Miami-Dade Legislative Item
File Number: 120462

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File Number: 120462 **File Type:** Resolution **Status:** Adopted
Version: 0 **Reference:** R-306-12 **Control:** Board of County Commissioners

File Name: AWARD RE: SWIRE PROPERTIES **Introduced:** 3/8/2012

Requester: Miami-Dade Transit **Cost:** **Final Action:** 4/3/2012

Agenda Date: 4/3/2012 **Agenda Item Number:** 8O1

Notes: TLL-3/8/2012 **Title:** RESOLUTION APPROVING AWARD OF A DEVELOPMENT, MAINTENANCE AND EASEMENT AGREEMENT AND A GROUND LEASE AGREEMENT, WHICH PROVIDES FOR ANNUAL RENT PAYMENTS TO THE COUNTY OF $50,000 DURING CONSTRUCTION, A ONE-TIME RENT PAYMENT OF $1.1 MILLION UPON COMPLETION OF CONSTRUCTION AND ANNUAL RENT PAYMENTS OF $2,100 THEREAFTER, TO SWIRE PROPERTIES, INC., AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE THE AGREEMENTS FOR AND ON BEHALF OF MIAMI-DADE COUNTY, AND TO EXERCISE ANY CANCELLATION AND RENEWAL PROVISIONS, AND TO EXERCISE ALL OTHER RIGHTS CONTAINED THEREIN

Indexes: NONE **Sponsors:** Bruno A. Barreiro, Prime Sponsor

Sunset Provision: No **Effective Date:** **Expiration Date:**

Registered Lobbyist: None Listed

Legislative History

Acting Body	Date	Agenda Item	Action	Sent To	Due Date	Returned	Pass/Fail
Board of County Commissioners	4/3/2012	8O1	Adopted				P
Regional Transportation	3/12/2012	3I	Forwarded to BCC with a favorable				P

Committee	recommendation
REPORT:	Assistant County Attorney Alexander Bokor read the foregoing proposed resolution into the record. Mr. Neisen Kasdin, representing Swire Properties, Inc., appeared before the Committee in support of this proposed resolution. He acknowledged the presence of his law partner Mr. Spencer Crowley; as well as Ms. Megan Kelly and Mr. Christopher Gandolfo, Swire Properties. Mr. Kasdin gave a Power Point presentation on the proposed Brickell CitiCentre Project. He noted this transit-oriented project could be considered the largest, private development investment in this County, and probably one of the largest in the United States. Mr. Kasdin said that this proposed project would incorporate the Metromover station; would include approximately 520,000 square feet of retail space; a hotel and service departments; two residential buildings; two office buildings; and a future residential and office building. This project would cross under and over city streets, with two levels of underground parking, and a bridge above Miami Avenue and Seventh Street to connect the various project elements, Mr. Kasdin said. He noted all final approvals were already obtained and a groundbreaking was anticipated in the second quarter of this year. Mr. Kasdin said this proposed project represented an $800 million investment; an overall economic impact of approximately $1 billion; 1,700 construction jobs on average per year for four years; 3,000 people employed upon completion; substantial revenue income for the City of Miami; approximately $9.6 million annually in Ad Valorem taxes, and approximately $1.2 million annually in Impact fees to the County. He noted the project would be connected to the Metrorail and to the Metromover and that the developers were working closely with County staff on this project. In response to Commissioner Moss' inquiry regarding the participation of area residents, Mr. Kasdin noted discussions were held with the City of Miami and he expected that a large portion of short term construction workers and long term project workers would be City residents. Deputy Mayor/County Manager Alina Hudak requested this proposed resolution be waived to the March 20, 2012 County Commission meeting, subject to approval by the Federal Transit Administration. Chairman Barreiro asked Deputy Mayor/County Manager Hudak to prepare an appropriate memorandum asking Chairman Martinez to waive the Board's Rules of Procedure to allow this proposed resolution to be heard at the March 20, 2012 County Commission meeting. Hearing no further comments or questions, the Committee proceeded to vote on the foregoing proposed resolution as presented. Chairman Barreiro asked Deputy Mayor/County Manager Alina Hudak to prepare an appropriate memorandum asking Chairman Martinez to waive the Board's rules and procedures to allow this proposed resolution to be heard at the March 20, 2012 County Commission meeting.

County Attorney	3/8/2012	Assigned	Bruce Libhaber		
County Mayor	3/8/2012	Assigned	County Attorney	4/3/2012	
REPORT:	MDT (ASST. COUNTY ATTY: BRUCE LIBHABER) (ATTACHMENT(S): AGREEMENT) (PENDING CMTE ASSIGNMENT) (BCC SPONSOR: CMSR BARREIRO)				
County Mayor	3/8/2012	Assigned	Ed Marquez	2/22/2012	3/7/2012

Legislative Text

TITLE

RESOLUTION APPROVING AWARD OF A DEVELOPMENT, MAINTENANCE AND EASEMENT AGREEMENT AND A GROUND LEASE AGREEMENT, WHICH PROVIDES FOR ANNUAL RENT PAYMENTS TO THE COUNTY OF $50,000 DURING CONSTRUCTION, A ONE-TIME RENT PAYMENT OF $1.1 MILLION UPON COMPLETION OF CONSTRUCTION

AND ANNUAL RENT PAYMENTS OF $2,100 THEREAFTER, TO SWIRE PROPERTIES, INC., AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE THE AGREEMENTS FOR AND ON BEHALF OF MIAMI-DADE COUNTY, AND TO EXERCISE ANY CANCELLATION AND RENEWAL PROVISIONS, AND TO EXERCISE ALL OTHER RIGHTS CONTAINED THEREIN

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

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board hereby approves the development, maintenance and easement agreement and the ground lease agreement, which provides for payment to the County of annual rent of $50,000 during construction, a one-time rent payment of $1.1 million upon completion of construction and annual rent payments of $2,100 thereafter, between Swire Properties, Inc. and Miami-Dade County, in substantially the form attached hereto and made a part hereof, and authorizes the County Mayor or County Mayor's designee to execute same for and on behalf of Miami-Dade County and to exercise any cancellation and renewal provisions and all other rights contained therein.

HEADER
Date:

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

From: Carlos A. Gimenez
Mayor

Subject: Recommendation to Approve the Award of a Ground Lease and a Development, Maintenance and Easement Agreement to Swire Properties, Inc.

STAFF RECOMMENDATION
Recommendation
It is recommended that the Board of County Commissioners (Board) adopt the attached resolution approving the award of a Ground Lease (Brickell Parcel A Vacant Land Lease) and a Development, Maintenance and Easement Agreement (Brickell Metromover Parcels B, C and D Development, Maintenance and Easement Agreement) to the Developer, Swire Properties, Inc. (Swire).

Scope
The impact of this project is countywide; however, it is located within Commission District 5.

Fiscal Impact
The project will be entirely financed by Swire. There will be no County or other governmental funding required for this project. As described further below, there will be a positive fiscal impact to the County and Miami-Dade Transit (MDT).

However, as a part of the Brickell Parcel A Vacant Land Lease, the County will receive, starting on the commencement date of the agreement, annual rent payments of $50,000 during the four-year construction period, a one-time payment of $1.1 million upon completion of construction, and additional annual rent payments of $2,100 for the remainder of the 99-year term of the lease.

Though no rent will be paid to the County pursuant to the Brickell Metromover Parcels B, C, and D, Development, Maintenance and Easement Agreement, Swire will provide supplemental landscaping under the Metromover guideway, improved vertical access to the Eighth Street Station platform and a connection from the station to the Brickell Citicentre project. Swire will donate all of these improvements to MDT and continue to maintain them for the entire term of this agreement.

Monitoring
The terms of the attached Ground Lease Agreement and of the Development, Maintenance and Easement Agreement will be monitored by Froilan Baez, Miami-Dade Transit, Acting Chief of Right-of-Way, Utilities and Property Management.

MANAGER'S BACKGROUND
Background
On September 23, 2011, Request for Proposals (RFP) No. 798 was issued by the County under full and open competition for the development of four parcels of property located adjacent to and under the Metromover system between SE 6th Street and SE 8th Street in the City of Miami.

One proposal was received in response to the RFP from Swire. The proposal was evaluated by a selection/evaluation committee. The committee recommended entering into negotiations with Swire. A negotiation committee was appointed and the two attached agreements were negotiated.

The proposed agreements, The Brickell Parcel A Lease Agreement, and the Brickell Metromover Parcels B, C and D Development, Maintenance and Easement Agreement, cover the development and use of four parcels of property acquired as part of the project under which the Brickell and Omni extensions to the Metromover were constructed. The extension project was funded, in part by the Federal Transit Administration (FTA) (75% of the funding), and the Florida Department of Transportation (FDOT) (approximately 8% of the funding) under Grant No. FL-03-0085. The remainder of the extension project was funded by the County.

The four parcels comprise a relatively small portion of the $750 million Brickell Citicentre Project being developed by Swire. The entire nine-acre project spans almost four city blocks and is planned to be constructed over several years. The four parcels of MDT property total approximately 2/3 of an acre. One of the parcels is vacant and the other three parcels are encumbered by the Metromover system, including the Eighth Street Metromover Station. These four parcels, though small, are an important element of the overall Brickell Citicentre Project.

The Brickell Parcel A Vacant Land Lease, which has a term of 99 years, covers only the one parcel of property that is not encumbered by the Metromover system, Parcel A. This vacant parcel contains approximately 9,000 square feet of property. Swire has proposed to construct a portion of a multi-level parking garage for a 455 unit condominium tower on this property. The negotiated ground lease requires the payment of rent in the amount of $50,000 per year while the building and garage are under construction. Once constructed, Swire will make a one-time payment of $1.1 million and will continue to pay rent in the amount of $2,100 per year thereafter for the remainder of the term of the agreement. The rent is structured in this manner to minimize the management and legal complexities of constructing a portion of a condominium on leased property.

The Brickell Metromover Parcels B, C, and D, Development, Maintenance and Easement Agreement covers the remaining three parcels of property that are encumbered by the Eighth Street Metromover Station and the Metromover guideway. If approved, the development portion of this agreement would

be effective during the construction of the improvements with the exception of the "Climate Ribbon" (discussed below). The maintenance and easement portion of the agreement would have a ten-year term with successive ten-year automatic renewal terms. Under this agreement, Swire is proposing to completely integrate the Metromover system into the Brickell Citicentre Project. This would be accomplished by providing supplemental landscaping under the Metromover guideway, improved access to the Eighth Street Station and providing a direct connection from the station to the Brickell Citicentre project (Depictions of these improvements are shown in Schedules 2.1 and 2.2 of the attached Brickell Metromover Parcels B, C and D Development, Maintenance and Easement Agreement). The developer will donate all of these improvements to MDT and continue to maintain them for the entire term of the agreement.

As part of Phase Two of the Brickell Citicentre project, Swire will construct a "Climate Ribbon" over the Eighth Street Metromover Station through an aerial easement granted by the County, but Swirewould retain ownership and the responsibility for its maintenance. The "Climate Ribbon" is a canopy providing shade and water collection for landscaping and water features, and may include the use of solar panels to provide energy. The "Climate Ribbon" would be constructed within twelve years of the effective date of the agreement.

The project is estimated to generate, on an annual basis, the following revenue:

* $3.8 million in County ad valorem taxes
* $5.2 million in Miami-Dade County School taxes,
* $5.4 million in City of Miami ad valorem taxes
* $1.0 million in tourist taxes
* $4.8 million in local option sales taxes

It is anticipated that the project will have a very significant, positive economic impact on the community. While under construction, the project is projected to create 1,700 jobs and will, once employ 3,700 individuals once completed. Additionally, it is estimated that the project will stimulate the creation of an additional 2,500 indirect jobs. Therefore, it is in the best interest of the County to approve these Agreements.

Deputy Mayor/County Manager

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Brickell Parcel A Vacant Land Lease

The foregoing resolution was offered by Commissioner , who moved its adoption. The motion was seconded by Commissioner and upon being put to a vote, the vote was as follows:

Joe A. Martinez, Chairman
Audrey M. Edmonson, Vice Chairman

Bruno A. Barreiro	Lynda Bell
Esteban Bovo, Jr.	Jose "Pepe" Diaz
Sally A. Heyman	Barbara J. Jordan
Jean Monestime	Dennis C. Moss
Rebeca Sosa	Sen. Javier D. Souto
Xavier L. Suarez	

The Chairperson thereupon declared the resolution duly passed and adopted this 3rd day of April, 2012. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

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

HARVEY RUVIN, CLERK

By:_____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

Bruce Libhaber

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 8(O)(1)
4-3-12

RESOLUTION NO. _____

RESOLUTION APPROVING AWARD OF A DEVELOPMENT, MAINTENANCE AND EASEMENT AGREEMENT AND A GROUND LEASE AGREEMENT, WHICH PROVIDES FOR ANNUAL RENT PAYMENTS TO THE COUNTY OF $50,000 DURING CONSTRUCTION, A ONE-TIME RENT PAYMENT OF $1.1 MILLION UPON COMPLETION OF CONSTRUCTION AND ANNUAL RENT PAYMENTS OF $2,100 THEREAFTER, TO SWIRE PROPERTIES, INC., AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE THE AGREEMENTS FOR AND ON BEHALF OF MIAMI-DADE COUNTY, AND TO EXERCISE ANY CANCELLATION AND RENEWAL PROVISIONS, AND TO EXERCISE ALL OTHER RIGHTS CONTAINED THEREIN

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

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board hereby approves the development, maintenance and easement agreement and the ground lease agreement, which provides for payment to the County of annual rent of $50,000 during construction, a one-time rent payment of $1.1 million upon completion of construction and annual rent payments of $2,100 thereafter, between Swire Properties, Inc. and Miami-Dade County, in substantially the form attached hereto and made a part hereof, and authorizes the County Mayor or County Mayor's designee to execute same for and on behalf of Miami-Dade County and to exercise any cancellation and renewal provisions and all other rights contained therein.

MEMORANDUM

(Revised)

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

DATE: April 3, 2012

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

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

Please note any items checked.

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

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

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

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

_____ **Budget required**

_____ **Statement of fiscal impact required**

_____ **Ordinance creating a new board requires detailed County Manager's report for public hearing**

_____ **No committee review**

_____ **Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous_____) to approve**

_____ **Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required**

As part of Phase Two of the Brickell Citicentre project, Swire will construct a "Climate Ribbon" over the Eighth Street Metromover Station through an aerial easement granted by the County, but Swirewould retain ownership and the responsibility for its maintenance. The "Climate Ribbon" is a canopy providing shade and water collection for landscaping and water features, and may include the use of solar panels to provide energy. The "Climate Ribbon" would be constructed within twelve years of the effective date of the agreement.

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Deputy Mayor/County Manager

Background

On September 23, 2011, Request for Proposals (RFP) No. 798 was issued by the County under full and open competition for the development of four parcels of property located adjacent to and under the Metromover system between SE 6th Street and SE 8th Street in the City of Miami. One proposal was received in response to the RFP from Swire. The proposal was evaluated by a selection/evaluation committee. The committee recommended entering into negotiations with Swire. A negotiation committee was appointed and the two attached agreements were negotiated.

The proposed agreements, The Brickell Parcel A Lease Agreement, and the Brickell Metromover Parcels B, C and D Development, Maintenance and Easement Agreement, cover the development and use of four parcels of property acquired as part of the project under which the Brickell and Omni extensions to the Metromover were constructed. The extension project was funded, in part by the Federal Transit Administration (FTA) (75% of the funding), and the Florida Department of Transportation (FDOT) (approximately 8% of the funding) under Grant No. FL-03-0085. The remainder of the extension project was funded by the County.

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The Brickell Parcel A Vacant Land Lease, which has a term of 99 years, covers only the one parcel of property that is not encumbered by the Metromover system, Parcel A. This vacant parcel contains approximately 9,000 square feet of property. Swire has proposed to construct a portion of a multi-level parking garage for a 455 unit condominium tower on this property. The negotiated ground lease requires the payment of rent in the amount of $50,000 per year while the building and garage are under construction. Once constructed, Swire will make a one-time payment of $1.1 million and will continue to pay rent in the amount of $2,100 per year thereafter for the remainder of the term of the agreement. The rent is structured in this manner to minimize the management and legal complexities of constructing a portion of a condominium on leased property.

The Brickell Metromover Parcels B, C, and D, Development, Maintenance and Easement Agreement covers the remaining three parcels of property that are encumbered by the Eighth Street Metromover Station and the Metromover guideway. If approved, the development portion of this agreement would be effective during the construction of the improvements with the exception of the "Climate Ribbon" (discussed below). The maintenance and easement portion of the agreement would have a ten-year term with successive ten-year automatic renewal terms. Under this agreement, Swire is proposing to completely integrate the Metromover system into the Brickell Citicentre Project. This would be accomplished by providing supplemental landscaping under the Metromover guideway, improved access to the Eighth Street Station and providing a direct connection from the station to the Brickell Citicentre project (Depictions of these improvements are shown in Schedules 2.1 and 2.2 of the attached Brickell Metromover Parcels B, C and D Development, Maintenance and Easement Agreement). The developer will donate all of these improvements to MDT and continue to maintain them for the entire term of the agreement.

Memorandum

MIAMI-DADE COUNTY

Date: April 3, 2012

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

From: Carlos A. Gimenez
Mayor

Subject: Recommendation to Approve the Award of a Ground Lease and a Development, Maintenance and Easement Agreement to Swire Properties, Inc.

Recommendation

It is recommended that the Board of County Commissioners (Board) adopt the attached resolution approving the award of a Ground Lease (Brickell Parcel A Vacant Land Lease) and a Development, Maintenance and Easement Agreement (Brickell Metromover Parcels B, C and D Development, Maintenance and Easement Agreement) to the Developer, Swire Properties, Inc. (Swire).

Scope

The impact of this project is countywide; however, it is located within Commission District 5.

Fiscal Impact

The project will be entirely financed by Swire. There will be no County or other governmental funding required for this project. As described further below, there will be a positive fiscal impact to the County and Miami-Dade Transit (MDT).

However, as a part of the Brickell Parcel A Vacant Land Lease, the County will receive, starting on the commencement date of the agreement, annual rent payments of $50,000 during the four-year construction period, a one-time payment of $1.1 million upon completion of construction, and additional annual rent payments of $2,100 for the remainder of the 99-year term of the lease.

Though no rent will be paid to the County pursuant to the Brickell Metromover Parcels B, C, and D, Development, Maintenance and Easement Agreement, Swire will provide supplemental landscaping under the Metromover guideway, improved vertical access to the Eighth Street Station platform and a connection from the station to the Brickell Citicentre project. Swire will donate all of these improvements to MDT and continue to maintain them for the entire term of this agreement.

Monitoring

The terms of the attached Ground Lease Agreement and of the Development, Maintenance and Easement Agreement will be monitored by Froilan Baez, Miami-Dade Transit, Acting Chief of Right-of-Way, Utilities and Property Management.

MEMORANDUM Agenda Item No. 8(O)(1)

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

DATE: April 3, 2012

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

SUBJECT: Resolution approving award of a development, maintenance and easement agreement and a ground lease agreement to Swire Properties, Inc.

The accompanying resolution was prepared by the Miami-Dade Transit Department and placed on the agenda at the request of Prime Sponsor Commissioner Bruno A. Barreiro.

R. A. Cuevas, Jr.
County Attorney

RAC/up

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BRICKELL PARCEL A VACANT LAND LEASE

THIS BRICKELL PARCEL A VACANT LAND LEASE, dated as of the ___ day of _____, 2012, made by and between MIAMI-DADE COUNTY, a political subdivision of the State of Florida, through Miami-Dade Transit, 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 (hereinafter called "Landlord" or "MDT"), 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 "Tenant").

WITNESSETH:

A. Landlord owns approximately 9,000 square feet of vacant real property located in Miami-Dade County, Florida, with a current Folio No. of 01-0210-060-1191, commonly referred to as Parcel A, as more particularly described on Schedule 1.1, attached hereto, and generally depicted on Schedule 1.2, attached hereto, and made a part hereof (the "Land") adjacent to the Metromover right-of-way.

B. Landlord desires to lease to Tenant, and Tenant desires to lease from Landlord the Demised Premises (as hereinafter defined) as part of the Tenant's development of the Project (as hereinafter defined).

C. Landlord recognizes the potential for public and private benefit through a joint use development of the Demised Premises in order to promote public transit usage and to further economic development in Miami-Dade County.

D. It is hereby mutually covenanted and agreed by and between the parties hereto that this Lease (hereinafter defined) 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

Premises - General Terms of Lease

Section 1.1 **Lease.** In accordance with (a) Chapter 125, Florida Statutes; (b) the powers granted to Landlord pursuant to authority properly delegated by the Florida legislature; and (c) the authority to lease real property and air rights over real property belonging to Miami-Dade County; and, for and in consideration of the rents, covenants and agreements specified herein, and the easements reserved unto Landlord, its successors and assigns, Landlord agrees, pursuant to the terms of this Lease, and does hereby lease and demise unto Tenant, its successors and assigns, and Tenant does hereby take and hire, upon and subject to the conditions and limitations herein expressed, the Demised Premises, reserving to Landlord the rights described herein, to have and to hold the same unto Tenant, its successors and assigns for the Term.

Section 1.2 **Term of Lease.**

(a) The term of this Lease shall be ninety nine (99) years, commencing on the Commencement Date and expiring on the ninety ninth (99th) year thereafter (the "Term").

(b) Landlord shall deliver possession, to the extent described herein, of the Demised Premises on the Commencement Date at which time Tenant may take possession thereof. Upon the request of either Landlord or Tenant, the Landlord and Tenant shall execute a certificate confirming the Commencement Date.

Section 1.3 **Conditions Precedent to Effectiveness of Lease.** This Lease 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 Lease.

Section 1.4 **Conditions Precedent to Commencement of Construction.** Landlord accepts Tenant's proposed development as depicted in the Special Area Plan, which describes development of the Brickell CitiCentre project. However, given the proximity of the Demised Premises to the System, the Tenant and Landlord agree that specific construction and development plans for the area of the Demised Premises within thirty (30) feet of the System (the "Affected Area") shall be subject to the review and approval of MDT to assure the public safety and the System's integrity and operation. Precedent to any construction, excavation, demolition, restoration, testing or staging within the Affected Area, Tenant shall submit to the 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 within the Affected Area 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 loan 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 within the Affected Area 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 23.17 herein. Notwithstanding anything herein, all construction on the Demised Premises shall be in compliance with the Miami-Dade County Adjacent Construction Safety Manual, or its replacement.

