this part, on the grounds of race, color, disability, national origin, or sex. (49 CFR Part 23.7)

[Signatures on Next Page]

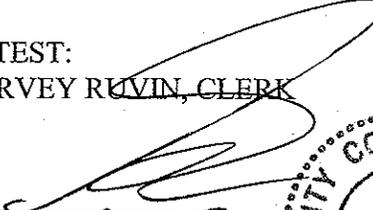
IN WITNESS WHEREOF, the Owner has caused this Agreement to be executed in its name by the County Mayor; as authorized by the Board of County Commissioners, and the Developer has caused this Agreement to be executed by its duly authorized representative all on the day and year first hereinabove written.

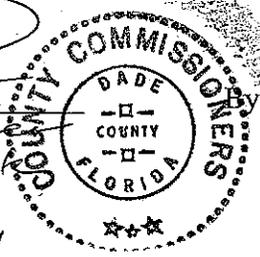
MIAMI-DADE COUNTY, a
political subdivision of
the State of Florida

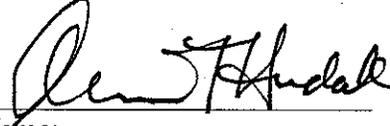
OWNER

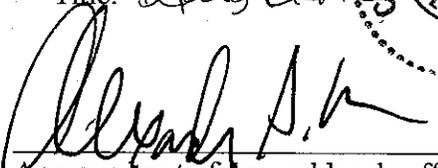
ATTEST:
HARVEY RUVIN, CLERK

MIAMI-DADE COUNTY

By: 
Name: Gene Spence
Title: Deputy Clerk



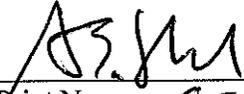
By: 
Name: Alex S. Bokor
Title:


Approved as to form and legal sufficiency

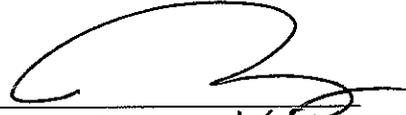
Print Name: Alexander S. Bokor

Signed in the presence of:

DEVELOPER


Print Name: G. E. TOLAND

SWIRE PROPERTIES, INC., a Florida corporation

By: 
Name: J Megan Kelly
Title: VP


Print Name: Kanna Rouco

Notarizations begin on following page.

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

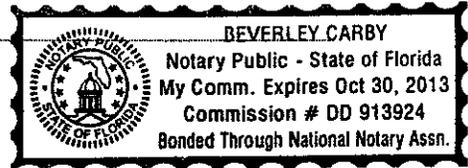
The foregoing instrument was acknowledged before me this 16th day of April, 2012, by J. Megan Kelly, as VICE PRESIDENT of Swire Properties, Inc., a Florida corporation.

Personally Known to me . OR Produced Identification ~~OR~~

Type of Identification Produced W/A



Print or Stamp Name:
Notary Public, State of Florida at Large
Commission No.: DD913924
My Commission Expires: 10/30/13



Schedule 1.1

Land Description

Parcel B

LOTS 8 AND 16, BLOCK 107S, PATTERSON AND OLIVE SUB., ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK "B", PAGE 77, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA,

and

THE EASTERLY 7.47 FEET OF LOT 7 AND LOT 15, BLOCK 107S, PATTERSON AND OLIVE SUB., ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK "B", PAGE 77, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA.

Parcel C

LOT 8, BLOCK 106S, PATTERSON AND OLIVE SUB., ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK "B", PAGE 77, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA.