Section 1.5 **Performance Bonds.** The Parties agree that the Improvements are not a public building or public work as contemplated under Section 255.05, Florida Statutes (2011). The Tenant 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), to guarantee the construction of the Improvements then being constructed by such contractor on the Land, and which will be delivered to MDT prior to the commencement of construction of the applicable Improvements 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 applicable Improvements then being constructed on the Land by such contractor. Each bond shall name the Landlord as beneficiary thereof and shall be issued by a surety reasonably acceptable to MDT. Tenant 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 Tenant for any portion of the work on the Land then being done. Any such performance bonds, or the equivalent, and Tenant's obligations thereunder, shall terminate upon payment of such work as required under the Tenant's

construction contract. In any event, Tenant's obligations to maintain any performance bond shall terminate at DBO. Notwithstanding anything in the foregoing, the Landlord acknowledges that the entire Project is not being constructed on the Property and the performance bond is not and shall not be based on the amount of the hard construction costs of the entire Project or any portion of the Project that is not located on the Demised Premises.

ARTICLE 2

Definition of Certain Terms

Section 2.1 Terms Defined.

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

(a) Acceptance Notice shall have the meaning ascribed to it in Section 17.10(b) herein.

(b) Additional Notice Period shall have the meaning ascribed to it in Section 4.2(a) hereof.

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

(d) Advanced Rent shall have the meaning ascribed to in Section 3.2 herein.

(e) Affected Area shall have the meaning ascribed to it in Section 1.4 herein.

(f) Air Rights shall mean all of the airspace and air rights above the Land and the Building and any other improvements, together with all other air rights, easements, rights-of-way and all appurtenances thereto leased to Tenant pursuant hereto as part of the Demised Premises.

(g) Association shall mean any condominium association, property owners' or master association, homeowner's association or other third party group having ownership or other rights in

any condominium constructed on all or any portion of the Demised Premises, together with its members, and the successors and/or assigns of any of the foregoing.

(h) Association Mortgage shall mean a project, construction, or development mortgage or mortgages, or other similar security agreements given to any Association Mortgagee of the interest of the Association or any of its members or owners, and shall be deemed to include any mortgage or trust indenture under which any condominium unit or common elements of any condominium constructed on the Project shall have been encumbered.

(i) Association Mortgagee shall mean any recognized lending institution, such as any federal, state, county or municipal governmental agency or bureau, bank, savings and loan, pension fund, insurance company, real estate investment trust, tax credit syndication entity, or other real estate investment or lending entity, savings bank, whether local, national or international, and/or the holder of any purchase money mortgage given back to a transferor, that is or becomes the holder, mortgagee or beneficiary under any Association Mortgage and the successors or assigns of such holder, mortgagee or beneficiary, and shall be deemed to include the trustee under any such trust indenture and the successors or assigns of such trust.

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

(k) Building shall mean the buildings, facilities, structures and other improvements to be erected on, above, or below the Demised Premises or a portion thereof as part of the Project (including any replacements, additions and substitutes thereof).

(l) Casualty Termination Notice shall have the meaning ascribed to such term in Section 16.1 herein.

(m) 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 Building(s) is (are) ready for occupancy in accordance with applicable Law or Ordinance.

(n) Commencement Date shall mean the date on which this Lease is executed by both Landlord and Tenant and approved by the Board and Landlord delivers the Demised Premises to Tenant.

(o) Completion of Construction shall mean the date a Temporary Certificate of Occupancy or Certificate of Occupancy is issued for the portion of the Project on the Demised Premises.

(p) Construction Plans shall means those plans as set forth in the Special Area Plan, which, subject to Section 1.4, are deemed accepted by MDT.

(q) DBO shall mean the Date of Beneficial Occupancy, which means the earliest of (i) the date on which Completion of Construction has occurred and the appropriate agency has issued a Temporary Certificate of Occupancy or a Certificate of Occupancy that enables the Tenant to occupy or utilize the Building (excluding any temporary trailers or sales centers) in any manner for its intended use and (ii) the date on which the Tenant commences the use of the Building for its intended use (with or without a Temporary Certificate of Occupancy or Certificate of Occupancy.

(r) Demised Premises shall mean collectively:

(i) the Land;

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

(iii) the Air Rights, TOGETHER WITH:

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

(B) the drains, utility lines, utility or other easements, stairwells, elevator shafts and pits and headhouses, and other improvements of Landlord located on the Land or in areas adjacent to the Demised Premises 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 rights of support and rights of use in respect of, if necessary, columns, supports, and foundations for the support of the Demised Premises, Improvements, and any other improvements and the Project thereon; provided, that nothing in the foregoing shall give the Tenant the right to construct on or use in construction of the portion of the Project on the Demised Premises any of the foundations or support columns of the System;

(D) the right of access to erect, construct, maintain, repair, renew and replace such columns, supports, foundations, stairwells, facilities, Buildings and Improvements on, beneath, above or abutting the Demised Premises;

(E) the right of ingress, egress and passageway to, from, over and beneath the Demised Premises and the System which shall be necessary or desirable for the construction (subject to Section 1.4 hereof) and operation of the Improvements and the Project; entrance, exit and passageway to and from the Demised Premises, and to and from the System for the use in common of Landlord (with respect to Public Areas only) and Tenant, and their respective successors, assigns, patrons, tenants, invitees and all other persons having business with any of them;

(F) the right to submit the Property and its air rights and subsurface rights to the condominium form of ownership by the recording of a declaration of condominium or similar instrument in the Public Records of Miami-Dade County, Florida; and

(G) all the right, title and interest of Landlord in all parking rights and all subsurface rights under the sidewalks, Building(s), Improvements, streets, avenues, vaults, curbs and roadways on, beneath, above the Demised Premises and the Project or abutting to the north and south of the Demised Premises and the Project, and all rights of ingress and egress thereto, including, without limitation, the right of pedestrians and vehicles to access any of the Improvements; and the right to construct, operate, inspect, maintain, service and repair the Building(s) and Improvements;

(iv) RESERVING UNTO LANDLORD, subject to the remaining provisions of this Lease and only to the extent not required, needed or used in connection with the Improvements and the Project, all subsurface rights under the sidewalks, streets avenues, curbs and roadways fronting on and abutting the Demised Premises subject to Tenant's rights described in subparagraph (iii) of this definition.

(s) Designated Representative shall have the meaning ascribed thereto in Section 4.10 herein.

(t) Event(s) of Default shall have the meaning ascribed to such term in Sections 19.1 and 19.8.

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

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

(w) Foreclosure Purchaser shall have the meaning ascribed to such term in Section 19.3(b) herein.

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

(y) Guaranteed Rent shall have the meaning ascribed to such term in Section 3.2 herein.

(z) Guaranteed Rent Commencement Date shall have the meaning ascribed to such term in Section 3.2 herein.

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

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

(cc) Initial Rent shall have the meaning ascribed to such term in Section 3.1 herein.

(dd) Land shall mean the real property described in Schedule 1.1 hereto, and generally depicted on Schedule 1.2 hereto, together with all rights, privileges and easements appurtenant to said real property, and all right, title and interest of Landlord, if any, in and to any Air Rights, subsurface 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.

(ee) Landlord shall mean, on the Commencement Date, Miami-Dade County, a political subdivision of the State of Florida, by and through Miami-Dade Transit. Thereafter, "Landlord" shall mean the owner at the time in question of Landlord's interest in the Demised Premises, so that if

Miami-Dade County or any successor to its interest hereunder ceases to have any interest in the Demised Premises or if there is any sale or transfer of Landlord's interest in the Demised Premises, the seller or transferor shall be entirely freed and relieved of all agreements, covenants and obligations of Landlord hereunder to be performed after the date of such sale or transfer provided that the purchaser, successor or transferee of Landlord's interest in the Demised Premises assumes in writing all such agreements, covenants and obligations of Landlord. Nothing herein shall be construed to relieve Landlord from any liability or damages arising from actions or omissions occurring or agreements, covenants and obligations required to be performed prior to the date of any such assignment, transfer or sale of Landlord's interest hereunder. Notwithstanding the foregoing and without limiting the previous sentence, Miami-Dade County shall remain liable for the representations and warranties of Section 24.1.

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

(gg) Lease shall mean this Lease and all amendments, supplements, addenda or renewals thereof.

(hh) Leasehold Mortgage shall mean a mortgage or mortgages or other similar security agreements given to any Leasehold Mortgagee of the leasehold interest of Tenant hereunder, and shall be deemed to include any mortgage or trust indenture under which this Lease shall have been encumbered.

(ii) Leasehold Mortgagee shall mean any recognized lending institution, such as any federal, state, county or municipal governmental agency or bureau, bank, savings and loan, pension fund, insurance company, real estate investment trust, tax credit syndication entity, or other real estate investment or lending entity, savings bank, whether local, national or international, and/or the holder of any purchase money mortgage given back to a transferor, that is or becomes the holder, mortgagee or beneficiary under any Leasehold Mortgage and the successors or assigns of such holder, mortgagee or beneficiary, and shall be deemed to include the trustee under any such trust indenture and the successors or assigns of such trust.

(jj) Lease Year shall mean each separate and consecutive period of twelve (12) full calendar months beginning upon the first day of the first month following the Commencement Date and upon each anniversary of such date thereafter until the expiration of the Lease, provided that Tenant may by written notice to Landlord elect to cause the Lease Year to be a calendar year.

(kk) Lender shall mean any Association Mortgagee, Leasehold Mortgagee or Subleasehold Mortgagee.

(ll) MDT shall have the meaning set forth in the Preamble of this Lease.

(mm) Mortgage shall mean collectively, a Leasehold Mortgage, Subleasehold Mortgage and Association Mortgage, as applicable.

(nn) Mortgagee Cure Period shall have the meaning set forth in Section 17.5(a).

(oo) Notice shall have the meaning ascribed to such term in Section 20.2 herein.

(pp) Offer to Purchase shall have the meaning ascribed to such term in Section 17.10(b) herein.

(qq) Offered Property shall have the meaning ascribed to such term in Section 17.10(b) herein.

(rr) 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.

(ss) Plans and Specifications shall mean the plans and specifications for all the work in connection with the alteration, construction and reconstruction of the Project on the Demised Premises pursuant to the Special Area Plan, including, any changes, additions or modifications thereof, provided the same are approved pursuant to applicable Laws and Ordinances; provided the same are approved subject to Section 1.4 hereof.

(tt) Project shall mean the development on the Demised Premises contemplated by the response by Tenant 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 Demised Premises, shall require the consent of the parties), specifically as it pertains to the construction on the Demised Premises, including, but not limited to the development and integration of the Land as part of a mixed use condominium tower, currently referred to as Brickell CitiCentre North.

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

(vv) Refund Expiration Date shall have the meaning ascribed to such term in Section 16.3 herein.

(ww) Rent shall collectively mean Initial Rent and Guaranteed Rent.

(xx) Review Period shall have the meaning ascribed thereto in Section 17.10(b) herein.

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

(zz) Space Lessee shall mean the tenant, lessee, or licensee, or their successors or assigns, under a Space Lease.

(aaa) Special Area Plan shall mean the plans for the improvements to be constructed on the Demised Premises 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.

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

(ccc) Sublease shall mean any instrument, excluding a Space Lease, pursuant to which all or any portion of the Demised Premises is subleased, including but not limited to a grant by Tenant of the right to develop the Project or any portion thereof.

(ddd) Subleasehold Mortgage shall mean a mortgage or mortgages or other similar security agreements given to any Subleasehold Mortgagee encumbering the Subleasehold interest of a Sublessee hereunder, and shall be deemed to include any mortgage or trust indenture under which any Sublease shall have been encumbered.

(eee) Subleasehold Mortgagee shall mean any recognized lending institution, such as a bank, federal, state, county, or municipal governmental agency or bureau, savings and loan, pension fund, insurance company, savings bank, real estate investment trust, tax credit syndication entity, other real estate investment or lending entity, whether local, county, state, national or international, and/or the holder of any purchase money mortgage given back to a transferor, that is or becomes the holder, mortgagee or beneficiary under any Subleasehold Mortgage and the successors or assigns of such holder, mortgagee or beneficiary, and shall be deemed to include the trustee under any trust indenture and the successors or assigns of trustee.

(fff) Sublessee shall mean the tenant, lessee, or licensee or their successors or assigns under any such Sublease.

(ggg) 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.

(hhh) Taking shall mean the exercise of the power of eminent domain as described in Article 18.

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

(jjj) Tenant shall mean, on the Commencement Date, Swire Properties, Inc., a Florida corporation. Thereafter, "Tenant" shall mean the owner(s) at the time in question of the Tenant's interest under this Lease, so that if Swire Properties, Inc., a Florida corporation, or any successor to

its interest hereunder ceases to have any interest in the leasehold estate hereby created, whether by reason of assignment, transfer or sale of Tenant's interest hereunder, the assignor, transferor or seller shall, subject to the provisions of Section 17.1, be released from and relieved of all agreements, covenants and obligations of Tenant hereunder to be performed after the date of such assignment, transfer or sale. Nothing herein shall be construed to relieve Tenant from any liability or damages arising from actions or omissions occurring or agreements, covenants and obligations required to be performed prior to the date of any such assignment, transfer or sale of Tenant's interest hereunder. Notwithstanding the foregoing, Swire Properties, Inc. shall remain liable for the representations and warranties of Section 24.2.

(kkk) 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 Landlord; 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 Lease 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 Lease 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 County or the Landlord in issuing an approval, consent, joinder, Permit or certificate be deemed an Unavoidable Delay by which the Landlord may benefit or receive an extension of time.

ARTICLE 3

Rent

Section 3.1 **Initial Rent.** During the period from the Commencement Date until the Date of Beneficial Occupancy (the "DBO"), Tenant shall pay the sum of Fifty Thousand and 04/100 Dollars ($50,000.04) per annum, payable by Tenant to Landlord in monthly installments of Four Thousand One Hundred Sixty Six and 67/100 Dollars ($4,166.67) on or before the 5th business day of each month of such Lease Year (the "Initial Rent"). Upon the request of either Landlord or Tenant, the Landlord and Tenant shall execute a certificate confirming the DBO.

Section 3.2 **Guaranteed Rent**. The Tenant shall cease paying Initial Rent the first full calendar month after the DBO at which time Tenant shall commence payment of Guaranteed Rent (the "Guaranteed Rent Commencement Date"). Commencing on the Guaranteed Rent Commencement Date, the "Guaranteed Rent" shall be payable from Tenant to Landlord as follows: (i) an initial sum in the amount of One Million One Hundred Thousand Dollars ($1,100,000.00) payable within five (5) business days after the DBO (the "Advanced Rent"), and thereafter (ii) commencing on the first anniversary after the Guaranteed Rent Commencement Date and continuing for the remainder of the Term, annual installments of Two Thousand One Hundred and No/100 Dollars ($2,100.00) due on or before the 5th business day, subject to an Unavoidable Delay, following the respective anniversary of

the Guaranteed Rent Commencement Date, it being agreed and acknowledged that in consideration of the Advanced Rent under the foregoing clause (i), there shall be no increases in Guaranteed Rent under clause (ii) for the remainder of the Term. Tenant shall not be required to pay any additional Rent, other than the Guaranteed Rent, on the Building or Improvements constructed or caused to be constructed by Tenant during the Term.

Section 3.3 **Late Payments**. In the event that any payment of Initial Rent or Guaranteed Rent due Landlord shall remain unpaid for a period of twenty (20) days beyond their due date, a late charge of five percent (5%) of the amount of such payment shall be added to such delinquent payment. In addition to the rights and remedies provided for herein, Landlord shall also have all rights and remedies afforded by law for enforcement and collection of Rent and any late charges which are not inconsistent with the limitations or remedies contained in this Lease. All Rent and other payments due Landlord under this Lease shall be paid to Landlord at the address specified herein for notice to Landlord.

Section 3.4 **Approved Restriction Adjustments**. Landlord and Tenant acknowledge that the Initial Rent and Guaranteed Rent established in this Lease were based on the understanding that Tenant would be able to develop the Project in substantially the form described in the Proposal and the Special Area Plan. In the event, due to Laws and Ordinances and/or Unavoidable Delays, the Tenant is not able to build the Project as originally described in the Proposal and the Special Area Plan or Tenant cannot obtain its Permits (as reasonably determined by Tenant), then in addition to any other rights Tenant has hereunder, (a) Tenant shall have the right to terminate this Lease and its obligations hereunder by giving written notice to Landlord within six (6) months after such inability becomes known to Tenant, and the obligations of Tenant to pay Rent under this Lease shall be abated as of the date of the giving of such notice, and in such event this Lease shall terminate as of the date

set forth in such notice from tenant, or if no date is indicated , then on the fifteenth (15th) day following the Landlord's receipt of notice of termination; and (b) in the event Tenant does not terminate this Lease, as set forth above, Tenant shall become entitled to an abatement in Rent on an equitable basis as mutually determined by the parties, taking into consideration the amount and character of the Building space or other aspect of the Project described in the Proposal and Special Area Plan, the use of which will be denied to the Tenant, as compared with the Building space described in the Proposal and the Special Area Plan.

ARTICLE 4

Development of Land and Construction of Buildings

Section 4.1 Land Uses.

(a) Tenant and Landlord agree, for themselves and their successors and assigns, to devote the Demised Premises to the uses specified in this Lease, or 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 Demised Premises and Improvements are developed, used and operated are matters of critical importance to Landlord and to the general welfare of the community. Tenant agrees that during the Term, Tenant will use reasonable efforts to create a development on the Demised Premises consistent with the Proposal and the Special Area Plan, the intent of which is to (i) enhance the ridership and usage of the System and (ii) create a mixed use center with a quality of character and operation consistent with similar comparable projects of this nature.

(c) Tenant shall establish such reasonable rules and regulations governing the use and operation as Tenant shall deem necessary or desirable in order to assure the level or quality and character of

operation of the Demised Premises required herein; and Tenant will use reasonable efforts to enforce such rules and regulations.

Section 4.2 **Development Rights and Construction**. Tenant shall have the right to develop the Demised Premises and to construct the applicable portion of the Improvements and the Project required in connection with such development, subject to the terms and conditions of this Lease, including the following:

(a) Development Rights of Land. It is intended that the Demised Premises 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 Landlord will join in such Permits or other permits, licenses, approvals, declaration of condominium or other administrative documents, including but not limited to non-disturbance and attornment agreements as provided in this Lease, as may be necessary for Tenant to develop and use the Demised Premises in accordance with the Special Area Plan and Proposal and in a manner otherwise permitted hereunder, provided that (i) such joinder by Landlord shall be at no cost to Landlord 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 Landlord; and (iii) the Landlord 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 Tenant (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 23.17 shall prevail. In the event that Board approval is not required under applicable Laws and Ordinances, Landlord agrees that if Landlord has not provided the Tenant with written notice of its approval

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

(b) 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 Landlord under Section 4.2(c) herein or to require the Landlord, subject to Section 23.17, to agree to any easements, restrictive covenants, easement vacations or modifications or such other documents that require the consent of the Board pursuant to applicable Laws and Ordinances.

(c) Miami-Dade County's rights as sovereign. It is expressly understood that notwithstanding any provision of this Lease and Miami-Dade County's status as Landlord thereunder:

(i) Miami-Dade County retains all of its sovereign prerogatives and rights as a county under Florida laws (but not in regard to its status as Landlord and the performance of its contractual duties hereunder) and shall in no way be estopped from withholding or refusing to issue any approvals of applications for building or zoning; from exercising its planning or regulatory duties and authority; and from requiring development under present or future Laws and Ordinances of whatever nature applicable to the design, construction and development of the Buildings and improvements provided for in this Lease; and

(ii) Miami-Dade County shall not by virtue of this Lease be obligated to grant Tenant, the Demised Premises or the Project any approvals of applications for building, zoning, planning or development under present or future (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 Lease.

(d) Submission to Condominium. Landlord agrees that it will join in and consent to a declaration of condominium or similar declaration of covenants, conditions and restrictions submitting the Demised Premises, or any portion thereof as required by Tenant, to the condominium form of ownership.

Section 4.3 **Conformity of Plans**. Construction Plans and all work by Tenant with respect to the Demised Premises and to Tenant's construction of or installation thereon shall be in conformity with this Lease, applicable building codes, and all other applicable federal, state, county and local laws, all as subject to Section 1.4.

Section 4.4 **Tenant Obligations**. MDT approval of any concept plans pursuant to this Article 4 and Section 1.4 hereof shall not relieve Tenant of its obligations under applicable Laws and Ordinances to file such plans with any other department of Miami-Dade County or any other governmental authority having jurisdiction over the issuance of building or other Permits and to take such steps as are necessary to obtain issuance of such Permits. Landlord agrees to cooperate pursuant to the terms of Section 23.17 and join in (if applicable), with Tenant in connection with the obtaining of such approvals and Permits, and that Tenant shall have the right to execute any and all applications, approvals and consents for any Permits relating to the Improvements of the Demised Premises and the Project without any further joinder, consent or approval from Landlord as long as the contemplated Improvements are consistent with the Proposal and the Special Area Plan, but in

the event that Landlord's authorization or signature is required for any Permit and Board approval thereof is not required under applicable Laws and Ordinances, Landlord agrees to execute any such Permit, approval or consent within the Administrative Review Period. By execution of this Lease, Landlord agrees that Tenant may unify the Land with property adjacent to the Land through a unity of title, covenant in lieu of a unity of title or any other similar agreement, such agreement to be in substantially the form as set forth on Schedule 4.4, which may be executed and recorded in the public records of Miami-Dade County, Florida, and Landlord agrees that no further consent of Landlord shall be required therefor, but in the event that Landlord's authorization or signature is required on such agreement to effectuate same, Landlord agrees to execute any such agreement within the Administrative Review Period. Tenant acknowledges that any approval given by MDT, as Landlord pursuant to this Article 4, shall not constitute an opinion or agreement by MDT that the plans are structurally sufficient or in compliance with any Laws or Ordinances, and no such approval shall impose any liability upon MDT.

Section 4.5 **Facilities to be Constructed**. Landlord shall not be responsible for any costs or expenses of construction or installation of the Improvements, except as otherwise provided herein or agreed to by the parties.

Section 4.6 **Progress of Construction**. Subsequent to the delivery of possession of the Demised Premises to Tenant and until Completion of Construction, upon written request of the Designated Representative, which such request shall not occur more than quarterly, Tenant shall submit a report to the Designated Representative of the progress of Tenant with respect to development and construction of the Project. Tenant, by executing this Lease, 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.

Section 4.7 **Ownership of Improvements**. All Improvements and all material and equipment provided by Tenant or on its behalf which are incorporated into or become a part of the Project (excepting all of the System facilities) shall, upon being added thereto or incorporated therein, and the Project itself, be and remain the property of Tenant, but subject to the same (not including personal property of Tenant, Sublessees or Space Lessees) becoming the property of Landlord at the expiration or termination of this Lease. Landlord agrees that all or a portion of the Project may be submitted to the condominium form of ownership and may, as a result of such submission, be subdivided into condominium units and parcels to be conveyed to individual unit owners.