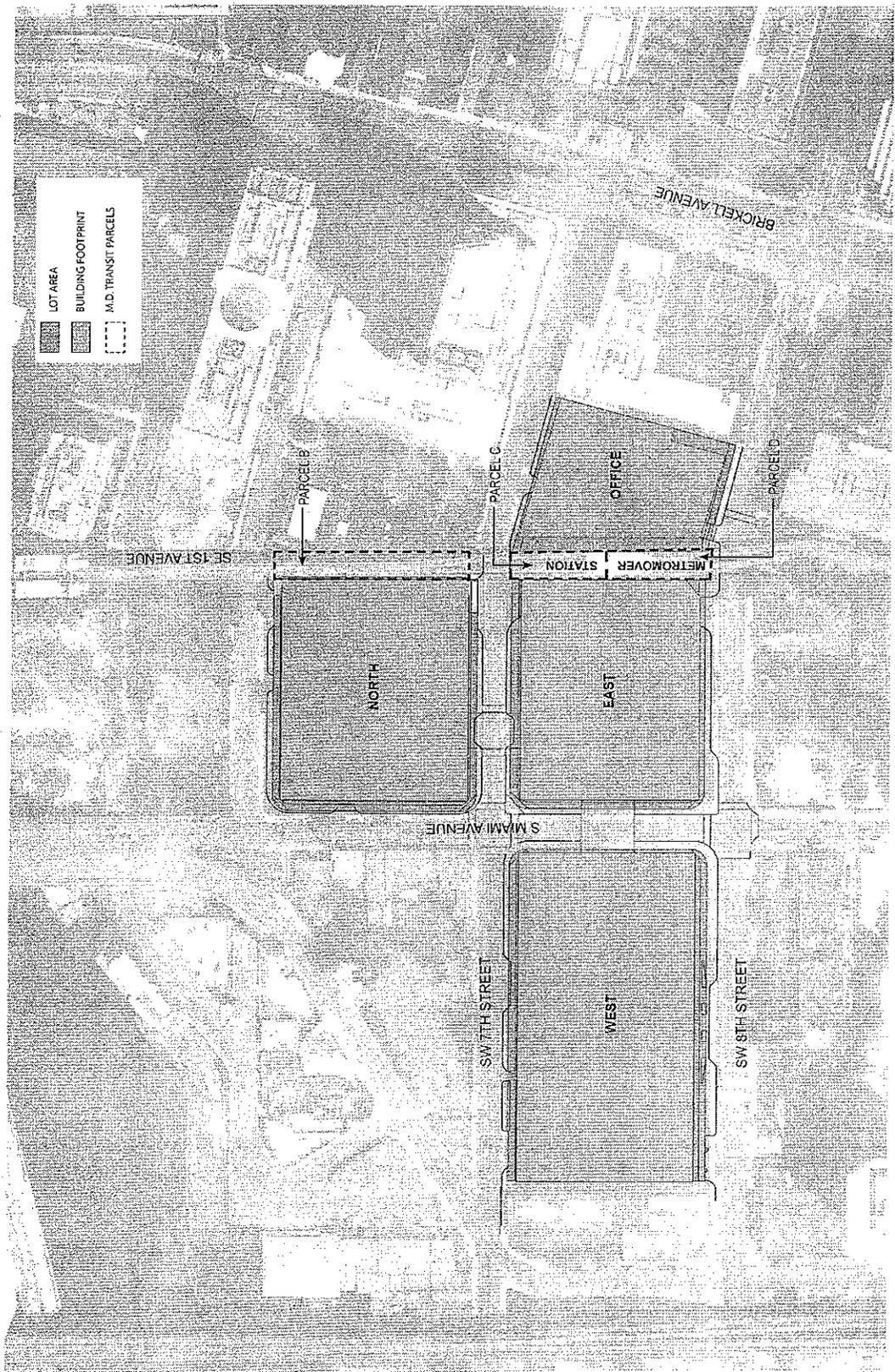
Parcel D

LOT 16, BLOCK 106S, PATTERSON AND OLIVE SUB., ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK "B", PAGE 77, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA

Schedule 1.2

Location Sketch

{23595239;1}



ARQUITECTONICA
 2800 OMAHAWAY AVENUE, MIAMI, FL 33131-4310, USA
 TEL: 305.372.4377 FAX: 305.373.1178
 www.arquitectonica.com

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SWIRE PROPERTIES
 BUILDING EXCEPTIONAL VALUE

**BRICKELL
 CITY CENTRE**

SPECIAL AREA PLAN

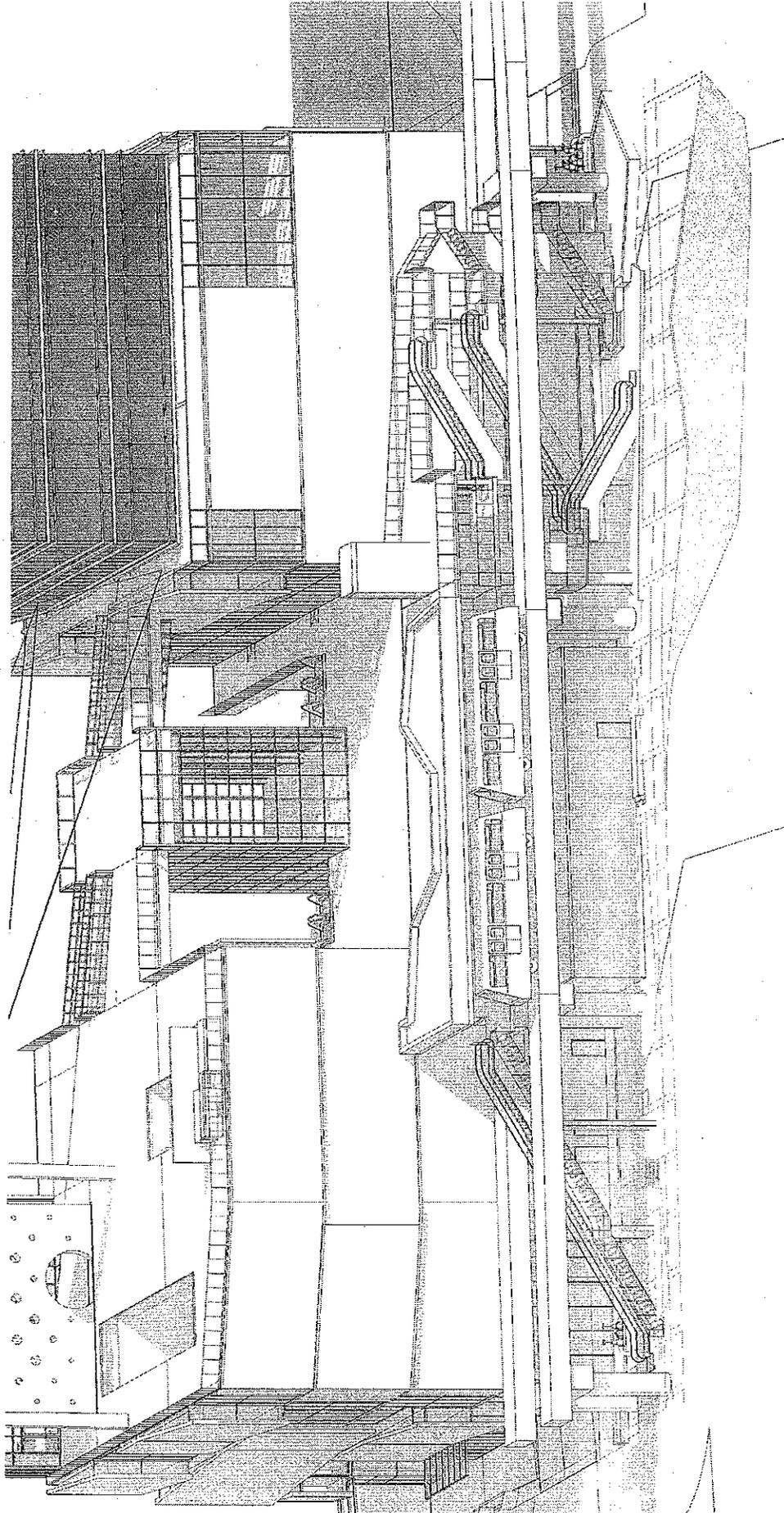
LOT COVERAGE

A0.05

Schedule 2.1

Improvements Depiction/Rendering

{23595239;1}



 BRICKELL
CITY CENTRE

8TH STREET STATION IMPROVEMENTS
PERSPECTIVE

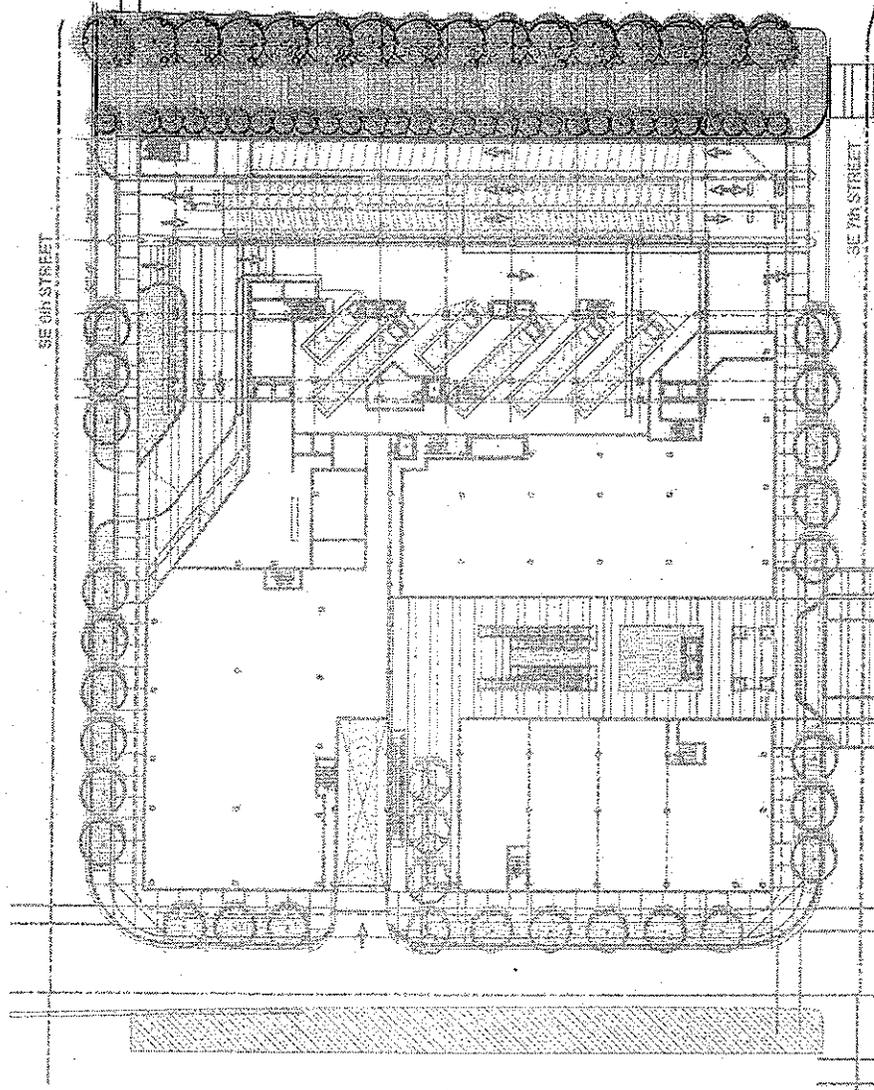
MDT-206

January 31, 2012

 SWIRE PROPERTIES
BUILDING EXCEPTIONAL VALUE

ARQUITECTONICA
200 Du Sable Road, Suite 1300
Miami, FL 33131, USA
www.arquitectonica.com

ARQUITECTONICA, S.A. is a company of SWIRE PROPERTIES LIMITED, a company incorporated in Hong Kong. SWIRE PROPERTIES LIMITED is a company incorporated in Hong Kong. SWIRE PROPERTIES LIMITED is a company incorporated in Hong Kong. SWIRE PROPERTIES LIMITED is a company incorporated in Hong Kong.



NOTE: GENERAL DESCRIPTION ONLY. FINAL LANDSCAPING PLAN TO BE DETERMINED

ARQUITECTONICA
 2000 ORIN AVENUE, MIAMI, FLORIDA 33133 USA
 TEL: 305.372.1877 FAX: 305.372.1875
 WWW.ARQUITECTONICA.COM

ARQUITECTONICA, its employees, or representatives shall not be held responsible for any errors or omissions in this drawing or for any consequences arising therefrom. All drawings are subject to change without notice. All drawings are subject to the terms and conditions of the contract. All drawings are subject to the terms and conditions of the contract. All drawings are subject to the terms and conditions of the contract.