Section 4.8 **Mutual Covenants of Non-Interference**. Tenant's development and construction of the Project and its use and operation of the Demised Premises shall not materially and adversely interfere with Landlord's customary and reasonable operation of the System, unless prior arrangements have been made in writing between Landlord and Tenant. Similarly, Landlord's use of the Station area and the System shall not materially and adversely interfere with Tenant's development and construction of the Project and its use and operation of the Demised Premises and the Improvements to be constructed thereon, unless prior arrangements have been made in writing between Landlord and Tenant. Landlord may at any time during the term of this Lease, stop or slow down construction by Tenant, but only upon Landlord's reasonable determination that the safety of the System, or of the users of the System or of any employees, agents, licensees and permittees of Landlord is jeopardized. Any such slowdown or stoppage shall be deemed to be an Unavoidable Delay and shall entitle Tenant to appropriate extensions of time hereunder, and an abatement of

Rent, if applicable, for such period of time, provided that such safety hazard which caused the slowdown or stoppage is not the result of Tenant's negligence or willful act.

Section 4.9 **Connection of Buildings to Utilities**. Tenant, at its sole cost and expense, may install or cause to be installed all necessary connections between the Improvements constructed or erected by it on the Demised Premises, and the water, sanitary and storm drain mains and mechanical and electrical conduits and other utilities, whether or not owned by Landlord. Tenant shall pay for the additional cost, if any, of locating and installing new facilities for sewer, water, electrical, and other utilities as needed to service the Demised Premises. Landlord shall cooperate with Tenant to the extent Tenant needs Landlord to join in any agreements or documents for installation of any connections necessary for the Project or required by Tenant.

Section 4.10 **Designation of Landlord's Representative**. The Miami-Dade Transit Director or his/her designee, or such person as subsequently designated by the Miami-Dade Transit Director upon written notice to Tenant, shall have the power, authority and right, on behalf of the Landlord, in its capacity as Landlord 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 Tenant to be submitted to Landlord pursuant to this Article and this Lease;

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

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

(d) execute non-disturbance agreements and declaration of condominiums, and issue estoppel statements as provided elsewhere in this Lease;

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

(f) execute on behalf of Miami-Dade County any and all consents, agreements, easements, applications or other documents, needed to comply with applicable regulatory procedures and secure Permits, other permits or other approvals needed to accomplish the construction of any and all Improvements in and refurbishments of the Demised Premises, and to amend this Lease to correct any typographical or non-material errors.

Notwithstanding anything herein to the contrary, the Landlord agrees that within three (3) business days after the Commencement Date to deliver written notice to Tenant designating Landlord'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 Tenant in connection with this Lease and any submissions, approvals, consents, joinders or inquiries with respect to this Lease, the Demised Premises and/or the Improvements thereon.

ARTICLE 5

Payment of Taxes, Assessments

Section 5.1 **Tenant's Obligations for Impositions**. Tenant shall pay or cause to be paid, prior to their becoming delinquent, all Impositions, which at any time during the Term have been, or which may become a lien on, the Demised Premises or any part thereof, or any appurtenance thereto (it being understood and acknowledged by Landlord, that such Impositions only pertain to the portion of the Project located on the Land and not the entire Project), provided, however, that:

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

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

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

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

(e) Upon the request of Tenant, the Landlord shall cooperate with Tenant, from time to time, in order for Tenant to receive (i) any sales tax exemptions provided under any applicable Laws

and Ordinances and (ii) any benefits to which Tenant may be entitled, including, but not limited to any entitlements as a result of being in an enterprise zone or empowerment zone.

Section 5.2 **Contesting Impositions.**

(a) Tenant shall have the right to contest the amount or validity, in whole or in part, of any Imposition, for which Tenant is or is claimed to be liable, by appropriate proceedings diligently conducted in good faith but only after payment of such Imposition, unless such payment or payment thereof under protest would operate as a bar to such contest or interfere materially with the prosecution thereof, in which event, notwithstanding the provisions of Section 5.1 herein, Tenant may postpone or defer payment of such Imposition if:

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

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

(b) Landlord agrees to cooperate with Tenant in connection with any proceedings referred to in this Section 5.2, but Landlord shall not be required to join in any proceedings referred to in this Section 5.2 unless the provisions of any Law or Ordinance at the time in effect shall require that Landlord is a necessary party to such proceedings, in which event Landlord shall participate in such proceedings at Tenant's reasonable cost.

ARTICLE 6

Surrender

Section 6.1 **Surrender of Demised Premises**. Tenant, on the last day of the Term, or upon any earlier termination of this Lease, shall surrender and deliver up the Demised Premises to the possession and use of Landlord without delay and, subject to the provisions of Articles 16 and 19 herein, in good condition and repair, reasonable wear and tear, acts of God, and casualties excepted, subject to any rights the Landlord may grant to the Association under any declaration of condominium or other covenants and restrictions and easement agreement, if any.

Section 6.2 **Removal of Personal Property or Fixtures**. Where furnished by or at the expense of Tenant, the Association (if not the Tenant), Sublessee, or any Space Lessee, or secured by a lien held by either the owner or a lender financing same, signs, furniture, furnishings, movable trade fixtures, business equipment and alterations and/or other similar items may be removed by Tenant, or, if approved by Tenant, by the Association (if not the Tenant) or by such Sublessee, Space Lessee or lien holder at, or prior to, the termination or expiration of this Lease; provided however, that if the removal thereof will damage the System or necessitate changes in or repairs to the System, Tenant shall repair or restore (or cause to be repaired or restored) the System to a condition substantially similar to its condition immediately preceding the removal of such furniture, furnishings, movable trade fixtures and business equipment, or pay or cause to be paid to Landlord the reasonable cost of repairing any damage arising from such removal.

Section 6.3 **Subject to Rights of Association**. Landlord acknowledges and agrees that in the event the Demised Premises is part of or subject to the condominium form of ownership, Landlord's lien rights shall be subject to the rights of the Association and individual condominium owners pursuant to Florida Statutes Chapter 718, as may be amended from time to time, subject to the terms of a declaration of condominium or easements, covenants and restrictions that is consistent with this Lease.

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

ARTICLE 7

Insurance

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

ARTICLE 8

Operation

Section 8.1 **Control of Demised Premises**. Landlord hereby agrees that, subject to Section 1.4 hereof, Tenant shall be free to perform and exercise its rights under this Lease and shall have exclusive authority to direct, operate, lease and manage the Demised Premises.

Section 8.2 **Repair and Relocation of Utilities**. Landlord and Tenant hereby agree to maintain and repair, and each party is given the right to replace, relocate, and remove, as necessary, utility facilities within the Demised Premises required for the operation of the Demised Premises or of the System, provided:

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

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

(c) Each of the utility facilities and the Demised Premises are thereafter restored to their former state; and

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

Landlord agrees to cooperate with Tenant in relocating existing utility lines and facilities on the Demised Premises 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 8.3 **Rights to Erect Signs.**

(a) Landlord hereby agrees that, to the extent permitted by law, Tenant shall have the right during the Term, to place, erect, maintain and operate, or cause, allow and control the placement, erection, maintenance and operation of any signs or advertisements consisting of commercial speech in accordance with subparagraph (b) below, in or on the Demised Premises. Tenant shall be responsible for obtaining any and all Permits and licenses which may be required from time to time by any governmental authority for such signs and advertisements, and Landlord agrees to execute any consents reasonably necessary or required by any governmental authority as part of Tenant's application for such Permits or licenses, such execution and consent to be provided within the Administrative Review Period. In the event that Landlord fails to respond within the Administrative Review Period and Board approval is not required under applicable Laws and Ordinances, Landlord agrees that if Landlord has not provided the Tenant with written notice of its approval or disapproval within the Administrative Review Period, then Tenant shall have the right to deliver written notice to Landlord advising Landlord that Landlord has not responded to Tenant within the Administrative Review Period, Tenant shall have the right to send written notice to Landlord of Landlord's failure thereof, and Landlord shall have the Additional Notice Period to respond to Tenant with such approval or disapproval. In the event that Landlord fails to respond after the expiration of the Additional Notice Period, the Landlord shall be deemed to have consented to the applicable request of Tenant that is then at issue under such request.

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

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

ARTICLE 9

Tenant Repairs and Maintenance of the Demised Premises

Throughout the Term, Tenant, at its sole cost and expense, shall keep the Demised Premises in good order and condition, and make all necessary repairs thereto; provided, however, that Landlord shall be responsible for all repairs necessary or required as a result of Landlord's gross negligence or misconduct. Landlord, at its option, and after thirty (30) days written notice to Tenant, may perform any maintenance or repairs required of Tenant hereunder which have not been commenced and are not being pursued by Tenant following the notice described above, and may seek reasonable cost and expenses thereof from Tenant.

ARTICLE 10

Compliance with Laws and Ordinances; Operation

Section 10.1 **Compliance by Tenant**. Throughout the Term, Tenant, at Tenant's sole cost and expense, shall promptly comply with all applicable Laws and Ordinances, provided such Laws and Ordinances apply to similar properties located in Miami-Dade County, Florida or the City of Miami as the Demised Premises generally, and is not specific to the Demised Premises or similar leases such as this Lease. To the extent that Tenant's compliance shall require the cooperation and participation of Landlord, Landlord agrees to use its best efforts to cooperate and participate in accordance with the Joint Use Policy for Joint Development Projects, as set forth in County Commission Resolution R-1443A-81, adopted September 28, 1981.

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

ARTICLE 11

Changes and Alterations to Buildings by Tenant

After the construction of the Improvements, Tenant 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 Improvements and to raze 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 Improvements.

ARTICLE 12

Discharge of Obligations

Section 12.1 **Tenant's Duty**. During the Term, except for any Mortgages or as otherwise allowed under this Lease, Tenant will discharge any and all obligations incurred by Tenant which give rise to any liens on the fee of the Demised Premises, it being understood and agreed that Tenant shall have the right to withhold any payment (or to transfer any such lien to a bond in accordance with applicable Florida law) so long as it is in good faith disputing liability therefor or the amount thereof.

Section 12.2 **Landlord's Duty**. During the Term, Landlord will discharge any and all obligations incurred by Landlord which give rise to any liens on the Demised Premises, it being understood and agreed that Landlord shall have the right to withhold any payment so long as it is in good faith disputing liability therefor or the amount thereof.

ARTICLE 13

Use of Premises

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

(a) The Demised Premises shall not knowingly be used for the following:

(i) any unlawful or illegal business, use or purpose; or

(ii) any purpose which violates the approvals of applicable government authorities as expressly required under this Lease.

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

(c) Except as otherwise specified, Tenant may use the Demised Premises for any lawful purpose or use authorized by this Lease and allowed under the Ordinance establishing the zoning for the Demised Premises, including, without limitation, the use of the Demised Premises for the Project and the use of the Demised Premises as a condominium and for condominium type of ownership.

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

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

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

(c) the use of normal cleaning and maintenance liquids and substances, or

(d) their use in construction of Improvements in the Demised Premises.

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

Section 13.4 **Designation of Improvements by Name**. Tenant shall have the right and privilege of designating name(s) by which all or any portion of the Improvements or the Project shall be known.

ARTICLE 14

Entry on Premises by Landlord

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

Section 14.2 **Limitations on Inspection**. Landlord, in its exercise of the right of entry granted to it in Section 14.1 herein, shall (a) not unreasonably disturb the occupancy of Tenant, the Association, Sublessees or Space Lessees nor disturb their business activities; and (b) with respect to any condominium ownership or residential Sublessee or Space Lessee, shall comply with all laws, rules and regulations governing or applicable to the Landlord of residential premises.

ARTICLE 15

Limitation of Liability

Section 15.1 **Limitation of Liability of Landlord**. Landlord shall not be liable to Tenant for any incidental or consequential loss or damage whatsoever arising from the rights of Landlord hereunder.

Section 15.2 **Limitation of Liability of Tenant**. Tenant shall not be liable to Landlord for any incidental or consequential loss or damage whatsoever arising from rights of Tenant hereunder. Excluding damage to the System caused by Tenant, any liability of Tenant hereunder shall be limited to the Fair Market Value of the Improvements located on the Land.

ARTICLE 16

Damage and Destruction

Section 16.1 **Tenant's Right to Restore**. If, at any time during the Term, the Demised Premises or any part thereof shall be damaged or destroyed by fire or other casualty, Tenant shall have the

right, at Tenant's sole option, (a) to terminate this Lease and its obligations hereunder by giving written notice to Landlord within six (6) months after such damage or destruction; (b) to terminate this Lease and its obligations hereunder by giving written notice to Landlord within six (6) months after Tenant's receipt of notice that that the insurance proceeds are not being made available or Tenant's determination that the insurance proceeds are inadequate, in Tenant's discretion, to replace or rebuild the Premises to the condition prior to such casualty; or (c) to repair, alter, restore, replace or rebuild the Improvements, or any portion thereof, subject to the terms of Section 1.4 hereof. Provided Tenant otherwise complies with the terms of this Lease, including, without limitation, Section 1.4 hereof, and the Tenant elects the option in this Section 16.1(c) above, Tenant may construct Improvements which are larger, smaller or different in design, function or use and which represent a use comparable to prior use or compatible with uses of property in the immediate geographical area, to the extent such construction and improvement are allowed by applicable Laws and Ordinances. A notice by Tenant terminating this Lease under Section 16.1(a) or Section 16.1(b) shall be referred to herein as a "Casualty Termination Notice."

Section 16.2 **Loss Payees of Tenant-Maintained Property Insurance**. With respect to all policies of property insurance required to be maintained by Tenant in accordance with Schedule 7 attached, (a) Landlord shall be named as an additional insured as its interest may appear, which such interest shall be limited to the Land and shall not be applicable to the Improvements or the Project, and (b) the loss thereunder shall be payable to Tenant and to any Leasehold Mortgagee under a standard mortgage endorsement. Neither Landlord nor any Lender shall 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 Tenant

Section 16.3 Abatement of Rent.

(a) In the event that Tenant sends Landlord a Casualty Termination Notice, the following provisions shall be applicable:

(i) Landlord shall have thirty (30) days from the date of receipt of the Casualty Termination Notice to deliver to Tenant written notice that Landlord desires the Tenant surrender the Demised Premises to Landlord in a vacant condition as a requirement to such termination;

(ii) if the Casualty Termination Notice is delivered to Landlord prior to the date that is ten (10) years from the DBO (the "Refund Expiration Date") and (A) the insurance proceeds are not available or are not adequate to reimburse Tenant for the Fair Market Value of the Project and (B) such casualty is not a result of the negligence or misconduct of Landlord, or its agents, employees or representatives, then the Advanced Rent shall be prorated (such proration to be based on the period from the DBO to the Refund Expiration Date and not the entire Term) as of the date of the Casualty Termination Notice, and Landlord shall return such prorated amount to Tenant within thirty (30) days of request therefor;

(iii) if the Casualty Termination Notice is delivered to Landlord on or after the Refund Expiration Date and such casualty is not a result of the negligence or misconduct of Landlord, or its agents, employees or representatives, then the Landlord shall be entitled to retain the Advanced Rent and such Advanced Rent shall not be prorated or required to be refunded to Tenant; and

(iv) if the Casualty Termination Notice is delivered to Landlord at any time during the Term and (A) the insurance proceeds are not available or are not adequate to reimburse Tenant for the Fair Market Value of the Project and (B) such casualty is a result of the

negligence or misconduct of Landlord, or its agents, employees or representatives, then the Advanced Rent shall be prorated over the then remaining Term and Landlord shall return such prorated amount to Tenant within thirty (30) days of request therefor; provided, that nothing in the foregoing shall limit any other rights or remedies of the Tenant hereunder.

b) Tenant shall be entitled to a proportionate abatement, allowance, reduction or suspension of any Rent or other payments due to Landlord under this Lease beginning on the date of such casualty and, if Tenant elects to rebuild, continuing for the period necessary, if applicable, to reconstruct the Improvements. If Tenant elects to restore or rebuild the Improvements under Section 16.1(c), then the Term of this Lease shall be extended for each day of such restoration or rebuilding until completion thereof.

ARTICLE 17

Mortgages, Transfers, Subleases, Transfer of Tenant's Interest, New Lease and Lease in Reversion

Section 17.1 **Right to Transfer Leasehold**. During the Term, Tenant 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 Lease (if the portion sold, assigned or transferred is less than all of the Demised Premises, such instrument is a "Sublease"), to an Association or 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 Tenant shall select; subject, however, to the following:

(a) In the event of a transfer of all of Tenant's rights hereunder, Tenant shall deliver written notice to Landlord of such transfer, together with a copy of the transfer agreement (if applicable) and the address for the transferee thereunder; provided, however, in no event will the Tenant or the

Association to which any portion of the Project may be transferred be required to deliver notices to Landlord of any transfers to any condominium unit owners, Sublessees or Space Lessees;

(b) Upon the transfer by Tenant, Tenant shall be released and discharged from all of its duties and obligations hereunder which pertain to the portion of the Demised Premises transferred for the then unexpired Term, including the payment of Rent and Impositions which are not then due and payable; it being the intention of this Lease that the tenant then in possession shall be liable for the payment of said Rent and Impositions becoming due and payable during the term of its possession of the Demised Premises, and that there shall be no obligation on the part of such tenant (or any transferor) for the payment of any such Rent or other Impositions which shall become due and payable with respect to the portion of the Demised Premises transferred subsequent to the termination of its possession of any portion of the Demised Premises under the terms of this Lease;

(c) Any sale, assignment or transfer of all or any part of Tenant's interest in the Lease and the Demised Premises shall be made expressly subject to the terms, covenants and conditions of this Lease, and such assignee or transferee shall expressly assume all of the obligations of Tenant under this Lease applicable to that portion of the Demised Premises being sold, assigned or transferred, and agree to be subject to all conditions and restrictions to which Tenant is subject, but only for matters accruing while such assignee or transferee holds, and only related to, the sold, assigned, or transferred interest. However, nothing in this subsection or elsewhere in this Lease shall abrogate (i) Landlord's right to payment of all Rent and other amounts due Landlord which accrued prior to the effective date of such transfer, and Landlord shall always have the right to enforce collection of such Rent or other sums due in accordance

with the terms and provisions of this Lease; and (ii) the obligation for the development, use and operation of every part of the Demised Premises to be in compliance with the requirements of this Lease; and

(d) Tenant shall not have the right to assign this Lease or its rights and obligations under this Lease 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 Landlord. Nothing in the foregoing shall prevent any such party from acquiring a condominium unit in the Building.

Section 17.2 **Right to Mortgage Leasehold**. Notwithstanding Section 17.1 to the contrary, Tenant, any Sublessees and any Association shall have the right from time to time, and without prior consent of Landlord, to mortgage and otherwise encumber their rights under this Lease, a Sublease thereof, its condominium unit, the common elements of the condominium and/or the leasehold estate, in whole or in part, as applicable. Such mortgages or encumbrances shall be expressly subject to the terms, covenants and conditions of this Lease. The granting of a Mortgage against all or part of the leasehold estate in the Demised Premises shall not operate to make such Lender thereunder liable for performance of any of the covenants or obligations of Tenant, the Association or Sublessee under this Lease or a Sublease, except in the case of a Lender which owns or is in possession of all or a portion of the Demised Premises, and then only for the applicable portion of the Demised Premises, and its period of ownership or possession, but Landlord shall always have the right to enforce the Lease obligations against such portion of the Demised Premises, including such obligations accruing prior to such period of ownership or possession, subject to the terms hereof. The amount of any such Mortgage may be increased whether by an additional mortgage and agreement consolidating the liens of such Mortgage or by amendment of the existing Mortgage, and may be permanent or temporary, replaced, extended, increased, refinanced, consolidated or renewed

on all or any portion of the Demised Premises without the consent of Landlord. Such Mortgage may contain a provision for an assignment of any rents, revenues, monies or other payments due to Tenant, Sublessee or the Association, as a landlord or under any declaration of condominium (but such Mortgage shall not contain a provision for an assignment of rents, revenues, monies or other payments due from the Tenant, Sublessee or the Association to Landlord) from Tenant, a Sublessee or the Association to the Lender, and a provision therein that the Lender in any action to foreclose the same shall be entitled to the appointment of a receiver.

Section 17.3 **Notice to Landlord of Mortgage**. In order for a Lender to be entitled to receive any notices from the Landlord under this Lease, such Mortgagee shall be required to deliver a notice to the Landlord specifying the name and address of such Lender to which notices under this Lease from the Landlord shall be sent. For the benefit of any such Lender who shall have become entitled to notice as hereinafter provided in this Article 17, Landlord agrees, subject to all the terms of this Lease, not to accept a voluntary surrender, termination or modification of this Lease at any time while such Lender shall remain a lien on Tenant's, Sublessee's or the Association's leasehold estate. No sale or transfer of Landlord's fee simple interest in the Land or any portion thereof to Tenant shall terminate this Lease by merger or otherwise so long as the lien of the Lender remains undischarged. The foregoing is not meant to prohibit a sale of the fee to Tenant.

Section 17.4 **Notices to Lenders, Sublessee(s) and the Association**. No notice of default under Section 19.1 or notice of failure to cure a default under Section 19.2(a) shall be deemed to have been given by Landlord to Tenant unless and until a copy has been given to each Lender, Sublessee and Association who shall have notified Landlord pursuant to Sections 17.3 or 17.5 of its name, address and its interest in the Demised Premises prior to Landlord's issuance of such notice. Landlord agrees to accept performance and compliance by any such Lender, Sublessee or Association of and with any

of the terms of this Lease with the same force and effect as though kept, observed or performed by Tenant, provided such act or performance is timely under Sections 17.5 or 19.3. Nothing contained herein shall be construed as imposing any obligation upon any such Lender, Sublessee or Association to so perform or comply on behalf of Tenant.

Section 17.5 Right to Cure Default of Tenant.

(a) In addition to any rights a Lender, Sublessee or the Association may have by virtue of Article 19 herein, if, within ninety (90) days after the mailing of any notice of termination or such later date as is thirty (30) days following the expiration of the cure period, if any, afforded Tenant (the "Mortgagee Cure Period"), such Lender, Sublessee or Association shall pay, or arrange to the satisfaction of Landlord for the payment of, a sum of money equal to any and all rents or other payments due and payable by Tenant hereunder with respect to the portion of the Demised Premises to which such Lender, Sublessee or Association claims an interest as of the date of the giving of notice of termination, in addition to their pro rata share of any and all expenses, costs and fees, including reasonable attorneys' fees, incurred by Landlord in preparation for terminating this Lease and in acquiring possession of the Demised Premises, then, upon the written request of such Lender, Sublessee or Association made any time prior to the expiration of the Mortgagee Cure Period, Landlord and the party making such request (or its nominee) shall mutually execute prior to the end of such Mortgagee Cure Period a new Lease of the Demised Premises (or such portion thereof as they have an interest in or mortgage on) for the remainder of the Term and on the same terms and conditions, and with the same priority over any encumbrances created at any time by Landlord, its successors and assigns which Tenant has or had by virtue of this Lease; provided, however, that in addition to the above payments such Lender, Sublessee or Association shall have paid to Landlord a sum of

money equal to the rents and other payments for such portion of the Demised Premises accruing from the date of such termination to the date of the commencement of the term of such new Lease, together with their pro rata share of all expenses, including reasonable attorneys' fees, incident to the preparation, printing, execution, delivery and recording of such new lease. Such priority shall exist by virtue of the notice created by this Lease to any transferee of Landlord or person receiving an encumbrance from Landlord, and the priority shall be self-operative and shall not require any future act by Landlord. Such new Lease(s) shall contain the same clauses subject to which this demise is made, and shall be at the rents and other payments for such portion of the Demised Premises due Landlord and upon the terms as are herein contained. Tenant(s) under any such new Lease(s) shall have the same right, title and interest in and to and all obligations accruing thereafter under this Lease with respect to the applicable portion of the Demised Premises as Tenant has under this Lease.