SWIRE PROPERTIES
 BUILDING EXCEPTIONAL VALUE

BRICKELL CITY CENTRE

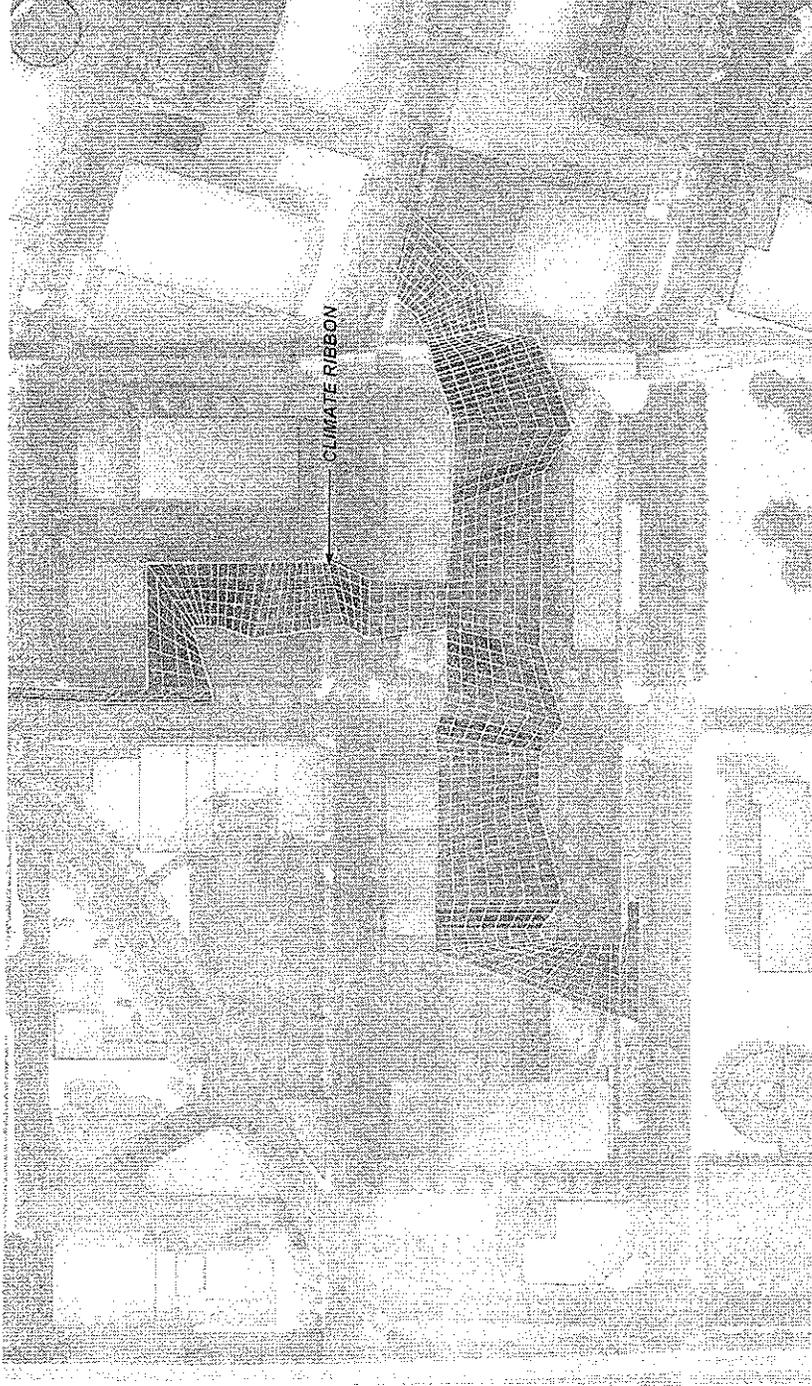
SPECIAL AREA PLAN

MDT PARCEL B
 LANDSCAPE PLAN

L1.01

Schedule 2.2

Climate Ribbon Depiction/Rendering



NOTE: GENERAL DEPICTION ONLY. FINAL LOCATION AND CONFIGURATION OF THE CLIMATE RIBBON TO BE DETERMINED.

ARQUITECTONICA

2000 OAK AVENUE, SUITE 100, OREGON, OREGON 97130, USA
 TEL: 503.322.8877 FAX: 503.371.1175
 WWW.ARQUITECTONICA.COM
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SWIRE PROPERTIES
 BUILDING EXCEPTIONAL VALUE

**BRICKELL
 CITYCENTRE**

SPECIAL AREA PLAN

CLIMATE RIBBON PLAN

A0.11

Schedule 6
Insurance

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 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 arising out of, relating to or resulting from the performance of this Agreement by the Developer or its employees, agents, servants, partners principals or subcontractors. 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 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.

Except as provided in Section 768.28, Florida Statutes (2011), the Owner shall indemnify and hold harmless the Developer and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the Developer 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 the Owner or its employees, agents, servants, partners principals or subcontractors. 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 attorney's fees which may issue thereon. The Owner expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by the Owner shall in no way limit the responsibility to indemnify, keep and save harmless and defend the Owner or its officers, employees, agents and instrumentalities as herein provided.