(b) If, within the Mortgagee Cure Period, more than one (1) request for a new lease shall have been received by Landlord for the same portion of the Demised Premises, priority shall be given (regardless of the order in which such requests shall be made or received) to the Lender, Sublessee or Association making such a request in order of their priority of interest in said portion of the Demised Premises. It shall be a condition of the effectiveness of any request for a new lease that a copy of such request be sent (with receipt for delivery) by the Sublessee, Association, Subleasehold Mortgagee or Association Mortgagee, as the case may be, to the Leasehold Mortgagee.

(c) Simultaneously with the making of such new lease(s), the party obtaining such new lease and all other parties junior in priority of interest in the Demised Premises shall execute, acknowledge and deliver such new instruments, including new mortgages and a new Sublease,

as the case may be, and shall make such payments and adjustments among themselves, as shall be necessary and proper for the purpose of restoring to each of such parties as nearly as reasonably possible, the respective interest and status with respect to the Demised Premises which was possessed by the respective parties prior to the termination of this Lease as aforesaid.

(d) Nothing herein contained shall be deemed to impose any obligation on the part of Landlord to deliver physical possession of the Demised Premises to such Lender, Sublessee or Association or to their respective nominee until the new lease(s) has been executed by all pertinent parties. Landlord agrees, however, that Landlord will, at the cost and expense of such Lender, Sublessee or Association or respective nominee, cooperate in the prosecution of judicial proceedings to evict the then defaulting Tenant or any other occupants of the Demised Premises.

(e) If such Lender, Sublessee or Association or respective nominee shall acquire a new lease pursuant to this Article 17 and if, upon the termination of this Lease, Tenant, but for such termination, would have been entitled to receive any amount pursuant to the provisions of this Lease, then Landlord agrees that the same shall be paid to the new tenant, in the same manner and to the same extent as it would have been paid or applied the same to or for the benefit of Tenant as if this Lease had not terminated; subject however to Landlord's right to offset any damages accrued as a result of said termination.

(f) Nothing contained in this Lease shall require any Leasehold or Subleasehold Mortgagee or its nominee as a condition to its exercise of its right to enter into a new lease to cure any default of Tenant or Sublessee not reasonably susceptible of being cured by such Leasehold or Subleasehold Mortgagee or its nominees, in order to comply with the provisions of this

Section 17.5.

(g) The provisions of this Section 17.5 shall survive any termination of this Lease.

Section 17.6 **Rights to Sublease and Non-Disturbance to Sublessees and/or Space Lessees**. Tenant shall have the right to enter a Sublease or Space Lease without any approval or consent of Landlord.

Section 17.7 **Estoppel Certificates from Landlord**. Upon request of Tenant, any Lender, any Sublessee or any Association, Landlord agrees to give such requesting party an estoppel certificate in accordance with Section 22.2 herein.

Section 17.8 **Limited Waiver of Landlord Lien**. In order to enable Tenant, its Sublessees and Space Lessees and the Association to secure financing for the purchase of fixtures, equipment, and other personalty to be located on or in the Demised Premises, whether by security agreement and financing statement, mortgage or other form of security instrument, Landlord does waive and will from time to time, upon request, execute and deliver an acknowledgment that it has waived its "landlord's" or other statutory or common law liens securing payment of rent or performance of Tenant's other covenants under this Lease as to such fixtures, equipment or other personalty.

Section 17.9 **No Subordination or Mortgaging of Landlord's Fee Title**. There shall be no subordination of Landlord's fee simple interest in the Land to the lien of any Mortgage financing nor shall Landlord be required to join in such mortgage financing. No Lender may impose any lien upon the Landlord's fee simple interest in the Demised Premises.

Section 17.10 **Transfers by Landlord; Right of First Refusal; Right of First Offer**.

(a) Transfer by Landlord. During the Term, the Landlord's right to transfer the Demised Premises or any portion thereof; to assign any of its rights and obligations under this Lease, shall be subject to the following:

(i) Prior to any transfer or assignment by the Landlord, Landlord shall comply with the terms of Sections 17.10(b) herein;

(ii) In the event that Tenant does not elect to proceed with its purchase rights under Sections 17.10(b) herein and/or Landlord otherwise transfers the Demised Premises or any portion thereof or any of its rights and obligations under this Lease, then:

(A) Landlord shall deliver written notice to Tenant 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 Landlord pursuant to the terms of this Lease, Landlord shall be released and discharged from all of its duties and obligations hereunder from and after the effective date of such transfer and only those which pertain to the portion of the Demised Premises transferred;

(C) Any sale, assignment or transfer of all or any part of Landlord's interest in the Lease and/or to the Demised Premises or any portion thereof shall be made expressly subject to the terms, covenants and conditions of this Lease, and such assignee or transferee shall expressly assume all of the obligations of Landlord under this Lease applicable to that portion of the Demised Premises being sold, assigned or transferred, and agree to be subject to all conditions and restrictions and obligations to which Landlord 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 Landlord shall be prohibited from using the Demised Premises, any portion thereof or any adjacent land to the Project owned by the County for any of the prohibited uses as described in Article 18 herein or in a manner that will adversely impact Tenant or the Project.

(b) Right of First Refusal. During the Term and provided that there is not then any Event of Default of Tenant beyond all applicable grace and cure periods, Tenant shall have the continuous right to exercise a right of first refusal to purchase the Demised Premises or an applicable portion thereof from Landlord pursuant to the terms set forth in this Section 17.10(b) and provided, that such right is not expressly prohibited by applicable Laws and Ordinances. In the event that Landlord shall receive a bona fide written offer to purchase the Demised Premises, or any portion thereof, from a third party (the "Offer to Purchase"), then Landlord shall deliver to Tenant a copy of any such Offer to Purchase to which Landlord desires or intends to agree, which such Offer to Purchase shall set forth detailed terms and condition under which the proposed purchaser intends to acquire the Demised Premises, or any portion thereof, (the "Offered Property"). Tenant shall have a reasonable time period, which such time period shall be set forth in the Offer to Purchase notice from Landlord, to review the Offer to Purchase (the "Review Period") and to send Landlord notice if Tenant desires to purchase the Offered Property, on the same terms and conditions as set forth in the Offer to Purchase or does not elect to exercise its rights of first refusal to

acquire same (the "Acceptance Notice"). If the Tenant does not deliver the Acceptance Notice to Landlord within the Review Period, then Tenant shall be deemed to have waived its right of first refusal to purchase the Offered Property pursuant to the specific Offer to Purchase delivered to Tenant. If, for any reason, Landlord's proposed purchaser under the Offer to Purchase fails to purchase the Offered Property, or any portion of the Offer to Purchase is modified, the Tenant's right of first refusal herein shall be revived and be of the same force and effect as if no bona fide Offer to Purchase was ever received by Tenant and Landlord shall be required to resubmit any revised Offer to Purchase to Tenant and Tenant shall have the rights set forth above with respect to such revised Offer to Purchase.

ARTICLE 18

Eminent Domain

Section 18.1 **Taking of Entire Premises.** 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 Demised Premises, such Taking shall be deemed to have caused this Lease to terminate and expire on the date of such Taking. Tenant shall have the right to recover, subject to Landlord's limited right below, the award for a Taking, including, without limitation, the fair market value of the Improvements, plus the value of Tenant's interest in the unexpired Term of the leasehold estate created pursuant to this Lease, plus the damages caused by such Taking on the Project as a whole, but in no event shall Tenant be entitled to compensation for any fee interest in the Land. Landlord acknowledges that the Demised Premises are a part of a larger project commonly referred to as Brickell CitiCentre, that the Demised Premises are intended to be unified pursuant to the covenant in lieu of unity of title in substantially the form

attached hereto as Exhibit H adjacent property currently owned by the Tenant and that a taking of all or a part of the Demised Premises would materially damage the Project. Subject to the foregoing, Landlord shall be entitled to receive from the condemning authority the appraised value of the Land, subject to the Lease, and as if vacant and assuming no improvements existed on the Property, at the time of the Taking; but in no event shall such award to the Landlord reduce the award to which Tenant is entitled. For the purpose of this Article 18, the date of Taking shall be deemed to be either the date on which actual possession of the Demised Premises or a portion thereof, as the case may be, is acquired by any lawful power or authority pursuant to the Taking or the date on which title vests therein, whichever is earlier. All Rents and other payments required to be paid by Tenant under this Lease shall be paid up to the date of the notice of such Taking. Tenant and Landlord shall, in all other respects, keep, observe and perform all the terms of this Lease up to the date of such Taking.

Section 18.2 **Proceeds of Taking**. In the event following any such Taking as aforesaid, this Lease is terminated, or in the event following a Taking of less than the whole of the Demised Premises this Lease is terminated as provided for in Section 18.3 herein, the proceeds of any such Taking (whole or partial) shall be distributed as described in Section 18.1. Lenders shall be entitled to participate in any proceedings in connection with a Taking, and to receive directly from the taking authority any sums to which they are found to be entitled.

Section 18.3 **Partial Taking; Termination of Lease**. If, in the event of a Taking of less than the entire Demised Premises, the remaining portion of the Demised Premises not so taken cannot be adequately restored, repaired or reconstructed as required by Tenant, in Tenant's sole discretion, then Tenant shall have the right, to be exercised by written notice to Landlord to terminate this Lease by written notice to Landlord on a date to be specified in said notice, and Tenant shall be entitled to the award as described in Section 18.1 and Section 18.2.

Section 18.4 **Partial Taking; Continuation of Lease**. If following a partial Taking this Lease is not terminated as hereinabove provided then, this Lease shall terminate as to the portion of the Demised Premises taken in such condemnation proceedings; and, as to that portion of the Demised Premises not taken Tenant shall 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 Improvements upon the Demised Premises affected by the Taking. In such event, Tenant's share of the award shall be determined in accordance with Section 18.1 herein. Such award, at Tenant's option, may be used by Tenant for its reconstruction, repair or rebuilding, and in such event, any excess award after such reconstruction, repair or rebuilding, may be retained by Tenant. In the event, the partial Taking results in making it impossible or unfeasible to reconstruct, restore, repair or rebuild Improvements, as determined by Tenant, Tenant's share of the award shall be determined in accordance with Section 18.1 herein. In such event, if Tenant elects not to terminate this Lease, then the Rent shall be partially abated on an equitable basis to be agreed to by Tenant and Landlord.

Section 18.5 **Temporary Taking**. If the whole or any part of the Demised Premises or of Tenant's interest under this Lease be taken or condemned by any competent authority for its or their temporary use or occupancy, Tenant shall have the right to terminate this Lease. If Tenant does not so terminate this Lease, the Rent shall abate for the period of time of such partial Taking Lease and Tenant shall have the right to extend the Term of this Lease for the period of time of such temporary use or occupancy. Further, in the event of any such temporary Taking, Tenant shall be entitled to receive the entire amount of any award made for such temporary Taking (attributable to the period within the Term) as described in Section 18.1, other than any portion of Rent which was abated by Landlord pursuant to this Lease, which amount Landlord shall be entitled to claim from the taking authority, whether paid by way of damages, rent or otherwise.

Section 18.6 **Additional Takings**. In case of a second, or any additional partial Taking or Takings from time to time, the provisions in Section 18.5 shall apply to each such partial Taking. In the event any federal or state sovereign or their proper delegates with the power of eminent domain appropriates or condemns all or a portion of the Demised Premises, and Landlord is a beneficiary of such Taking, the award shall be divided in accordance with the provisions of this Article 18.

Section 18.7 **Inverse Condemnation or Other Damages**. In the event of damage to the value of the Demised Premises or the Project as a whole by reason of change of grade, access rights, street alignments or any other governmental or quasi-governmental act (not involving Landlord) which constitutes an inverse condemnation of any portion of the Demised Premises creating a right to full compensation therefor, then Landlord and Tenant shall each be entitled to claim and receive from the net payment or award made on account thereof, the compensation for their respective estates and interests as set forth in Section 18.1.

Section 18.8 **Taking by Landlord**. Subject to the terms and provisions set forth below in this Section 18.8, should Landlord condemn the Demised Premises or any portion thereof within the Term, it is expressly agreed by Landlord that full compensation to Tenant shall be:

(a) Those factors set forth in Section 18.1 above;

(b) The costs expended by Tenant in the development of the condemned portion of the Demised Premises and the Project as it is impacted as a whole by such condemnation; and

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

The costs referred to in clause (b) 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 or otherwise; other financing costs; costs of infrastructure such as water, sewer, other utilities and road, drainage and other land improvements; Tenant's

overhead costs related to the portion of the Demised Premises taken and such Takings impact on the Project as a whole; 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, N.A. or its successor, but which in no event shall be less than eight percent (8%). Landlord agrees that Landlord shall not condemn the Demised Premises or any portion thereof except (i) in good faith, (ii) when no other property is reasonably suitable for the public use the Landlord needs, and (iii) for a purpose other than either leasing or selling the condemned property to another person or entity engaging in Tenant's, the Association's or Sublessee's business, including, without limitation, the business of leasing, selling or developing office, commercial, retail, condominium, hotel or residential space (or a combination of such uses). If there is a taking by Landlord of a portion of the Demised Premises, Landlord covenants that Landlord shall not use the property it so acquires for any use detrimental to Tenant's remaining property or adjacent property, which prohibited uses include, but are not limited to a trash transfer station, Metromover turning or switching yard, train repair or storage, but 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 Tenant's use and enjoyment of the remainder of the Demised Premises, the Project or the adjacent property thereto. Landlord shall consult with and coordinate design of any improvements upon the land referred to in this paragraph with Tenant, so as to maintain architectural compatibility with the balance of the Project and the Improvements located on the Demised Premises and adjacent thereto, and so as to coordinate traffic in a manner that will not adversely impact Tenant.

Section 18.9 **Involuntary Conversion**. In the event any Taking or other like proceeding or threat or imminence thereof shall occur as provided for hereinabove or otherwise, Landlord and Tenant agree to cooperate with each other (especially in the event of a Taking under Section 18.8) in order to

provide proper evidence of communication of the proceeding or threat or imminence thereof (including evidence of like Takings under Section 18.7) to the Internal Revenue Service for purposes of determining whether property has been voluntarily converted within the meaning of the Internal Revenue Code.

Section 18.10 Condemnation of Fee Interest. Notwithstanding anything in Article 18 to the contrary, Landlord hereby covenants and agrees with Tenant that (i) it will not agree to any Taking by any party without the consent of Tenant which may be withheld in Tenant's sole direction, (ii) it will contest, at Landlord's cost, 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 19

Default by Tenant or Landlord

Section 19.1 Events of Default of Tenant.

The following provisions shall apply if any one or more of the following "Event(s) of Default of Tenant" shall happen:

(a) Default is made in the due and punctual payment of any Rents or other monies payable to Landlord under this Lease when and as the same shall become due and payable and such default shall continue for a period of thirty (30) days after written notice thereof from Landlord to Tenant, subject to applicable extensions for Unavoidable Delays, with copies thereof to each Lender, Sublessee and Association who shall have notified Landlord of its name, address and interest prior to such notice; or

(b) Default is made by Tenant in keeping, observing or performing any of the duties imposed upon Tenant pursuant to the terms of this Lease, excepting the obligation to pay Rents or other

monies due Landlord, and such non-monetary default shall continue for a period of sixty (60) days after written notice thereof from Landlord to Tenant setting forth with reasonable specificity the nature of the alleged breach, with copies thereof to each Lender, Sublessee and Association who shall have notified Landlord of its name, address and interest prior to such notice; or in the case of such default or contingency which cannot with due diligence and in good faith be cured within sixty (60) days, Tenant fails within said sixty (60) day period to proceed promptly and with due diligence and in good faith to pursue curing said default, subject to applicable extensions for Unavoidable Delays,.

Section 19.2 <u>Failure to Cure Default by Tenant</u>.

(a) If an Event of Default of Tenant shall occur, Landlord, at any time after the periods set forth in Section 19.1 (a) or (b) and provided Tenant has failed to cure such Event of Default within such applicable period, shall give written notice to Tenant and to any Lender, Sublessee or Association who has notified Landlord in accordance with Article 17, specifying such Event(s) of Default of Tenant and stating that this Lease and the Term hereby demised shall expire and terminate on the date specified in such notice, which shall be at least sixty (60) days after the giving of such notice, during which time Tenant and/or the Lender, Sublessee or Association shall have the right to cure such default, and upon the date specified in such notice if the Event of Default has not been cured, then, subject, however, to the provisions of Sections 17.5 and 19.3 herein, this Lease and the Term hereby demised and all rights of Tenant under this Lease, shall expire and terminate.

(b) If an Event of Default of Tenant shall occur and the rights of Lender, Sublessee or Association shall not have been exercised as provided within this Lease, then Landlord at any time after the

periods for exercise of rights as set forth under Sections 17.5, 19.1 and 19.3 herein shall have the following rights and remedies which are cumulative:

(i) Landlord shall be entitled to sue Tenant for the Rent or monies due and the costs and expenses arising from Tenant'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, all of which shall be limited by Section 15.2; and

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

Landlord agrees and acknowledges that notwithstanding anything herein to the contrary, that the Tenant intends to construct a condominium tower as part of the Project and that pursuant to Section 718.401, Florida Statutes, the Landlord shall not have any right to terminate this Lease or evict the Association or any owners of condominium units.

Section 19.3 **Rights of Lenders, Sublessees and Association**.

(a) If Landlord shall have given notice to any Lender, Sublessee or Association, as required by Sections 17.3 and 19.2(a) herein, such Lender, Sublessee or Association shall, have, and be subrogated to, any and all rights of Tenant with respect to the curing of any such Event of Default but shall also have the right to extend the period of time for curing of any such Event of Default for an additional period of ninety (90) days from the date contained in the notice given pursuant to Sections 17.3 and 19.2 herein, or in the case of an Event of Default which cannot be cured within said ninety (90) day period, for such additional period as, with all due diligence and in good faith, is necessary to cure the Event of Default.

(b) Irrespective of any other right a Lender may have to maintain this Lease free from default and in the meantime to foreclose its Mortgage, such Lender, as to any Event of Default of Tenant that may not be cured by the payment of money and which is not susceptible to curing by entry upon the Demised Premises or otherwise, shall have the right to further extend the period of time within which to cure such Event of Default of Tenant for such additional period as, with all due diligence and in good faith will enable such Lender to institute foreclosure proceedings, apply for the appointment of a receiver for the purpose, among other things, of curing such Event of Default, if such is susceptible to curing, and to acquire by foreclosure Tenant's or Sublessee's interest in this Lease, to effect a removal of Tenant or Sublessee from the Demised Premises and, in the meantime and at the earliest opportunity, to cure such Event of Default if such is susceptible to curing. In the event the leasehold estate created by this Lease or by a Sublease hereunder shall have been duly acquired by such Lender or any purchaser at a foreclosure sale (hereinafter referred to as "Foreclosure Purchaser") and such Event of Default of Tenant shall have been duly cured, then the notice of termination of this Lease based upon Tenant's, Sublessee's or the Association's failure to timely cure such Event of Default of Tenant shall be deemed withdrawn, terminated and of no further force or effect. In the event, however, that such Lender or any Foreclosure Purchaser fails to cure such Event of Default of Tenant within the time periods set forth in this Section 19.3, Landlord reserves the right to (and must do so to effect a termination) give such Lender or any Foreclosure Purchaser, an additional thirty (30) days' written notice of termination of this Lease due to such failure by the Lender or any Foreclosure Purchaser to cure such prior Event of Default by Tenant. All such Notices 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.

After the giving of such notice of termination to such Lender or any Foreclosure Purchaser and upon the expiration of said thirty (30) days, during which time such Lender or Foreclosure Purchaser shall have failed to cure such default, this Lease and the term thereof shall end and expire as fully and completely as if the date of expiration of such thirty (30) day period were the day herein definitely fixed for the end and expiration of this Lease or Sublease and the term thereof. If Tenant, Sublessee, Leasehold Mortgagee (or Subleasehold Mortgagee), or any Foreclosure Purchaser is in possession either personally or by a receiver, Tenant, Sublessee, Leasehold Mortgagee (or Subleasehold Mortgagee) or any Foreclosure Purchaser or such receiver as the case may be, shall then quit and peacefully surrender the Demised Premises to Landlord, subject to the rights of the Association or any condominium unit owners. Notwithstanding anything contained herein to the contrary, such Leasehold Mortgagee (or Subleasehold Mortgagee) shall not be required to institute foreclosure proceedings if it is able to acquire and does acquire Tenant's or Sublessee's interest in the leasehold estate by any other means so long as such Leasehold or Subleasehold Mortgagee fulfills all other requirements of this Article 19 and of Section 17.5.

Section 19.4 **Surrender of Demised Premises**. Upon any expiration or termination in accordance with the terms and conditions of this Lease, Tenant and all Sublessees and Space Lessees shall quit and peacefully surrender the Demised Premises to Landlord, except as provided under any non-disturbance agreement provided by Landlord to any Sublessee or Space Lessees, and subject to the rights of the Association and any condominium unit buyers.

Section 19.5 **Rights of Landlord After Termination**. Subject to Section 718.401, Florida Statutes and Section 17.5 of this Lease, at any time or from time to time after such termination, Landlord may relet the Demised Premises or any part thereof, for such term or terms (which may be greater or less than the period which would otherwise have constituted the balance of the Term) and on such conditions (which may include concessions or free rent) as Landlord, in its reasonable discretion, may determine; provided, that any such party to which the Demises Premises may be transferred will be subject, if applicable, to the rights of the condominium unit owners and the Association, under any declaration of condominium affecting the Demised Premises, and may collect and receive the rents therefor, so long as Landlord uses normal and customary commercial practices in attempting to relet the Demised Premises or any part thereof, and in collecting rent due from such reletting during the balance of the term of the Lease or any renewal thereof. Landlord shall in no way be responsible or liable for any failure to relet the Demised Premises or any part thereof, or for any failure to collect any rent due for any such reletting.

Section 19.6 **No Waiver by Landlord**. No failure by Landlord to insist upon the strict performance of any of the terms of this Lease or to exercise any right or remedy consequent upon a breach thereof, and no acceptance by Landlord of full or partial Rent during the continuance of any such breach, shall constitute a waiver of any such breach or of any of the terms of this Lease. None of the terms of this Lease to be kept, observed or performed by Tenant, and no breach thereof, shall

be waived, altered or modified except by a written instrument executed by Landlord. No waiver of any default shall affect or alter this Lease, but each of the terms of this Lease shall continue in full force and effect with respect to any other then existing or subsequent breach thereof. No waiver of any default of Tenant hereunder shall be implied from any omission by Landlord to take any action on account of such default, and no express waiver shall affect any default other than the default specified in the express waiver and then only for the time and to the extent therein stated. One or more waivers by Landlord shall not be construed as a waiver of a subsequent breach of the same covenant, term or conditions.

Section 19.7 **Events of Default of Landlord**. The provisions of Section 19.8 shall apply if any of the following "Events of Default of Landlord" shall happen: if default shall be made by Landlord in keeping, observing or performing any of the duties imposed upon Landlord pursuant to the terms of this Lease, excepting the obligation to for Landlord to comply with the terms of the Administrative Review Period and the Additional Notice Period, it being agreed that the notice and time periods set forth in this Section 19.7 are not intended to extend such Administrative Review Period and Additional Notice Period time frames, and such default shall continue for a period of sixty (60) days after written notice thereof from Tenant to Landlord setting forth with reasonable specificity the nature of the alleged breach; or, in the case of any such default or contingency which cannot, with due diligence and in good faith, be cured within sixty (60) days, Landlord fails within said sixty (60) day period to proceed promptly after such notice and with due diligence and in good faith to cure said Event of Default, subject to applicable extensions for Unavoidable Delays.

Section 19.8 **Failure to Cure Default by Landlord**. If an Event of Default of Landlord shall occur, Tenant, at any time after the period set forth in Section 19.7 shall have the following rights and remedies which are cumulative:

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

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

(c) To terminate any and all obligations that Tenant may have under this Lease, in which event Tenant shall be released and relieved from any and all liability under this Lease and shall surrender possession of the Demised Premises to Landlord.

Section 19.9 **No Waiver by Tenant**. Failure by Tenant to insist upon the strict performance of any of the terms of this Lease or to exercise any right or remedy upon a breach thereof, shall not constitute a waiver of any such breach or of any of the terms of this Lease. None of the terms of this Lease to be kept, observed or performed by Landlord, and no breach thereof, shall be waived, altered or modified except by written instrument executed by Tenant. No waiver of any default of Landlord hereunder shall be implied from any omission by Tenant to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default specified in the express waiver and then only for the time and to the extent therein

stated. One or more waivers by Tenant shall not be construed as a waiver of a subsequent breach of the same covenant, term or condition.

ARTICLE 20

Notices

Section 20.1 **Addresses**. All notices, demands or requests by Landlord to Tenant shall be deemed to have been properly served or given, if addressed to Tenant 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 Tenant may, from time to time, designate by written notice to Landlord. If Tenant at any time during the Term hereof changes its office address as herein stated, Tenant will promptly give notice of same in writing to Landlord. The Lender, Sublessee or Association shall be deemed to have been properly served or given notice if addressed to such party at the address furnished pursuant to the provisions of Section 17.3 above. All notices, demands or requests by Tenant or by a Lender, Sublessee or Association to Landlord 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 Landlord may, from time to time, designate by written notice to Tenant. If Landlord at any time during the Term hereof changes its office address as herein stated, Landlord will promptly give notice of same in writing to Tenant.

Section 20.2 **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 21

Quiet Enjoyment

Section 21.1 Grant of Quiet Enjoyment.

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

ARTICLE 22

Certificates by Landlord and Tenant

Section 22.1 Tenant Certificates. Tenant agrees at any time and from time to time, upon not less than twenty (20) days' prior written notice by Landlord, to execute, acknowledge and deliver to Landlord a statement in writing setting forth the rents, payments and other monies then payable under the Lease, if then known; certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that the Lease is in full force and effect as modified and stating the modification), and the dates to which the rents, payments and other monies have been paid, and

stating (to the best of Tenant's knowledge) whether or not Landlord is in default in keeping, observing or performing any of the terms of this Lease; and, if in default, specifying each such default (limited to those defaults of which Tenant has knowledge). It is intended that any such statement delivered pursuant to this Section 22.1 may be relied upon by Landlord or any prospective assignee, transferee or purchaser of the fee, but reliance on such certificate shall not extend to any default of Landlord as to which Tenant shall have no actual knowledge.

Section 22.2 **Landlord Certificates**. Landlord agrees at any time and from time to time, upon not less than twenty (20) days' prior written notice by Tenant or by a Lender, Sublessee or Association, to furnish a statement in writing, in substantially the form attached hereto as Schedule 22.2 setting forth the rents, payments and other monies then payable under the Lease, if then known; certifying that this Lease is unmodified and in full force and effect (or if there shall have been modifications that the Lease is in full force and effect as modified and stating the modifications) and the dates to which rents, payments and other monies have been paid; stating whether or not to the best of Landlord's knowledge, Tenant is in default in keeping, observing and performing any of the terms of this Lease, and, if Tenant shall be in default, specifying each such default of which Landlord may have knowledge. It is intended that any such statement delivered pursuant to this Section 22.2 may be relied upon by any prospective assignee, transferee or purchaser of Tenant's interest in this Lease, any prospective Sublessee, Lender or Association or any assignee thereof, but reliance on such certificate may not extend to any default of Tenant as to which Landlord shall have had no actual knowledge.

ARTICLE 23

Construction of Terms and Miscellaneous

Section 23.1 **Severability**. If any provisions of this Lease or the application thereof to any person or situation shall, to any extent, be held invalid or unenforceable, the remainder of this Lease, and the application of such provisions to persons or situations other than those as to which it shall have been held invalid or unenforceable, shall not be affected thereby, and shall continue valid and be enforced to the fullest extent permitted by law.

Section 23.2 **Captions**. The Article headings and captions of this Lease and the Table of Contents preceding this Lease are for convenience and reference only and in no way define, limit or describe the scope or intent of this Lease nor in any way affect this Lease.

Section 23.3 **Relationship of Parties**. This Lease does not create the relationship of principal and agent or of mortgagee and mortgagor or of partnership or of joint venture or of any association between Landlord and Tenant, the sole relationship between Landlord and Tenant being that of Landlord and Tenant or lessor and lessee.

Section 23.4 **Recording**. A Memorandum of this Lease, or at Tenant's behest, a full copy hereof, shall be recorded by Tenant among the Public Records of Miami-Dade County, Florida, at the sole cost of Tenant.

Section 23.5 **Construction**. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine or neuter, singular or plural, as the identity of the party or parties may require. The parties hereby acknowledge and agree that each was properly represented by counsel and this Lease was negotiated and drafted at arm's 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 Lease which has been drafted by counsel for both Landlord and Tenant.

Section 23.6 **Consents**. Whenever in this Lease the consent or approval of Landlord or Tenant is required, except as expressly set forth herein, such consent or approval shall be made by the County Mayor or his/her designee on behalf of Landlord and:

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

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

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

Section 23.7 **Entire Agreement**. This Lease contains the entire agreement between the parties hereto and shall not be modified or amended in any manner except by an instrument in writing executed by the parties hereto.

Section 23.8 **Successors and Assigns**. The terms herein contained shall bind and inure to the benefit of Landlord, its successors and assigns, and Tenant, its successors and assigns (including Sublessees, Lenders, Association and Space Lessees as appropriate and applicable), except as may be otherwise provided herein.

Section 23.9 **Station and System Plans**. Landlord agrees, at the request of Tenant, to make available to Tenant for inspection all plans, specifications, working drawings and engineering data in the possession of Landlord, or available to it, relating to the Station, the System and other facilities of Landlord in Miami-Dade County, it being understood and agreed that Tenant will reimburse Landlord for any duplication costs incurred in connection therewith and Landlord assumes no responsibility or liability for the information obtained pursuant to this Section.

Section 23.10 **Holidays**. It is hereby agreed and declared that whenever the day on which a payment due under the terms of this Lease, or the last day on which a response is due to a notice, or the last day of 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 Lease of a period of days for performance shall mean calendar days, unless stated herein otherwise.

Section 23.11 **Schedules**. Each Schedule referred to in this Lease has been initialed by the parties and forms an essential part of this Lease. The Schedules, even if not physically attached, shall be treated as if they were part of the Lease.

Section 23.12 **Brokers**. Landlord and Tenant hereby represent and agree that no real estate broker or other person is entitled to claim a commission as a result of the execution and delivery of this Lease.

Section 23.13 **Protest Payments**. If at any time a dispute shall arise as to any amount or sum of money to be paid by Tenant to Landlord under the provisions of this Lease, in addition to the rights set forth in Article 19 herein, Tenant shall have the right to make payment "under protest" and such payment shall not be regarded as a voluntary payment, and there shall survive the right on the part of Tenant to seek the recovery of such sum, and if it should be adjudged that there was no legal obligation on Tenant to pay such sum or any part thereof, Tenant shall be entitled to recover such sum or so much thereof as it was not legally required to pay under the provisions of this Lease; and if at any time a dispute shall arise between the parties hereto as to any work to be performed by either of them under the provisions of this Lease, the party against whom the obligation to perform the work is asserted may perform such work and pay the cost thereof "under protest" and the performance of such work shall in no event be regarded as a voluntary performance and there shall

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

Section 23.14 Radon. In accordance with Florida law, the following disclosure is hereby made:

> RADON GAS: Radon gas is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risk to persons who are exposed over time. Levels of radon that exceed Federal and State Guidelines have been found in building in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit.

Section 23.15 Energy Efficiency Rating Disclosure. In accordance with Florida law, the following disclosure is hereby made:

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

Section 23.16 Governing Law This Lease shall be governed by and construed in accordance with the internal laws of the State of Florida.

Section 23.17 Cooperation; Expedited Permitting and Time is of the Essence. Landlord and Tenant agree to cooperate with each other to the full extent practicable pursuant to the terms and conditions of this Lease. Landlord and Tenant agree that time is of the essence in all aspects of their respective and mutual responsibilities pursuant to this Lease. Landlord shall use its best efforts to

expedite the permitting and approval process in an effort to assist Tenant in obtaining its Permits and achieving its development and construction milestones for the Project.

Section 23.18 Counterparts. This Lease may be executed in two or more counterparts, each of which shall constitute an original but all of which, when taken together, shall constitute one and the same agreement.

Section 23.19 Order of Precedence. If there is a conflict between or among the provisions of this Lease, the Scope of the Services (as set forth on Schedule 23.19), the Proposal and the Special Area Plan, the order of precedence is as follows: (i) the terms of this Lease; (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 23.20 Proposal Incorporated. Landlord and Tenant acknowledge that, in response to a Request for Proposal advertised by Miami-Dade County, the Tenant submitted the Proposal and that such Proposal was the basis for award of this Lease and upon which the Landlord has relied. The Proposal is incorporated herein by this reference.

Section 23.21 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 the RFP 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 Lease voidable. For additional information, please contact the Ethics Commission hotline at (305) 579-2593.

(b) Vendor Registration. The Tenant shall be a registered vendor with the County – Department of Procurement Management, for the duration of this Lease. 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 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(i) 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.
18. 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 24

Representations and Warranties

Section 24.1 Landlord's Representations and Warranties.

Landlord hereby represents and warrants to Tenant that:

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

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

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

(d) Landlord has obtained all authorizations and governmental approvals regarding this Lease, including, without limitation, any approvals or authorizations as may be required by the FTA or FDOT.

Section 24.2 **Tenant's Representations and Warranties**. Tenant hereby represents and warrants to Landlord that it has full power and authority to enter into this Lease and perform in accordance with its terms and provisions and that the parties signing this Lease on behalf of Tenant have the authority to bind Tenant and to enter into this transaction and Tenant has taken all requisite action and steps to legally authorize it to execute, deliver and perform pursuant to this Lease.

ARTICLE 25

Equal Opportunity

Section 25.1 **Equal Opportunity**. Tenant 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 Tenant shall take affirmative action to ensure that applicants are employed and that employees are treated during their 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. Tenant 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. Tenant 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 Landlord 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.

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

Tenant does hereby covenant and agree that in the event facilities are constructed, maintained or otherwise operated by Tenant on the Demised Premises 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 Tenant 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. Tenant 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 Tenant 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. Notwithstanding anything in this Section 25.1 to the contrary, the Landlord and Tenant agree that this Section 25.1 shall only be required with respect to, and is only applicable for, the Demised Premises.

Section 25.2 **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) Notwithstanding anything in this Section 25.2 to the contrary, the Landlord and Tenant agree that this Section 25.2 shall only be required with respect to, and is only applicable for, the Demised Premises.

[Signatures on Next Page]

IN WITNESS WHEREOF, Landlord has caused this Lease to be executed in its name by the County Mayor; as authorized by the Board of County Commissioners, and Tenant has caused this Lease 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

ATTEST:
HARVEY RUVIN, CLERK

By:_____
Name:
Title:

_____
Approved as to form and legal sufficiency

Print Name:_____

LANDLORD

MIAMI-DADE COUNTY

By:_____
Name:
Title:

{23685982;1}

Signed in the presence of:

Olga Valogeropoulos
Print Name: OLGA VALOGEROPOULOS

Print Name: Marysthena Calderin-Fee

TENANT

SWIRE PROPERTIES, INC., a Florida corporation

By:
Name: J. Megan Kelly
Title: Vice President

Notarizations begin on following page.

{22829279;14}

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

The foregoing instrument was acknowledged before me this 6th day of February, 2012, by Jean Michael Kelly, as _____ of Swire Properties, Inc., a Florida corporation.

Personally Known ✓ OR Produced Identification _____

Type of Identification Produced N/A

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

LILIANA RAMOS
Notary Public - State of Florida
My Comm. Expires Nov 9, 2014
Commission # EE 40930
Bonded Through National Notary Assn.

{22829279;14}

Schedule 1.1

Land Description

PORTIONS 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, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID LOT 7; THENCE S87°48'07"W ALONG THE NORTH LINE OF SAID LOT 7 AND THE SOUTH RIGHT OF WAY LINE OF SOUTHEAST 6TH STREET, 7.47 FEET TO THE POINT OF BEGINNING; THENCE S02°15'18"E, 299.98 FEET TO A POINT ON THE SOUTH LINE OF SAID LOT 15 AND THE NORTH RIGHT OF WAY LINE OF SOUTHEAST 7TH STREET; THENCE S87°48'17"W ALONG THE SOUTH LINE OF SAID LOT 15 AND THE NORTH RIGHT OF WAY LINE OF SOUTHEAST 7TH STREET, 42.53 FEET TO THE SOUTHWEST CORNER OF SAID LOT 15; THENCE N02°15'18"W, ALONG THE WEST LINE OF SAID LOT 15, 149.99 FEET TO THE NORTHWEST CORNER OF SAID NORTH LINE OF SAID LOT 15 AND THE SOUTH LINE OF SAID LOT 7, 25.00 FEET; THENCE N02°15'18"W, 149.99 FEET TO A POINT ON THE NORTH LINE OF SAID LOT 7 AND THE SOUTH RIGHT OF WAY LINE OF SOUTHEAST 6TH STREET; THENCE N87°48'07"E, ALONG THE NORTH LINE OF SAID LOT 7 AND THE SOUTH RIGHT OF WAY LINE OF SOUTHEAST 6TH STREET, 17.53 FEET TO THE POINT OF BEGINNING.

SAID LANDS LYING IN THE CITY OF MIAMI, MIAMI-DADE COUNTY, FLORIDA, CONTAINING 9, 009 SQUARE FEET (0.2068 ACRE) MORE OR LESS.

Schedule 1.2

Location Sketch

ARQUITECTONICA

SWIRE PROPERTIES
BUILDING EXCEPTIONAL VALUE

BRICKELL CITICENTRE

SPECIAL AREA PLAN

LOT COVERAGE

A0.05
JULY 11, 2011

Schedule 4.4

Form of Covenant in Lieu of Unity of Title

(Reserved for Clerk of Court)

COVENANT IN LIEU OF UNITY OF TITLE

KNOW ALL BY THESE PRESENTS that MIAMI-DADE COUNTY, a political subdivision of the State of Florida, through Miami-Dade Transit, 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 (the "County"), and Swire Properties, Inc., a Florida corporation, having an office and place of business at 501 Brickell Key, Suite 600, Miami, Florida 33131 ("Swire" and together with the County, collectively, the "Owners") jointly and severally, this _____ day of _____, 2012, hereby make, declare and impose on the land herein described, this Covenant in Lieu of Unity of Title (the "Covenant"), which shall be binding on Owners, all heirs, future grantors, grantees, successors and assigns, personal representatives, mortgagees, lessees, and against all persons claiming by, through or under them;

WHEREAS, the County holds fee simple title to certain property located in the City of Miami, Miami-Dade County, Florida, more particularly described on Exhibit "A" attached hereto and incorporated herein (the "County Parcel"); and

WHEREAS, Swire holds fee simple title to certain property located in the City of Miami, Miami-Dade County, Florida, more particularly described on Exhibit "B" attached hereto and incorporated herein (the "Swire Parcels"); and

WHEREAS, collectively the County Parcel and the Swire Parcels are referred to herein as the "Property"; and

WHEREAS, for properties which contain multiple owners, Miami-Dade County and the City of Miami may accept a covenant in lieu of unity of title; and

WHEREAS, the Owners wish to treat the Property as a single project for planning, development and zoning purposes.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in consideration of the approval on the Property, the Owners hereby agree as follows:

1. Recitals: The recitals and findings set forth in this Covenant are hereby adopted by reference thereto and incorporated herein as if fully set forth in this section.

2. Covenant in Lieu of Unity of Title: The Owners of the Property hereby agree and declare that for the purposes of determining compliance with the Zoning Ordinance of the City of Miami (the "City"), as amended, including without limitation, any future zoning designations (e.g. "Special Area Plans" or similar designations), the Property shall be considered as one plot and parcel of land so long as this instrument shall remain in effect, any and all conveyances or transfers of all or any portion of the Property by the Owners shall be subject to the terms and conditions of this Covenant as if any such grantee, successor or assign were a party hereto or a signatory hereof.

3. Covenant Running with the Land: The Covenant, once approved for legal form and sufficiency by the City Attorney, or designee, shall run with the land and be binding upon the heirs, successors, personal representatives and assigns, and upon all owners, future owners, mortgages, and lessees and others presently or in the future having any interest in the property.

4. Easements: In the event of multiple Ownership subsequent to the approval of the Covenant, each of the subsequent owners shall be bound by the terms, provisions, and conditions of this Covenant. The Owners shall further agree not to convey portions of the Property to such other parties unless and until the Owners and such parties shall have executed and mutually delivered, in recordable form, an instrument to be known as an "Easement and Operating Agreement" which, if applicable, shall contain:

   (i) Easements in the common area of each parcel for ingress to and egress from the other parcels;

   (ii) Easements in the common area of each parcel for the passage and parking of vehicles;

   (iii) Easements in the common area of each parcel for the passage and accommodation of pedestrians;

   (iv) Easements for access roads across the common area of each parcel to public and private roadways;

(v) Easements for the installation, use, operation, maintenance, repair, replacement, relocation or removal of utility facilities in appropriate areas in each such parcel;

(vi) Easements on each parcel for construction of buildings and improvements in favor of each other parcel;

(vii) Easements upon each parcel in favor of each adjoining parcel for the installation, use, maintenance, repair, replacement and removal of common construction improvements such as footings, supports and foundations;

(viii) Easements on each parcel for attachment of buildings;

(ix) Easements on each such parcel for building overhangs, other overhangs and projections encroaching upon such parcel from adjoining parcels such as, by way of example, marquees, canopies, lights, lighting devices, awnings, wing walls and the like;

(x) Appropriate reservation of rights to grant easements to utility companies;

(xi) Appropriate reservation of rights to road rights-of-way and curb cuts;

(xii) Easements in favor of each such parcel for pedestrian and vehicular traffic over dedicated private ring roads and access roads; and

(xiii) Appropriate agreements between the owners of the several parcels as to the obligation to maintain and repair all private roadways, parking facilities, common areas and common facilities and the like.

These instruments contained in the Easement and Operating Agreement or portions thereof may be waived if approved by each of the directors of the Public Works Department, the Planning Department, the Building Department, and the Office of Zoning, or their designees, if the provisions are inapplicable to the subject property. In addition, the instruments shall contain such other provisions with respect to the operation, maintenance and development of the property as the parties may agree. Such provision may be modified or amended by such parties (or the applicable association governing such parties) without approval or joinder by the directors, or their designees, if it will be constructed, conveyed and operated in accordance with an approved site plan. The multiple owners may, by mutual agreement, allocate among themselves and the parcels owned by them, setbacks, parking, open space, floor area and similar governmental requirements, and these allocations shall be honored in connection with requests for future site plan changes.

5. Effective Date and Term of Covenant: The provisions of this instrument shall become effective upon their recordation in the Public Records of Miami-Dade County, Florida, and shall continue in effect for a period of thirty (30) years after the

date of such recordation, after which time they shall be extended automatically for successive periods of ten (10) years each.

6. Amendment and Modification: The provisions of this Covenant may be amended and modified by a written instrument executed by the Owners of the Property or if any portion of the Property has been submitted to the condominium form of Ownership, then by the association established to operate the condominium in lieu of all of the unit owners and the joinder of any mortgages on the Property. Joinder is required by the same Department directors, or their designees or successors, which approved the original Covenant. Any amendment or modification of this Covenant or of the Easements referenced in Section 4 involving the City or its Zoning Regulations will be in a form acceptable to Planning and Zoning and the City Attorney.

7. Release: The provisions of this Covenant may be released in writing by the then Owners of the Property or if any portion of the Property has been submitted to the condominium form of Ownership, then by the association established to operate the condominium in lieu of all of the unit owners and the joinder of any mortgages on the Property. Joinder is required by the same Department directors, or their designees or successors, which approved the original Covenant. Any release involving the City will be in a form acceptable to the City Attorney.

8. Enforcement: Enforcement shall be by action against the individual property owners for violations pertaining to their own property and against parties or persons violating or attempting to violate any of the provisions of this Covenant. The prevailing party to any action or suit pertaining to or arising out of this Covenant shall be entitled to recover, in addition to costs and disbursements, allowed by law, such sum as the Court may adjudge to be reasonable for the serves of his attorney. The attorney's fee provision in this Section shall never apply against the City and no attorney's fees may be awarded against the City pursuant to this Section. This enforcement provision shall be in addition to any other remedies available at law, in equity or both.

9. Severability: Invalidation of any of the provisions of this Covenant by judgment of court shall not affect any of the other provisions, which shall remain in full force and effect.

10. Recording: This Covenant shall be recorded in the public records of Miami-Dade County at Owners' expense and a certified copy hereof shall be delivered to the City Clerk of the City of Miami, Florida within thirty (30) days after recording.