It is agreed and understood that except for the insurance obligations required to be maintained by the Developer in connection with its maintenance and access rights with respect to the Improvements and its easement with respect to the Climate Ribbon, commencing on the Maintenance Easement Term and thereafter, the County shall be responsible for insuring the Improvements consistent with all applicable Laws and Ordinances and the Developer shall have no liability therefor.

The Developer shall furnish to Miami-Dade County c/o Miami Dade Transit, 701 N.W. 1st Court, Suite 1700, Miami, FL 33136, Director, Certificates of Insurance that shows that insurance coverage has been obtained that meets the requirements as outlined below.

DESIGN STAGE

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

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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 conjunction with this agreement in an amount not less than \$500,000 combined single limit per occurrence for bodily injury and property damage

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

CONSTRUCTION PHASE

Developer shall provide certificate(s) of insurance indicating the following insurance coverage prior to Commencement of Construction:

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

B. Commercial General Liability Insurance on a comprehensive basis in an amount not less than \$50,000,000 combined single limit per occurrence for bodily injury and property damage. **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 conjunction with this agreement in an amount not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage.

D. 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 the Developer and the Owner A.T.I.M.A.

OPERATION PHASE

Developer shall provide certificate(s) of insurance as follows:

A. Worker's Compensation Insurance for all employees of the Developer 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 conjunction with this agreement in an amount not less than \$500,000 combined single limit per occurrence for bodily injury and property damage.

- D. With respect to the Climate Ribbon only, Property Insurance on an "All Risk" basis in an amount not less than one hundred (100%) percent of the replacement cost of the building(s). Miami Dade County must be shown as a Loss Payee with respect to this coverage A.T.I.M.A.

Schedule 16.2

Owner's Estoppel Certificate

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

Re: Brickell Metromover Parcels B, C and D Development, Maintenance and Easement Agreement, dated _____, 2012 (the "Agreement"), by and between Miami-Dade County, acting by and through Miami-Dade Transit (together hereinafter "Owner") and _____ ("Developer")

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 Property, the Climate Ribbon 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 Property or the Project.

3. The Agreement is in full force and effect. The Developer has constructed the Improvements and Climate Ribbon and is maintaining the Improvements and Climate Ribbon 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.

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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, the Climate Ribbon or the Project (except as expressed hereunder or attached hereto).

7. The undersigned is properly authorized to execute this Estoppel Certificate and the Relying Parties have the right to rely on this Estoppel Certificate.

Except as otherwise expressly defined in this Estoppel Certificate, all capitalized and/or defined terms when used herein will have the same meanings as given such terms in the Agreement. This Certificate may be delivered by the Owner by facsimile; pdf or facsimile signature.

Dated this ____ day of _____, 20__.

Very truly yours,

Schedule 19.17

Scope of Services (RFP No. 798)

2.1 Project Objectives

The objectives of the County in offering the parcel of property described in Schedule 1.1 are the following:

- a) To focus density around the Eighth Street Metromover Station and promote increased patronage of the Metromover system.
- b) To achieve functional and aesthetic integration of the Eighth Street Metromover Station into the overall development with direct access links between the station and the development.
- c) To provide a long term source of income for the County.

2.3 The Project Site

The Project Sites are located within the City of Miami between SE 6th Street and SE 8th Street. Parcels B, C, and D are encumbered by the Metromover guideway. Parcel A which is located adjacent to the Metromover guideway, is not encumbered by the guideway and will be part of a separate lease agreement.

1. Parcel A: Vacant property not encumbered by the Metromover guideway.
2. Parcel B: Parcel encumbered by the Metromover guideway.
3. Parcel C: Parcel encumbered by the Metromover guideway and Eighth Street Station.
4. Parcel D: Parcel encumbered by the Metromover guideway and Eighth Street Station.

2.4 Development Agreement

Parcels B, C, and D will be developed under a long-term Development Agreement. Fee simple title ownership of the Site shall remain in the name of the County.

2.5 Project Construction

The construction phase of the Project shall be completed in accordance with the applicable rules, regulations, ordinances and standards required by the City of Miami, Miami-Dade County or any other applicable regulatory agency. The Developer shall obtain certified, experienced and reputable architectural and engineering services, and construction services including a general contractor, project manager and subcontractors. Applicable governmental regulations may include, but are not limited to:

- All applicable Occupational, Health and Safety Administration (OSHA) regulations.
- All applicable County construction regulations.
- Florida Statutes Section 255.05 (Bond of contractor constructing public buildings).
- Florida Statutes Section 255.20 (Local bids and contracts for public construction works).
- Florida Statutes Section 287.055 (Acquisition of professional architectural, engineering, landscape architectural, or surveying and mapping services).