APPROVED AS TO FORM AND CORRECTNESS:

OFFICE OF THE CITY ATTORNEY

By: _____
Printed: Julie O. Bru, Esq.
Its: City Attorney

APPROVED:

OFFICE OF ZONING

By: _____
Printed: Barnaby L. Min, Esq.
Its: Zoning Administrator

APPROVED:

DEPARTMENT OF PUBLIC WORKS

By: _____
Printed: Nzeribe Ihekwaba, Ph.D., P.E.
Its: Director

APPROVED:

PLANNING DEPARTMENT

By: _____
Printed: Francisco J. Garcia
Its: Director

APPROVED:

BUILDING DEPARTMENT

By: _____
Printed: Mariano V. Fernandez
Its: Director

{22829279;14}

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

ATTEST:
HARVEY RUVIN, CLERK

By:_____
Name:
Title:

MIAMI-DADE COUNTY

By:_____
Name:
Title:

_____
Approved as to form and legal sufficiency

Print Name:_____

{22829279;14}

Witnessed by

Swire Properties, Inc., a Florida corporation

_____
Printed:

By: _____
Name:
Title:

_____
Printed:

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

The foregoing instrument was acknowledged before me this ___ day of _____, 2012 by Swire Properties, Inc., a Florida corporation. He/She is personally known to me or presented _____ as identification and who did not take an oath.

Notary Public, State of Florida

NOTARY SEAL/ STAMP

Print Name

{22829279;14}

EXHIBIT "A" TO COVENANT IN LIEU OF UNITY OF TITLE
County Parcel Legal Description

PORTIONS 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, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID LOT 7; THENCE S87°48'07"W ALONG THE NORTH LINE OF SAID LOT 7 AND THE SOUTH RIGHT OF WAY LINE OF SOUTHEAST 6TH STREET, 7.47 FEET TO THE POINT OF BEGINNING; THENCE S02°15'18"E, 299.98 FEET TO A POINT ON THE SOUTH LINE OF SAID LOT 15 AND THE NORTH RIGHT OF WAY LINE OF SOUTHEAST 7TH STREET; THENCE S87°48'17"W ALONG THE SOUTH LINE OF SAID LOT 15 AND THE NORTH RIGHT OF WAY LINE OF SOUTHEAST 7TH STREET, 42.53 FEET TO THE SOUTHWEST CORNER OF SAID LOT 15; THENCE N02°15'18"W, ALONG THE WEST LINE OF SAID LOT 15, 149.99 FEET TO THE NORTHWEST CORNER OF SAID NORTH LINE OF SAID LOT 15 AND THE SOUTH LINE OF SAID LOT 7, 25.00 FEET; THENCE N02°15'18"W, 149.99 FEET TO A POINT ON THE NORTH LINE OF SAID LOT 7 AND THE SOUTH RIGHT OF WAY LINE OF SOUTHEAST 6TH STREET; THENCE N87°48'07"E, ALONG THE NORTH LINE OF SAID LOT 7 AND THE SOUTH RIGHT OF WAY LINE OF SOUTHEAST 6TH STREET, 17.53 FEET TO THE POINT OF BEGINNING.

SAID LANDS LYING IN THE CITY OF MIAMI, MIAMI-DADE COUNTY, FLORIDA, CONTAINING 9.009 SQUARE FEET (0.2068 ACRE) MORE OR LESS.

EXHIBIT "B" TO COVENANT IN LIEU OF UNITY OF TITLE
Swire Parcels Legal Description

LOTS 1 THROUGH 6, THE WEST HALF OF LOT 7, AND LOTS 9-14, BLOCK 107S, OF PATTERSON AND OLIVE SUBDIVISION, ACCORDING TO THE MAP OR PLAT THEREOF, AS RECORDED IN PLAT BOOK B, AT PAGE 77, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA.

LESS AND EXCEPT THAT PORTION OF THE ABOVE DESCRIBED PARCEL CONVEYED BY RIGHT-OF-WAY DEED RECORDS IN OFFICIAL RECORDS BOOK 25161, PAGE 1547, PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA.

[Insert]

Schedule 7
Insurance

Tenant shall indemnify and hold harmless the County and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the County or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of this Lease by the Tenant or its employees, agents, servants, partners principals or subcontractors. Tenant 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 County, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. Tenant expressly understands and agrees that any insurance protection required by this Lease or otherwise provided by Tenant shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County or its officers, employees, agents and instrumentalities as herein provided.

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

The Tenant shall furnish to the Vendor Assistance Section, Department of Procurement Management, Administration Division, 111 NW 1st Street, Suite 1300, Miami, Florida 33128, Certificate(s) of Insurance which indicate that insurance coverage has been obtained which meets the requirements as outlined below:

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

All insurance policies required above shall be issued by companies authorized to do business under the laws of the State of Florida, with the following qualifications:

The company must be rated no less than "B" as to management, and no less than "Class V" as to financial strength, by the latest edition of Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to the approval of the County Risk Management Division.

or

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

Certificates will indicate no modification or change in insurance shall be made without thirty (30) days in advance notice to the certificate holder.

CERTIFICATE HOLDER MUST READ:

MIAMI-DADE COUNTY
111 NW 1st STREET
SUITE 2340
MIAMI, FL 33128

Compliance with the foregoing requirements shall not relieve the Tenant of liability and obligation under this Schedule or under any other section of this Lease.

Department of Procurement Management
Bids and Contracts Division
111 NW 1st Street, Suite 1300
Miami, Florida 33128-1989

{22829279;14}

Schedule 22.2

Landlord's Estoppel Certificate

(Form subject to amendments based on Lender, Tenant, Sublessee, Space Lessee or the Association per requirements)

Re: Brickell Parcel A Vacant Land Lease dated _____, 2012 (the "Lease"), by and between Miami-Dade County, acting by and through Miami-Dade Transit (together hereinafter "Landlord") and _____ ("Tenant")

Ladies and Gentlemen:

Landlord 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 Demised Premises described in the Lease, and that, in connection with the Transaction, the Relying Party will act in material reliance upon this Estoppel Certificate from Landlord.

Landlord hereby certifies, represents, warrants, acknowledges and agrees as follows:

1. A true, complete and correct copy of the Lease is attached to this Estoppel Certificate as Exhibit A. There have been no amendments, modifications, extensions, renewals or replacements of the Lease (other than as attached hereto).

2. Other than those contained in writing in the Lease, Tenant has made no representations, warranties or covenants to or in favor of Landlord with respect to the Demised Premises or the Project.

3. The Lease is in full force and effect. Tenant has accepted the Demised Premises, presently is in possession of same, and is paying the Rent, if applicable, as specified in the Lease on a current basis as of _____ [date]. Landlord has no knowledge of any set offs, claims or defenses to the enforcement of the Lease or Tenant's rights thereunder (except as expressed hereunder or attached hereto).

4. To Landlord's knowledge, (i) there is no Event of Default by Tenant or Landlord; (ii) neither Tenant nor Landlord is in breach under the Lease, 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 Lease by either party (except as expressed hereunder or attached hereto).

5. As of [date], the Rent is _____.

6. Landlord 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 Lease, the Demised Premises, 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 Lease. This Certificate may be delivered by Landlord by facsimile; pdf or facsimile signature.

Dated this ____ day of _____, 20___.

Very truly yours,

Schedule 23.19

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 Site is located within the City of Miami adjacent to the Metromover guideway between SE 6th Street and SE 8th Street. Parcel A which is located adjacent to the Metromover guideway, is not encumbered by the guideway and is available for full development. Parcels B, C, and D are encumbered by the Metromover guideway and will be part of a separate development 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 Lease Agreement

Parcel A will be leased to the Tenant under a long-term Lease 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 Tenant 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 Tenant has obtained all appopriate approval and permits from all appropriate jurisdictions.

The Tenant 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 Tenant 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 Tenant. Extension, relocation, upgrading or connection of new utilities, if necessary, will be the sole responsibility of the Tenant. All development fees imposed in connection with the development of the Improvements that are part of the Project located on the Demised Premises by any municipality, the County or any other agency of appropriate jurisdiction will be the sole responsibility of the Tenant.

2.7 Financing

The Tenant 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 the Improvements through self-financing.

2.8 Environmental Issues

The County will provide the Tenant with environmental studies as of the date of Project award, if available. If necessary, the Tenant 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 Landlord under the planned Lease Agreement. However, the Tenant 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 Tenant shall be solely responsible for any further environmental remediation ofthe 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 the RFP Solicitation.

2.9 Tenant's Responsibilities

After a contract is awarded as a result of the RFP Solicitation, the Tenant shall be responsible for the following pursuant to the terms of the Lease, 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 Lessee.

E. Payment of any and all taxes associated with the development of the Site, 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 Tenant to determine any and all tax consequences which may arise due to placing the development on County-owned land. The County makes no representations or warranties as to the continued availability of any exemption or tax benefit, or to the Tenant's ability to receive any such exemption or benefit.

2.11 FTA and FDOT Approval

The RFP 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 the RFP 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).

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 ___ day of _____, 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.

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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.**

(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

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

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 loan 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

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

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).

(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

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

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

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

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.

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.

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

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

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

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

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

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

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;

(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 a 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

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

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

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.

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 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.

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

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

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;

(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

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

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.

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

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 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(i) 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

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

ATTEST:
HARVEY RUVIN, CLERK

By:_____
Name:
Title:

OWNER

MIAMI-DADE COUNTY

By:_____
Name:
Title:

_____
Approved as to form and legal sufficiency

Print Name:_____

{23685536;1}

Signed in the presence of:

Print Name: Chris Grandaffo

Print Name: Robert Wesley

DEVELOPER

SWIRE PROPERTIES, INC., a Florida corporation

By:

Name: J Megan Kelly

Title: VP

Notarizations begin on following page.

{23595239:1}

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

The foregoing instrument was acknowledged before me this 17 day of February, 2012 by J Megan Kelly, as VP of Swire Properties, Inc., a Florida corporation.

Personally Known ✓ OR Produced Identification _____

Type of Identification Produced _____

Print or Stamp Name: DIANA PEREZ-GATA
Notary Public, State of Florida at Large
Commission No.: EE101480
My Commission Expires: 6/8/15

DIANA PEREZ-GATA
NOTARY PUBLIC
STATE OF FLORIDA
Comm# EE101480
Expires 6/8/2015

{23595239;1}

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

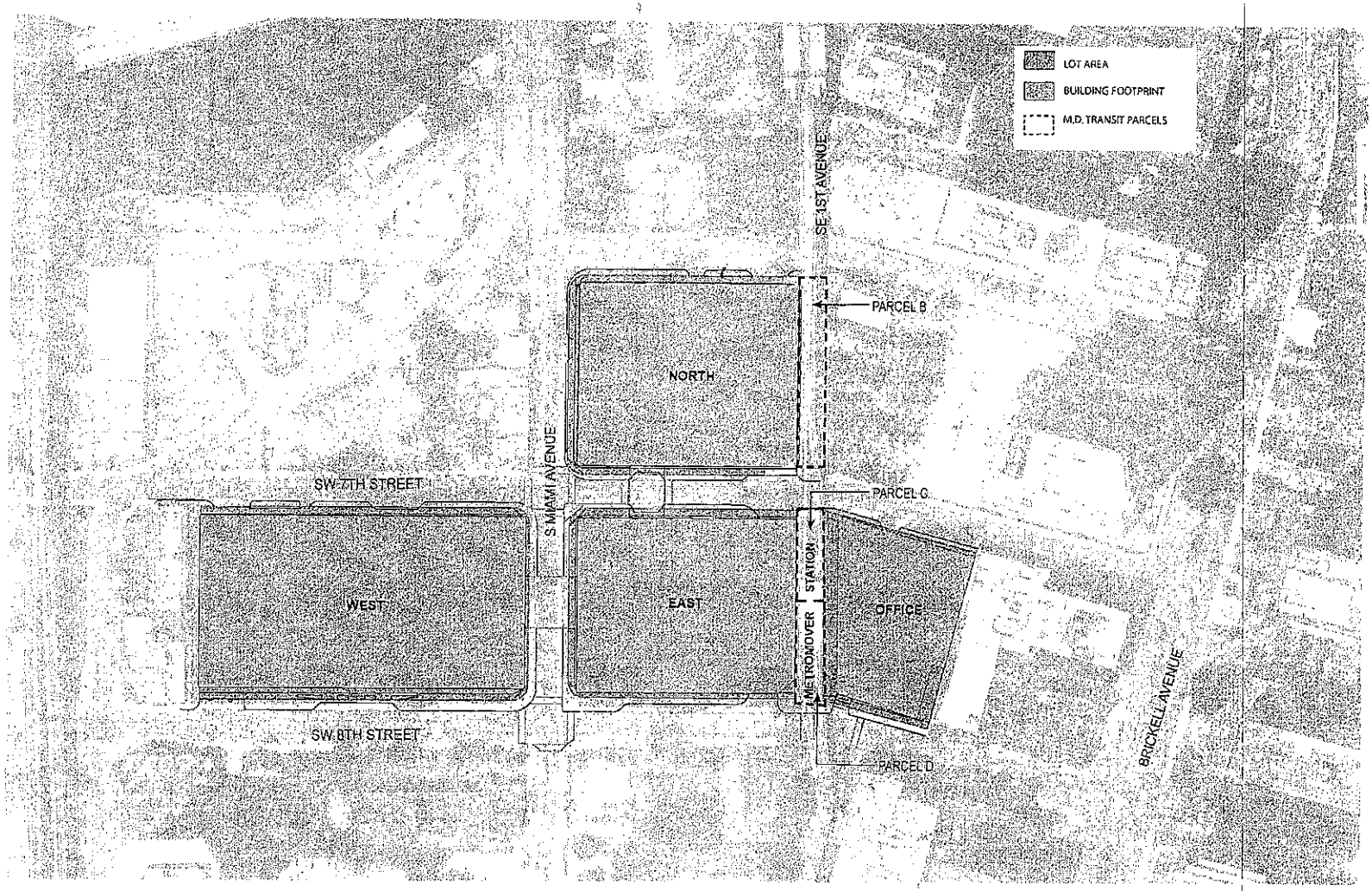
LOT 8, BLOCK 106S, PATTERSON AND OLIVE SUB., ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK "B", PAGE 77, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA.

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



ARQUITECTONICA
2900 OAK AVENUE, MIAMI FLORIDA 33133 USA
Tel. 305 372 1812 Fax 305 372 1175
www.arquitectonica.com

SWIRE PROPERTIES
BUILDING EXCEPTIONAL VALUE

BRICKELL CITICENTRE

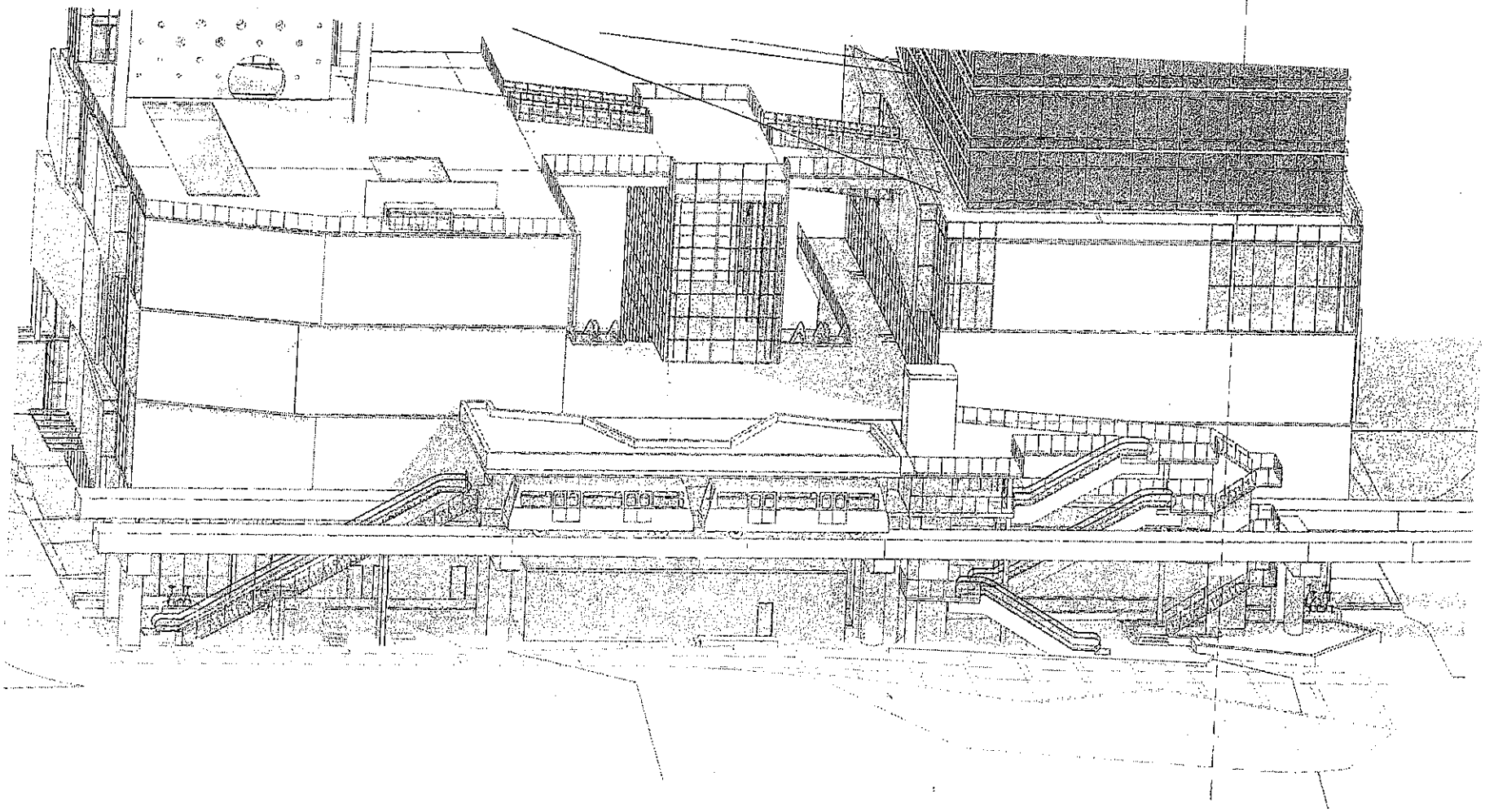
SPECIAL AREA PLAN

LOT COVERAGE

A0.05

Schedule 2.1

Improvements Depiction/Rendering



ARQUITECTONICA

3850 Oak Avenue, Miami Florida 33133
Tel. 305 372 1812 Fax 305 372 1175
www.arquitectonica.com

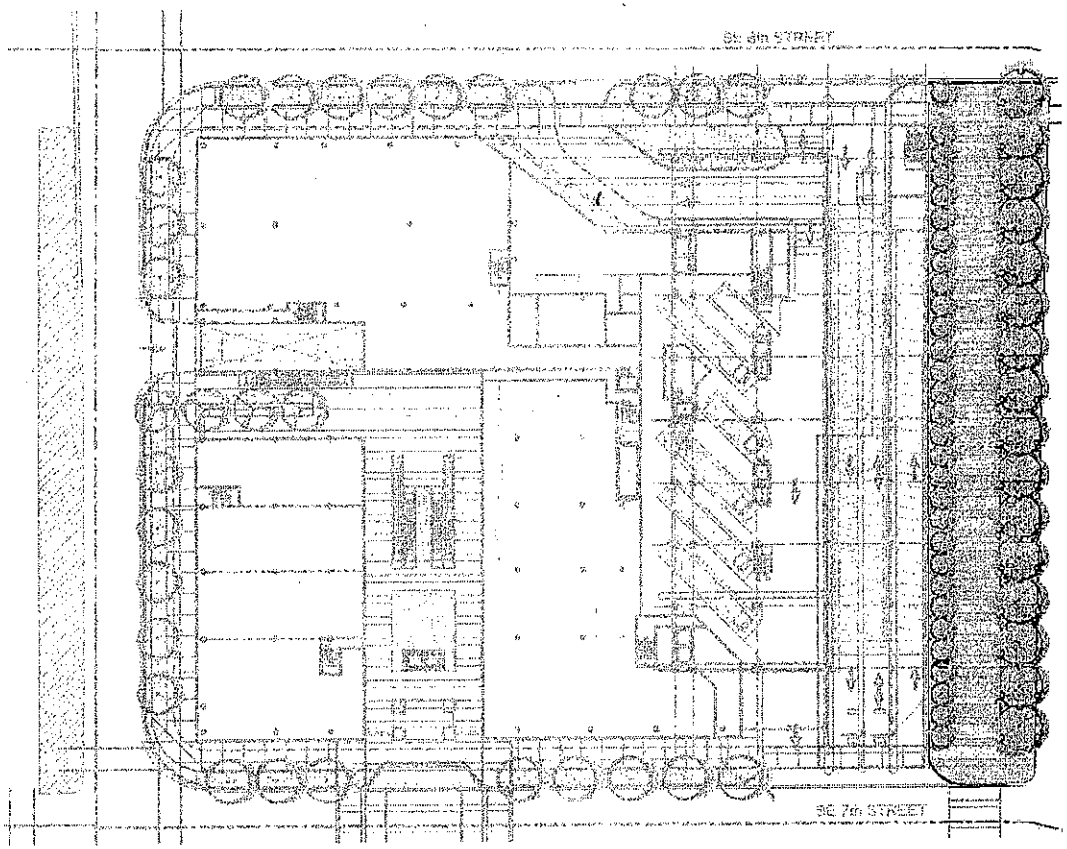
SWIRE PROPERTIES
BUILDING EXCEPTIONAL VALUE

BRICKELL CITICENTRE

8TH STREET STATION IMPROVEMENTS
PERSPECTIVE

MDT-206

January 31, 2012



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

ARQUITECTONICA
2900 OAK AVENUE, MIAMI FLORIDA 33133 USA
tel. 305.372.1812 Fax.305.372.1175
www.arquitectonica.com

SWIRE PROPERTIES
BUILDING EXCEPTIONAL VALUE

BRICKELL CITICENTRE

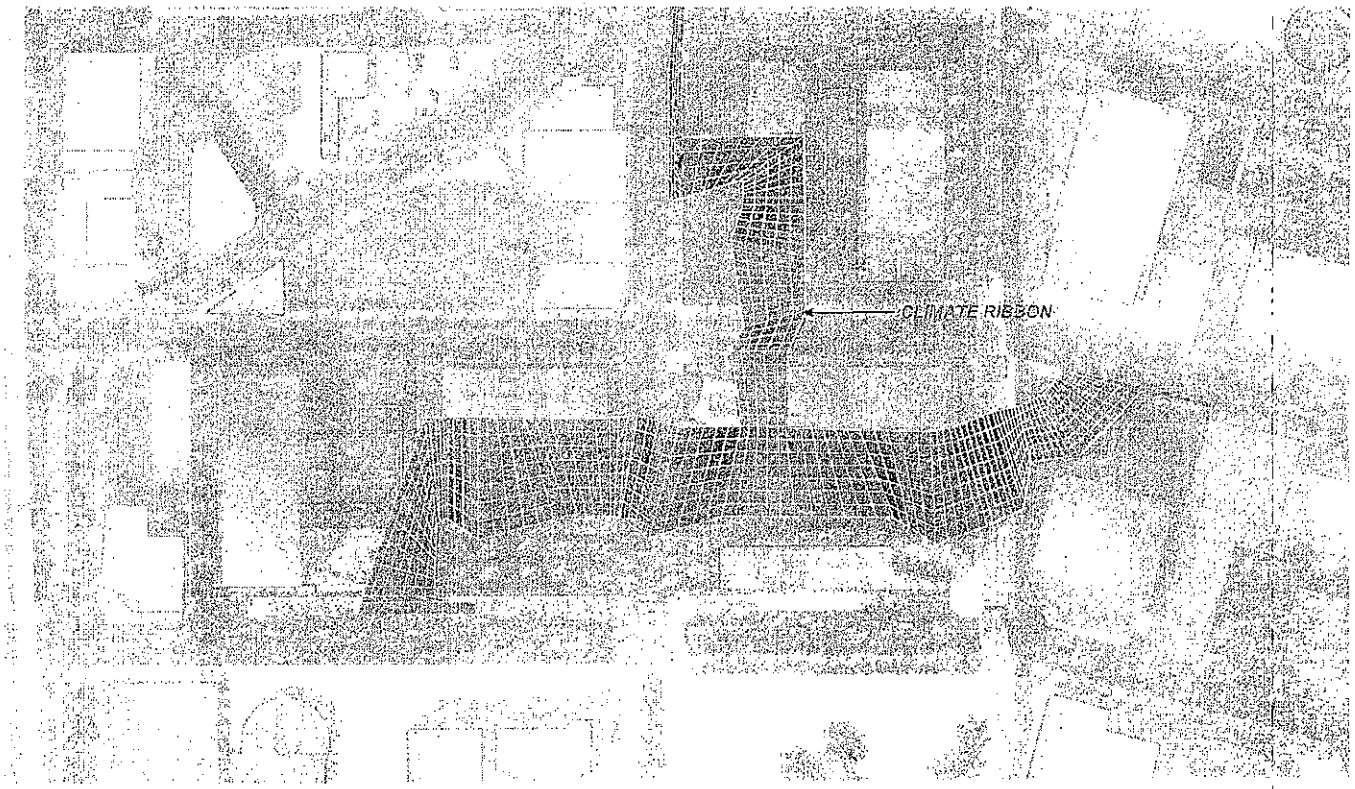
SPECIAL AREA PLAN

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
2360 OAK AVENUE, MIAMI FLORIDA 33133 USA
tel. 305.372.1812 Fax.305.372.1175
www.arquitectonica.com

SWIRE PROPERTIES
BUILDING EXCEPTIONAL VALUE

BRICKELL CITICENTRE

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*.