- Miami-Dade County Inspector General (IG) requirement for new construction projects.
- Miami-Dade County Art in Public Places (APP) fee requirement for new construction projects.

No construction will commence on the Site until the Developer has obtained all appropriate approval and permits from all appropriate jurisdictions.

The Developer shall mitigate any negative impact to transit operations prior to commencing any work that may have such impact. The plan may be amended as necessary as the project progresses. However, the plan and any amendments or changes to the plan must be approved by MDT in writing prior to commencing any work that may impact transit operations.

2.6 Development Costs

The Developer will be required to obtain all necessary permits and pay all required permit fees and shall be responsible for all expenses incurred in connection with the proposed development including, but not limited to, surveying, platting, application fees, etc. All off-site public improvements and/or infrastructure required for development of the Site (streets, street widening, street lights, sidewalks, water/sewer infrastructure, landscaping, etc.) will be the responsibility of the Developer. Extension, relocation, upgrading or connection of new utilities, if necessary, will be the sole responsibility of the Developer. All development fees imposed in connection with the development of the Improvements by any municipality, the County or any other agency of appropriate jurisdiction will be the sole responsibility of the Developer until such time as the Improvements are transferred to the County, at which time, such responsibility shall be the County's.

2.7 Financing

The Developer shall secure all necessary financing, as well as any and all licenses and permits prior to and after construction. The Developer has historically financed projects from internal resources, typically a line of credit supported by corporate guarantee, and the Developer intends to use its parent company resources in lieu of conventional bank financing to fund the construction of Improvements through self-financing.

2.8 Environmental Issues

The County will provide the Developer with environmental studies as of the date of Project award, if available. If necessary, the Developer shall prepare any required additional environmental reviews, pursuant to the requirements of the Miami-Dade Department of Environmental Resource Management (DERM), or any other applicable regulatory agency as they pertain to the Site. The County will assist in the preparation and review of these assessments according to its obligations as Owner under the planned Agreement. However, the Developer shall be solely and fully responsible for providing any and all information and paying the cost of any and all studies and analyses required for completion of these assessments. The Developer shall be solely responsible for any further environmental remediation of the Site, if required. The County does not make or offer any representation or warranty, whatsoever, regarding the condition of the Site or its sustainability for the uses contemplated by this Solicitation.

2.9 Developer's Responsibilities

After a contract is awarded as a result of this solicitation, the Developer shall be responsible for the following pursuant to the terms of the Development Agreement, as applicable:

- A. Submission of a project schedule/plan delineating steps to complete development of the Site.
- B. At its sole cost and expense, applying for, obtaining and maintaining any and all permits and licenses and approvals, necessary prior to and after construction.
- C. Submission of a plan to mitigate any disruption to transit operations. The plan must be approved in writing by Miami-Dade Transit prior to commencement of any work that could impact transit operations.
- D. Any additional environmental review, soil testing, and/or remediation on the Site. This shall be done at the sole expense of the Developer.
- E. Payment of any and all taxes associated with the development of the Site, except as provided in the Development Agreement, and all recording fees and taxes associated with filing a lease memorandum and Project financing.
- F. After awarded project completion, payment of any other taxes, including, but not limited to ad valorem real estate taxes, that may be associated with the Project and/or the Site.
- G. Submission of status reports to the County regarding the Project development on a quarterly basis, or more frequently, if required by the County.
- H. Commencement and completion of the construction of the Project in a timely manner

2.10 Property Taxes

Because the Site is County-owned property, it is not currently subject to real estate taxes. However, it is the responsibility of the Developer to determine any and all tax consequences which may arise due to the Climate Ribbon and the Developer shall be responsible for taxes thereon.

2.11 FTA and FDOT Approval

This solicitation is for the joint development of property purchased, in part, with funds provided by the Federal Transit Administration (FTA) and the Florida Department of Transportation (FDOT). Accordingly, all - agreements resulting from this solicitation must comply with all FTA requirements for joint development. (The FTA Joint Development Policy is attached as Exhibit B.) Additionally, award of any agreement subsequent to this RFP will be subject to approval from the FTA and Florida Department of Transportation (FDOT).