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.

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,

{23685536;1}

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).

REQUEST FOR PROPOSALS (RFP) NO. 798
FOR
Development of Brickell Metromover Property

PRE-PROPOSAL CONFERENCE TO BE HELD:

September 30, 2011 at 10:30 AM (local time)
111 NW 1st Street, 18th Floor, Conf. Rm. 18-4, Miami, Florida

ISSUED BY MIAMI-DADE COUNTY:

Department of Procurement Management (DPM)
for
General Services Administration, Miami-Dade Transit Department and
Miami Dade County Department of Housing and Community Development

COUNTY CONTACT FOR THIS SOLICITATION:

Name and Title: J.C. Romano, CPPB, Procurement Contracting Officer II
Address: 111 NW 1st Street, Suite 1300, Miami, Florida 33128
Telephone: (305) 375-4262
E-mail: jromano@miamidade.gov

PROPOSALS ARE DUE AT THE CLERK OF THE BOARD NO LATER THAN:

November 10, 2011 at 2:00 PM (local time)
at
CLERK OF THE BOARD
Stephen P. Clark Center
111 NW 1st Street, 17th Floor, Suite 202
Miami, Florida 33128-1983

The Clerk of the Board business hours are 8:00 a.m. to 4:30 p.m., Monday through Friday. Additionally, the Clerk of the Board is closed on holidays observed by the County.

All proposals received and time stamped by the Clerk of the Board prior to the proposal submittal deadline shall be accepted as timely submitted. The circumstances surrounding all proposals received and time stamped by the Clerk of the Board after the proposal submittal deadline will be evaluated by the procuring department in consultation with the County Attorney's Office to determine whether the proposal will be accepted as timely. Proposals will be opened promptly at the time and date specified. The responsibility for submitting a proposal on or before the stated time and date is solely and strictly the responsibility of the Proposer. The County will in no way be responsible for delays caused by mail delivery or caused by any other occurrence. All expenses involved with the preparation and submission of proposals to the County, or any work performed in connection therewith, shall be borne by the Proposer(s).

The submittal of a proposal by a Proposer will be considered by the County as constituting an offer by the Proposer to perform the required services at the stated prices. A Proposer may submit a modified proposal to replace all or any portion of a previously submitted proposal up until the proposal due date. The County will only consider the latest version of the proposal.

Requests for additional information or inquiries must be made in writing and received by the County's contact person for this Solicitation. The County will issue responses to inquiries and any changes to this Solicitation it deems necessary in written addenda issued prior to the proposal due date. Proposers who obtain copies of this Solicitation from sources other than the County's Department of Procurement Management website at www.miamidade.gov/dpm or the Vendor Assistance Unit risk the possibility of not receiving addenda and are solely responsible for those risks.

1.0 Project Overview and General Terms and Conditions

1.1 Introduction

Miami-Dade County, hereinafter referred to as the "County", as represented the General Services Administration (GSA) and the Miami-Dade Transit (MDT) Departments, is soliciting proposals from interested developers for development on four parcels of property adjacent to and under the Metromover guideway between SE 6 Street and SE 8 Street in the City of Miami, County of Miami-Dade, Florida.

The County anticipates awarding a contract for development that includes a long-term ground lease and development agreement, with options to renew, at the County's sole discretion.

The anticipated schedule for this Solicitation is as follows:

Solicitation issued:	September 23, 2011
Pre-Proposal Conference:	See front cover for date, time and place. Attendance is recommended but not mandatory. If you need a sign language interpreter or materials in accessible format for this event, please call the DPM ADA Coordinator at (305) 375-1564 at least five days in advance.
Deadline for receipt of questions:	October 14, 2011
Proposal due date:	See front cover for date, time and place.
Evaluation process:	November/December 2011
Projected award date:	February 2012

1.2 Definitions

The following words and expressions used in this Solicitation shall be construed as follows, except when it is clear from the context that another meaning is intended.

1. The word **"County"** to mean Miami-Dade County, a political subdivision of the State of Florida.

2. The words **"County Property"** to mean property that is owned by Miami-Dade County.

3. The words **"Contract Manager"** to mean the director of Miami-Dade Transit or the duly authorized representative designated to manage the contract.

4. The words **"Date of Award of Agreement"** to mean the date that the Board of County Commissioners (BCC) approves the Agreement resulting from this Solicitation and its award to the selected Developer.

5. The words "**Date of Beneficial Occupancy**" to mean the date that the selected Developer is able to occupy the portion of the project covered under the Agreement resulting from this Solicitation for the purpose for which it was intended.

5. The word **"Day"** to mean a calendar day.

6. The words **"Developer Team"** to mean the Developer/Lead Developer and its Team Members and any Subcontractors responsible to complete all work to be done in accordance with the Scope of Services and the terms and conditions of this Solicitation.

7. The words **"FTA"** to mean the Federal Transit Administration.

8. The words **"General Contractor"** to mean the builder of the prime construction contract for the project. The General Contractor shall be licensed in Miami-Dade County and the State of Florida.

9. The words **"Guaranteed Rent"** to mean rent paid from the date of date of Beneficial Occupancy through the termination date of the Agreement.

10. The words **"Initial Rent"** to mean rent paid during the period between the award of the Agreement by the Board of County Commissioners (BCC) and the Date of Beneficial Occupancy of the portion of the development covered under the Agreement resulting from this Solicitation.

11. The words **"Lease Agreement Year"** to mean each twelve month period starting from the date on which this Lease Agreement is effective.

12. The words **"Notice to Occupy the Project Site"** to mean authorization to start construction and transfer responsibility for the project site to the selected Developer.

13. The words **"Notice to Proceed"** (NTP) shall mean a document issued by the County to initiate the start of the contract time and design phase.

14. The words **"Project Completion"** to mean the completion of construction and securing a Certificate of Occupancy from the entity authorized to issue such certificate.

15. The words **"Project Manager"** to mean the Miami-Dade County Mayor or the duly authorized representative designated to manage the project.

16. The words **"Proposer"**, **"Developer"**, **"Lead Developer"** or **"Mixed-financed Developer Entity"** to mean the person, firm, entity or organization, as stated on Form A-1, submitting a response to this Solicitation.

17. The words **"Scope of Services"** to mean Section 2.0 of this Solicitation, which details the work to be performed by the Contractor.

18. The word **"Solicitation"** to mean this Request for Proposals (RFP) document, and all associated addenda and attachments.

19. The word **"Site"** to mean the property being offered by the County for development as described in Exhibit A.

20. The word **"Subcontractor"** to mean any person, firm, entity or organization, other than the employees of the Contractor, who contracts with the Contractor to furnish labor, or labor and materials, in connection with the Services to the County, whether directly or indirectly, on behalf of the Contractor.

21. The term **"subcontract"** means an agreement between a Proposer and a Subcontractor to perform a portion of contract between the selected Proposer and the County.

22. The words **"Treasury"** to mean the U.S. Department of the Treasury.

23. The words **"Work", "Services", "Program", or "Project"** to mean all matters and things that will be required to be done by the Contractor in accordance with the Scope of Services and the terms and conditions of this Solicitation.

1.3 General Proposal Information

The County may, at its sole and absolute discretion, reject any and all or parts of any or all responses; accept parts of any and all responses; further negotiate project scope and fees; postpone or cancel at any time this Solicitation process; or waive any irregularities in this Solicitation or in the responses received as a result of this process. A proposal shall be the Proposer's firm commitment to provide the goods and services solicited in the manner requested in the Solicitation and described in the proposal. In the event that a Proposer wishes to take an exception to any of the terms of this Solicitation, the Proposer shall clearly indicate the exception in its proposal. No exception shall be taken where the Solicitation specifically states that exceptions may not be taken. Further, no exception shall be allowed that, in the County's sole discretion, constitutes a material deviation from the requirements of the Solicitation. Proposals taking such exceptions may, in the County's sole discretion, be deemed nonresponsive. The County reserves the right to request and evaluate additional information from any respondent regarding respondent's responsibility after the submission deadline as the County deems necessary.

Proposals shall be irrevocable until contract award unless the proposal is withdrawn. A proposal may be withdrawn in writing only, addressed to the County contact person for this Solicitation, prior to the proposal due date or upon the expiration of 180 calendar days after the opening of proposals.

Proposers are hereby notified that all information submitted as part of, or in support of proposals will be available for public inspection after opening of proposals, in compliance with Chapter 119, Florida Statutes, popularly known as the "Public Record Law". The Proposer shall not submit any information in response to this Solicitation which the Proposer considers to be a trade secret, proprietary or confidential. The submission of any information to the County in connection with this Solicitation shall be deemed conclusively to be a waiver of any trade secret or other protection, which would otherwise be available to Proposer. In the event that the Proposer submits information to the County in violation of this restriction, either inadvertently or intentionally, and clearly identifies that information in the proposal as protected or confidential, the County may, in its sole discretion, either (a) communicate with the Proposer in writing in an effort to obtain the Proposer's written withdrawal of the confidentiality restriction or (b) endeavor to redact and return that information to the Proposer as quickly as possible, and if appropriate, evaluate the balance of the proposal. Under no circumstances shall the County request the withdrawal of the confidentiality restriction if such communication would in the County's sole discretion give to such Proposer a competitive advantage over other proposers. The redaction or return of information pursuant to this clause may render a proposal non-responsive.

Any Proposer who, at the time of proposal submission, is involved in an ongoing bankruptcy as a debtor, or in a reorganization, liquidation, or dissolution proceeding, or if a trustee or receiver has been appointed over all or a substantial portion of the property of the Proposer under federal bankruptcy law or any state insolvency law, may be found non-responsible. To request

a copy of any ordinance, resolution and/or administrative order cited in this Solicitation, the Proposer must contact the Clerk of the Board at (305) 375-5126.

1.4 Cone of Silence

Pursuant to Section 2-11.1(t) of the Miami-Dade County Code, as amended, a "Cone of Silence" is imposed upon each RFP or RFQ after advertisement and terminates at the time a written recommendation is issued. The Cone of Silence prohibits any communication regarding RFPs or RFQs between, among others:

- potential Proposers, service providers, lobbyists or consultants **and** the County's professional staff including, but not limited to, the Mayor, Mayor's staff, County Commissioners or their respective staffs;
- the Mayor, County Commissioners or their respective staffs **and** the County's professional staff including, but not limited to, the Mayor and the Mayor's staff; or
- potential Proposers, service providers, lobbyists or consultants, any member of the County's professional staff, the Mayor, County Commissioners or their respective staffs **and** any member of the respective selection committee.

The provisions do not apply to, among other communications:

- oral communications with the staff of the Vendor Assistance Unit, the responsible Procurement Agent or Contracting Officer, provided the communication is limited strictly to matters of process or procedure already contained in the solicitation document;
- oral communications at pre-proposal conferences, oral presentations before selection committees, contract negotiations during any duly noticed public meeting, public presentations made to the Board of County Commissioners during any duly noticed public meeting; or
- communications in writing at any time with any county employees, official or member of the Board of County Commissioners unless specifically prohibited by the applicable RFP or RFQ documents.

When the Cone of Silence is in effect, all potential vendors, service providers, bidders, lobbyists and consultants shall file a copy of any written correspondence concerning the particular RFP or RFQ with the Clerk of the Board, which shall be made available to any person upon request. The County shall respond in writing (if County deems a response necessary) and file a copy with the Clerk of the Board, which shall be made available to any person upon request. Written communications may be in the form of e-mail, with a copy to the Clerk of the Board at CLERKBCC@MIAMIDADE.GOV.

1.5 Public Entity Crimes

Pursuant to Paragraph 2(a) of Section 287.133, Florida Statutes, a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a proposal for a contract to provide any goods or services to a public entity; may not submit a proposal on a contract with a public entity for the construction or repair of a public building or public work; may not submit proposals on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and, may not transact business with any public entity in excess of the threshold amount provided in Section 287.017 for Category Two ($10,000) for a period of thirty-six (36) months from the date of being placed on the convicted vendor list.

1.6 Lobbyist Contingency Fees

A) In accordance with Section 2-11.1(s) of the Code of Miami-Dade County, after May, 16, 2003, no person may, in whole or in part, pay, give or agree to pay or give a contingency fee to another person. No person may, in whole or in part, receive or agree to receive a contingency fee.

B) A contingency fee is a fee, bonus, commission or non-monetary benefit as compensation which is dependent on or in any way contingent upon the passage, defeat, or modification of: 1) any ordinance, resolution, action or decision of the County Commission; 2) any action, decision or recommendation of the Mayor or any County board or committee; or 3) any action, decision or recommendation of any County personnel during the time period of the entire decision-making process regarding such action, decision or recommendation which forseeably will be heard or reviewed by the County Commission or a County board or committee.

1.7 Collusion

Where two (2) or more related parties, as defined herein, each submit a proposal for any contract, such proposals shall be presumed to be collusive. The foregoing presumption may be rebutted by the presentation of evidence as to the extent of ownership, control and management of such related parties in preparation and submittal of such proposals. Related parties shall mean Proposer or the principals thereof which have a direct or indirect ownership interest in another Proposer for the same contract or in which a parent company or the principals thereof of one Proposer have a direct or indirect ownership interest in another Proposer for the same contract. Furthermore, any prior understanding, agreement, or connection between two or more corporations, firms, or persons submitting a proposal for the same services shall also be presumed to be collusive. Proposals found to be collusive shall be rejected. Proposers who have been found to have engaged in collusion may be considered non-responsible, and may be suspended or debarred, and any contract resulting from collusive bidding may be terminated for default.

1.8 Compliance With Laws, Ordinances and Regulations

The selected Proposer shall comply with all laws, ordinances and regulations applicable to the development contemplated herein, including, but not limited to, the following:

- Conflict of interest as described the Federal Transit Administration Master Agreement dated October 1, 2009, Section 3, Subparagraphs (a)(1), (a)(2).

- Debarment and Suspension (Executive Orders 12549 and 12689. 31 U.S.C. §6101, U.S. DOT regulations, "non-procurement Suspension and Debarment",2 C.F.R. Part 1200 , which adopts and supplements the provisions of U.S. Office of Management and Budget "Guidelines to Agencies on Governmentwide Debarment and Suspension (Non-procurement)", 2 C.F.R. Part 180.

- Executive Order 11246 entitled "Equal Employment Opportunity" and as amended by Executive Order 11375 and as supplemented by the Department of Labor Regulations (41 CFR, Part 60), the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) and implementing regulations at 28 CFR Part 36, the Architectural Barriers Act of 1968, as amended (42 U.S.C 4151) and regulations pursuant thereto (24 CFR Part 40) the

Rehabilitation Act of 1973, as amended, Chapter 553 of the Florida Statutes and any and all other local, state and federal directives, ordinances, rules, orders, and laws relating to people with disabilities, including requirements that reasonable modifications and accommodations be made to make units accessible and regulations issued pursuant thereto (24 CFR Part 8).

The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101-07) and regulations issued pursuant thereto (24 CFR Part 146).

- Prohibitions against discrimination based on race, color, national origin or sex (49 CFR 23.7).

Prohibition Against Liens. The selected Developer is prohibited from placing a lien on the Owner's property. This prohibition shall be placed in all Subcontractor contracts.

1.9 Bid Security And Performance And Payment Bond

A. Bid Security

The Proposer must submit a bid security **with its Proposal** in the amount of $50,000.00. This security must accompany the Proposal. Proposals without bid security will be considered non-responsive. Bid security must be in the form of a certified check, cashier's check, an irrevocable letter of credit or surety bond payable to the Board of County Commissioners of Miami-Dade County, Florida. The bid security is conditioned upon the selected Proposer submitting the specified performance and payment bond within the ten (10) days following notice of award. Failure or refusal of the selected Proposer to submit a satisfactory performance and payment bond within the time stated will result in the forfeiture of the bid security as liquidated damages. Bid securities will be returned after the contract is executed, unless returned earlier, at the County's discretion.

B. Performance and Payment Bond

The selected Proposer shall execute and deliver prior to the issuance of a Notice-to-Proceed, a Performance and Payment Bond in the amount the total cost of construction to take place on County owned property, prepared on the applicable form(s) and included with the Ground Lease and Development Agreement to be executed as a result of this solicitation.

1.10 Assurance of Completion

A. Pursuant to Chapter 255.05 of the Florida Statutes, the selected Developer and all its Subcontractors shall furnish an assurance of completion prior to the issuance of the Notice to Proceed. The selected Developer shall require each of its Subcontractors to ensure that such assurance covers both the selected Developer and the County. This assurance may be:

(i) A performance and payment bond in a penal sum of 100 percent of the contract price; or, as may be required or permitted by State law;

(ii) Separate performance and payment bonds, each for 50 percent or more of the contract price;

(iii) A 20 percent cash escrow; or

(iv) A 25 percent irrevocable standby letter of credit issued by a Florida-chartered bank or national bank operating in Florida may be acceptable in lieu of the payment and performance bond based on industry standards and the Selected Developer's organizational capacity, track record, and experience.

B. Bonds must be obtained from guarantee or surety companies acceptable to the U.S. Government and authorized to do business in the state where the work is to be performed. Individual sureties will not be considered. U.S. Treasury Circular Number 570, published annually in the Federal Register, lists companies approved to act as sureties on bonds securing Government contracts, the maximum underwriting limits on each contract bonded, and the States in which the company is licensed to do business. Use of companies listed in this circular is mandatory. Free copies of the circular may be obtained by writing directly to: U.S. Department of Treasury, Financial Management Service, Surety Bond Branch, 401 14th Street, SW, 2nd Floor, West Wing, Washington, D.C. 20226.

C. Each bond shall clearly state the rate of premium and the total amount of premium charged. The current power of attorney for the person who signs for the surety company must be attached to the bond. The effective date of the power of attorney shall not precede the date of the bond. The effective date of the bond shall be on or after the execution date of the contract.

D. Failure by the selected Developer and its subcontractors to obtain the required assurance of completion within the time specified, or within such extended period as the County may grant based upon reasons determined adequate by the County, shall render the Developer ineligible for award. The County may retain the ineligible Proposer's Proposal Guaranty/Bid Bond.

E. Execute and deliver to the County Certificates and Policies of Insurance prior to commencing any operations, which indicate the selected Developer has insurance coverage in the type, amount, and classifications as identified in Article II of Section 5.

1.11 Vendor Registration

Prior to being recommended for award, the Proposer shall complete a Miami-Dade County Vendor Registration Package. Effective June 1, 2008, the new Vendor Registration Package, including a Uniform Affidavit Packet (Affidavit form), must be completed. The Vendor Registration Package, including all affidavits can be obtained by downloading from the DPM website at www.miamidade.gov or from the Vendor Assistance Unit at 111 N.W. 1st Street, 13th Floor, Miami, FL. The recommended Proposer shall affirm that all information submitted with its Vendor Registration Package is current, complete and accurate, at the time they submitted a response to the Solicitation, by completing an Affirmation of Vendor Affidavit form.

The selected Developer shall be a registered vendor with the County – Department of Procurement Management, for the duration of any agreement executed as a result of this solicitation. In becoming a Registered Vendor with Miami-Dade County, the selected Developer shall confirm 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 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(i) 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. ***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.

b) Conflict of Interest

Section 2-11.1(d) of Miami-Dade County Code requires that 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, competing or applying for a contract, 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. Any such contract or business engagement entered in violation of this subsection, as amended, shall be rendered voidable. For additional information, please contact the Ethics Commission hotline at (305) 579-2593.

2.0 Scope of Services

2.1 Introduction

Miami-Dade County is seeking proposals from experienced developers with a proven track record of undertaking and successfully completing commercial and/or mixed-use developments. Previous experience in successfully completing developments will be a factor in the evaluation of the proposals. The proposer must have the authority to submit the proposal and negotiate and execute the resulting agreement(s). The County will only negotiate and subsequently award an agreement under this RFP to the legal entity that submits the proposal.

Proposals should offer development of the property to the highest and best economic and transit-related use permitted by existing market conditions. Additionally, functional and aesthetic integration of the Eighth Street Metromover Station into the overall development is very much encouraged and will also be a factor in the evaluation of the proposals.

2.2 Project Objectives

The objectives of the County in offering the parcels of property described in Exhibit A 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 Site is located within the City of Miami under and adjacent to the Metromover guideway between SE 6th Street and SE 8th Street. (See Project Site, Exhibit A.) Parcel A which is located adjacent to the Metromover guideway, is not encumbered by the guideway and is available for full development. Parcels B, C, and D are encumbered by the Metromover guideway and development of these parcels is limited.

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 Ground Lease and Development Agreement

The Site will be leased to the selected Developer under a long-term Ground Lease and Development Agreement. The Site will be leased and/or a development agreement entered into in accordance with the term of years as agreed to by the County and the selected Developer, up to a term of 99 years.

The one parcel of property that is unencumbered by the Metromover system may be offered under a long-term Ground Lease and Development Agreement. The remaining three parcels of property that are encumbered by the Metromover guideway and/or station will be offered under a long-term development agreement.

The County reserves the right to determine the form of the agreement and to include standard County clauses and requirements including, but not limited to, indemnification, insurance, bonding requirements and compliance with state, local and federal regulations.

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 selected 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 selected Developer has obtained all appropriate approval and permits from all appropriate jurisdictions.

The selected 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 selected 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 selected Developer. Extension, relocation, upgrading or connection of new utilities, if necessary, will be the sole responsibility of the selected Developer. All development fees imposed in connection with the development by any municipality, the County or any other agency of appropriate jurisdiction will be the sole responsibility of the selected Developer.

2.7 Financing

The selected Developer shall secure all necessary financing, as well as any and all licenses and permits prior to and after construction. The selected Developer shall acquire a term sheet and a letter of intent (or a commitment letter) from a lender indicating its willingness to lend an amount necessary for construction financing of the Project or other documents indicating that the selected Developer has sufficient financing to complete the development.

Should the selected Developer fail, for any reason, to secure adequate financing for development as described in the proposal submitted in response to this RFP the County shall be free to terminate the Ground Lease and Development Agreement.

2.8 Environmental Issues

The County will provide the selected Developer with environmental studies as of the date of Project award, if available. If necessary, the selected 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 Landlord under the planned Ground Lease and Development Agreement. However, the selected 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 selected 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 selected Developer shall be responsible for the following:

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 selected Developer.

E. Payment of any and all taxes associated with the development of the Site, 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 selected Developer to determine any and all tax consequences which may arise due to placing the development on County-owned land. The County makes no representations or warranties as to the continued availability of any exemption or tax benefit, or to the selected Developer's ability to receive any such exemption or benefit.

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).

2.12 Payments to the County

The selected Developer shall pay the County one rate of rent (Initial Rent) prior to completion of the development and, thereafter, another rate of rent (Guaranteed Rent). The payments shall be provided as follows:

A. Initial Rent

The selected Developer shall pay the County one rate of rent (Initial Rent) for the period between the award of the Agreement by the Board of County Commissioners (BCC) and the date that the selected Developer is able to occupy the portion of the development covered under the Agreement resulting from this Solicitation (Date of Beneficial Occupancy).

B. Guaranteed Rent

After the Date of Beneficial Occupancy and through the termination date of the Agreement, the selected Developer shall pay the County Guaranteed Rent in accordance with the terms of the resulting Agreement.

Note: The minimum acceptable Guaranteed Rent will be based upon the appraised fair market rental value which shall be determined by appraisal(s) performed by independent appraiser(s) selected by the County. The Guaranteed Monthly Rent shall be adjusted upward by three percent (3%) at the end of each Lease Agreement Year. The County reserves the right to reevaluate the Guaranteed Rent every ten (10) years for market conditions.

3.0 Response Requirements

3.1 Submittal Requirements

In response to this Solicitation, Proposer should **return the entire completed Proposal Submission Package** (see attached). Proposers should carefully follow the format and instructions outlined therein. All documents and information must be fully completed and signed as required.

The proposal shall be written in sufficient detail to permit the County to conduct a meaningful evaluation of the proposed services. However, overly elaborate responses are not requested or desired.

4.0 Evaluation Process

4.1 Review of Proposals for Responsiveness

Each proposal will be reviewed to determine if the proposal is responsive to the submission requirements outlined in this Solicitation, including but not limited to compliance with FTA requirements. A responsive proposal is one which follows the requirements of this Solicitation, includes all documentation, is submitted in the format outlined in this Solicitation, is of timely submission, and has the appropriate signatures as required on each document. Failure to comply with these requirements may result in the proposal being deemed non-responsive.

4.2 Evaluation Criteria

Proposals will be evaluated by an Evaluation/Selection Committee which will evaluate and rank proposals on criteria listed below. The Evaluation/Selection Committee will be comprised of appropriate County personnel and members of the community, as deemed necessary, with the appropriate experience and/or knowledge. Reasonable efforts will be made to ensure that the Evaluation/Selection Committee is balanced with regard to

both ethnicity and gender. The criteria are itemized with their respective weights for a maximum total of one thousand (1000) points per Evaluation/Selection Committee member.

Technical and Financial Criteria	Points
A. Proposer's approach to focusing density around the Eighth Street Metromover Station and to achieving functional and aesthetic integration of the station into the overall development, including, but not be limited to, the quality of the following aspects of the project: • design • layout • landscaping • construction • project components • mitigation of negative impacts on transit operations during construction.	400
B. Proposer's relevant experience, qualifications, and past performance in completing successful commercial developments.	200
C. Relevant experience and qualifications of all key personnel of Proposer, design team, construction contractor and subcontractors, that will be assigned to this project	150
D. Proposer's financial strength and capability to secure financing. Initial Rent and Guaranteed Rent as described in Section 2.12 of this Solicitation, and any other additional financial benefits to the County.	150
E. Financial Benefit to the County	100

4.3 Oral Presentations

Upon completion of the criteria evaluation indicated above, rating and ranking, the Evaluation/Selection Committee may choose to conduct an oral presentation with the Proposer(s) which the Evaluation/Selection Committee deems to warrant further consideration based on, among other considerations, scores in clusters and/or maintaining competition. (See **Form A-2** regarding registering speakers in the proposal for oral presentations.) Upon completion of the oral presentation(s), the Evaluation/Selection Committee will re-evaluate, re-rate and re-rank the proposals remaining in consideration based upon the written documents combined with the oral presentation.

4.4 Selection Factor

A Selection Factor is not applicable to this Solicitation.

4.5 Price Evaluation

The payment proposal schedule will be evaluated subjectively in combination with the technical proposal, including an evaluation of how well it matches Proposer's understanding of the County's needs described in this Solicitation, the Proposer's assumptions, and the value of the proposed services. The pricing evaluation is used as part of the evaluation process to determine the highest ranked Proposer. The County reserves the right to negotiate the final terms, conditions and pricing of the contract as may be in the best interest of the County.

4.6 Local Certified Service-Disabled Veteran's Business Enterprise Preference

Disabled Veteran's Preference is not applicable in this solicitation due to FTA requirements.

4.7 Local Preference

Local Preference is not applicable in this solicitation due to FTA requirements.

4.8 Negotiations

The County may award a contract on the basis of initial offers received, without discussions. Therefore, each initial offer should contain the Proposer's best terms from a monetary and technical standpoint.

The Evaluation/Selection Committee will evaluate, score and rank proposals, and submit the results of their evaluation to the County Mayor or designee with their recommendation. The County Mayor or designee will determine with which Proposer(s) the County shall negotiate, if any. In his sole discretion, the County Mayor or designee may direct negotiations with the highest ranked Proposer, negotiations with multiple Proposers, or may request best and final offers.

Notwithstanding the foregoing, if the County and said Proposer(s) cannot reach agreement on a contract, the County reserves the right to terminate negotiations and may, at the County Mayor's or designee's discretion, begin negotiations with the next highest ranked Proposer(s). This process may continue until a contract acceptable to the County has been executed or all proposals are rejected. No Proposer shall have any rights against the County arising from such negotiations or termination thereof.

Any Proposer recommended for negotiations shall:

a) Complete a Collusion Affidavit, in accordance with Sections 2-8.1.1 of the Miami-Dade County Code as amended by Ordinance 08-113. (If a Proposer fails to submit the required Collusion Affidavit, said Proposer shall be ineligible for award.)

Any Proposer recommended for negotiations may be required to provide to the County:

a) Its most recent certified business financial statements as of a date not earlier than the end of the Proposer's preceding official tax accounting period, together with a statement in writing, signed by a duly authorized representative, stating that the present financial condition is materially the same as that shown on the balance sheet and income statement submitted, or with an explanation for a material change in the financial condition. A copy of the most recent business income tax return will be accepted if certified financial statements are unavailable.

b) Information concerning any prior or pending litigation, either civil or criminal, involving a governmental agency or which may affect the performance of the services to be rendered herein, in which the Proposer, any of its employees or subcontractors is or has been involved within the last three years.

4.9 Contract Award

Any contract, resulting from this Solicitation, will be submitted to the County Mayor or designee for approval. All Proposers will be notified in writing when the County Mayor or designee makes an award recommendation. The Contract award, if any, shall be made to the Proposer whose proposal shall be deemed by the County to be in the best interest of the County. Notwithstanding the rights of protest listed below, the County's decision of whether to make the award and to which Proposer shall be final.

4.10 Rights of Protest

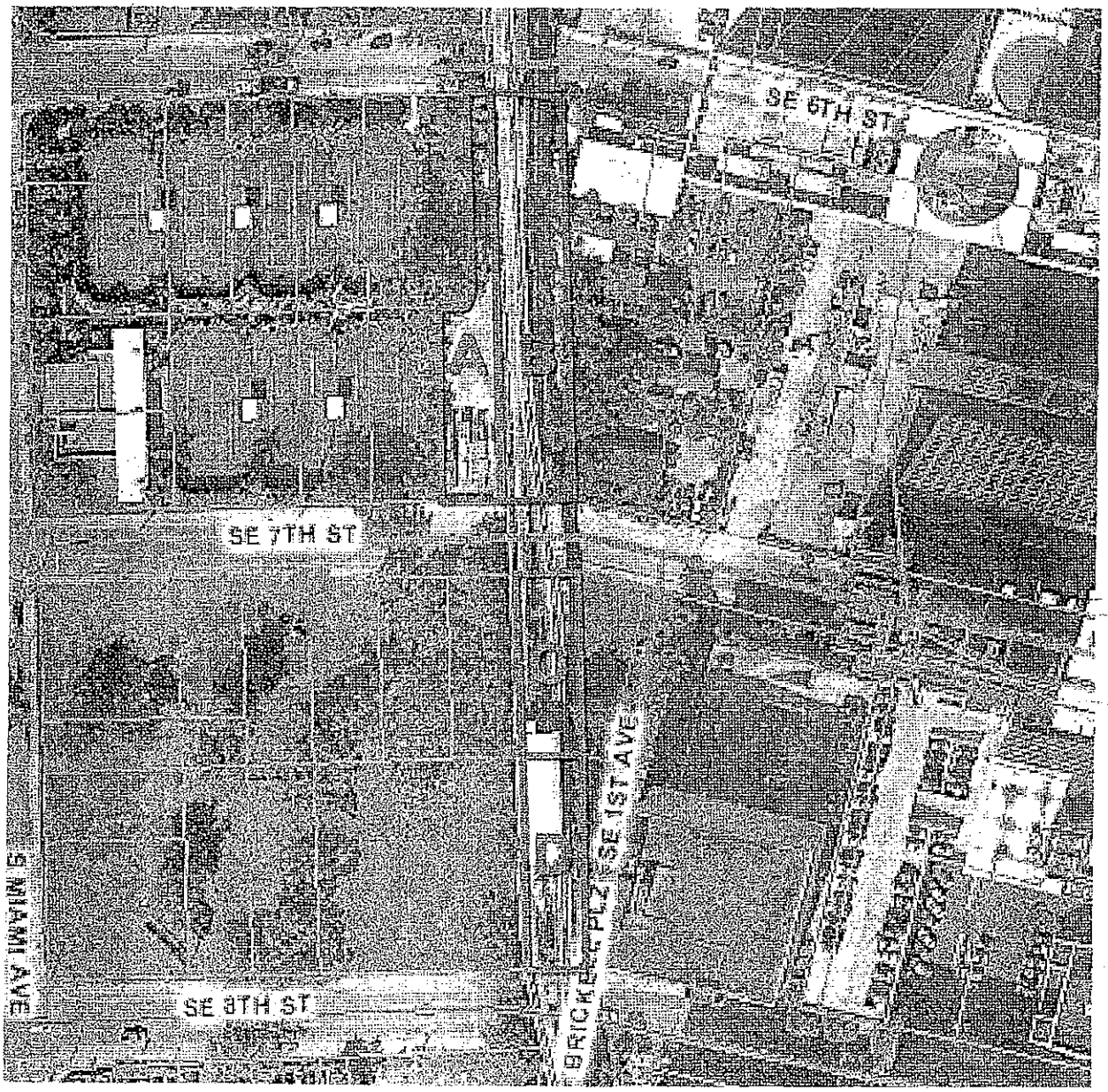
A recommendation for contract award or rejection of all proposals may be protested by a Proposer in accordance with the procedures contained in Sections 2-8.3 and 2-8.4 of the County Code, as amended, and as established in Implementing Order No. 3-21.

5.0 ATTACHMENTS

Project Site – Exhibit A
Federal Transit Administration Policy on Transit Joint Development – Exhibit B
Proposal Submission Package

Exhibit A

PROJECT SITE



Parcel A Folio No. 01-0210-060-1191
Vacant property not encumbered by the Metromover guideway.

Parcel B Folio No. 01-0210-060-1190
Parcel encumbered by the Metromover guideway.

Parcel C Folio No. 01-0210-060-1061
Parcel encumbered by the Metromover guideway and Eighth Street Station.

Parcel D Folio No. 01-0210-060-1120
Parcel encumbered by the Metromover guideway and Eighth Street Station.

Policy on Transit Joint Development

SHARE
What is this?

EXHIBIT B

Number 62 12266
03-14-97

[Federal Register: March 14, 1997 (Volume 62, Number 50)]
[Notices]
[Page 12266-12269]
From the Federal Register Online via GPO Access [wais.access.gpo.gov]
[DOCID:fr14mr97-125]

DEPARTMENT OF TRANSPORTATION
Federal Transit Administration

Policy on Transit Joint Development

AGENCY: Federal Transit Administration (FTA), U.S. Department of Transportation.

SUMMARY: FTA is revising and clarifying its Joint Development policies with respect to program income in relation to real estate acquired with funds under Federal transit law, 49 U.S.C. 5301 et seq. This Notice supplements the guidance contained in Appendix B of FTA Circular 9300.1 ``Joint Development Projects.'' All joint development projects undertaken in conformance with this policy will be considered ``mass transportation projects'' eligible for funding under FTA capital programs. This policy is applicable to development of properties acquired under previous grants as well as new grants, as specified in the FTA Master Agreement dated October 1, 1996. All such projects must generate a one-time payment or revenue stream for transit use, the present value of which equals or exceeds the fair market value of the property. In determining the fair market value, FTA will consider appraisal methods which factor in the ``highest and best transit use'' of the property as defined in the body of this notice. Where the grantee retains continuing control and use of the joint development for mass transportation purposes, all proceeds will be considered program income. Proposals that meet the criteria described below may be submitted at any time to the appropriate FTA regional office, listed in Attachment A.

DATES: Effective March 14, 1997.

FOR FURTHER INFORMATION CONTACT: Richard Steinmann, Director, Office of Policy Development, on (202) 366-4060; or Paul Marx, Economist, on (202) 366-1675.

SUPPLEMENTARY INFORMATION:

Introduction

Transit systems have long been encouraged to undertake joint development projects in connection with their rail transit stations. However, apparent inconsistencies between transit laws, the Common Grant Rule and FTA policy may have dissuaded some transit authorities from initiating joint development projects. This notice clarifies the relationship between transit laws and regulations and FTA policy regarding property disposition, leases of property, and sale of property for joint development. This FTA policy statement affects primarily the treatment of program income with regard to joint development and the definition of ``highest and best transit use'' in joint development.

Transit systems are permitted in 49 U.S.C. 5309 (a)(1)--(5) and (7) [former Section 3(a)(1)(D) of the Federal Transit Act] to use grant funds to also support ``transportation projects which enhance the effectiveness of any mass transportation project and are physically or functionally related to such mass transportation project or which create new or enhanced coordination between public transportation and other forms of transportation, either of which enhance urban economic development or incorporate private investment including commercial and residential development.'' The Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) added Section 3 (a)(1)(F), now codified at 49 U.S.C. 5309(a)(7), to the Federal transit laws. This section allows FTA grant funds to support any ``other nonvehicular capital improvements that the Secretary may decide would result in increased mass transportation usage in the corridor.''

FTA is encouraging transit systems to undertake transit-oriented Joint Development projects either under new grants or with property acquired under previous grants, whether the property is associated with a rail, bus or other transit facility. The purpose of this Joint Development should be both to secure a revenue stream for the transit system and to help shape the community that is being served by the transit system. Where the grantee retains effective continuing control over the joint development for mass transportation purposes (such as an easement, or a contractual arrangement), all proceeds of sale, lease or other incumbrance of the property will be treated as program income for use by the transit system to meet capital and operating needs. This is a departure from previous policy in two areas. First, FTA will now define all

[[Page 12267]]

revenue derived from such joint development to be program income as defined in the Common Grant Rule at 49 CFR, Subtitle A, Sec. 18.25. Second, grantees may use the new concept of ``highest and best transit use'', as an alternate to ``highest and best use'', in valuing real property for transit-oriented joint development. To accomplish this change, the FTA Master Agreement has been expressly modified to include joint development as an eligible activity in all capital grants to which it applies. Further, grantees may request amendment of grants issued prior to FY 1997, as desired, to expressly include joint development within the scope of such grants.

In accordance with this new policy, transit agencies have three options: they can sell property as excess for non-transit use; they can lease the property for incidental, non-interfering use by others while the property is held for a future identified transit use; or they can undertake a transit-oriented joint development on the property. In the case of a sale without a continuing transit use, property disposition rules under the Common Grant Rule at 49 CFR, Subtitle A, Sec. 18.31 apply. That is, the pro-rata Federal share of the net proceeds of a sale at fair market value are returned to the U.S. Treasury.

Transit-oriented joint development can be accomplished through a sale or lease of federally funded property, or through direct participation of the transit agency in the development e.g., as a general partner, depending upon the needs of the project. To qualify as a ``transportation project'', the transit agency must retain sufficient continuing control over the property to ensure its continued physical or functional relationship to transit. <SUP>1 This control may be exerted through any number of legally enforceable contractual arrangements, ranging from a simple easement to ensure unimpeded access between the development and the transit factility by transit patrons, or perhaps some form of reverter clause to take effect in the event

access becomes unreasonably curtailed. Any legally enforceable arrangement between the transit system and the developer which preserves the defined physical or functional relationship between the development and the transit facility should satisfy this requirement. As long as such control is maintained, the transit agency may retain all revenues from such joint development as program income.

\1\ Effective, continuing control of the property for transit purposes does not substitute for the grantee's obligation to ensure ongoing access by the general public to the transit facility.

Policy: FTA encourages transit systems to undertake joint development projects at and around transit stations, bus terminals, intermodal facilities and other transit properties, where such projects are physically or functionally related to the provision of transit service, and where they increase transit revenues through proceeds from the joint development. FTA will do this by: making grants under the authority to support Joint Development provided by 49 U.S.C. 5307,<SUP>2 5309 (a) (1)-(5), 5309 (a)(7), and 5309 (f), and by allowing the proceeds from sale, lease or other incumbrance of property for transit-oriented joint development to be retained by the transit system for transit operating and capital expenses.

\2\ FTA has determined that joint development authority under section 5309(a) is coextensive with section 5307.

FTA considers transit-oriented joint development already to be within the scope of nearly all capital grants involving real property unless expressly prohibited by a special term or condition of the grant. This is due to a term in most, if not all, capital grants requiring the grantee to follow FTA's most recent policies and procedures in administering its grants. Notwithstanding, FTA will modify existing grants at the request of the grantee, when this step is desired to expressly reflect transit-oriented joint development in the grant purpose. In the case of a section 5309 grant made between 1978 and 1983,<SUP>3 and certain section 5307 grants, FTA will review joint development proposals on a case-by-case basis, and will work with the grantee to achieve the purposes of this policy. The FTA Master Agreement dated October 1, 1996 expressly includes transit-oriented joint development as an authorized grant purpose.

\3\ Funding for certain grants may have lapsed which could prevent their reopening should a change in scope be necessary to carry out transit oriented joint development.

This policy applies to projects funded under the following transit programs: Section 5309, Capital; Section 5307, Urbanized Area Formula; Section 5310, Elderly and Persons with Disabilities; and Section 5311, Nonurbanized Area Program.<SUP>4

\4\ FTA realizes that properties supported with Nonurbanized Area or Elderly and Persons with Disabilities program funds are unlikely candidates for joint development. However, FTA wishes to make it clear that the source of funding is not to be regarded as an impediment to a joint development proposal under this policy.

The policy will not affect leases of real property for non-transit

purposes or disposition of property that is no longer needed for transit purposes.

Criteria

To be eligible for consideration as a transit-oriented joint development project under this policy, the project must have the following characteristics:

- It includes a transit element; and
- It enhances urban economic development or incorporates private investment including office, commercial, or residential development; and
- It enhances the effectiveness of a mass transit project, and the non-transit element is physically or functionally related to the mass transit project; or
- it creates new or enhanced coordination between public transit and other forms of transportation; or,
- it includes nonvehicular capital improvements that result in increased transit usage, in corridors supporting fixed guideway systems.

Financial criteria that FTA will use in assessing joint development projects using land acquired with FTA funds are as follows:

- It is FTA's intent that the transit system be able to negotiate its project benefit whenever possible, on the basis of the value added to the property by the planning, design and construction of transit-oriented joint development around the transit facility. Therefore the project shall generate either a one-time payment or a revenue stream, the present value of which equals either the current market value or the appraised value of the property, taking highest and best transit use into account.<SUP>5

\5\ The proposer must make a convincing case that the transit-oriented joint development will be more beneficial to the transit system than an outright sale of the property for non-transit purposes. For example, ``Highest and best transit use'' of a property for a day care center produces less income than ``highest and best use'' as a coin-operated laundry, but market sureveys show it would attract and serve a greater number of transit riders and is better suited to the overall plan for the area. This would be an appropriate trade-off.

- When the joint development project is one of several being undertaken in a program of joint development projects, the combined revenue streams from all of the projects may be balanced against the cumulative appraised value of the combined real estate on a portfolio basis. In such an approach, one project could be carried forward at a nominal loss, provided other projects in the same portfolio produced a proportionally greater revenue for the transit system, resulting in a net present value benefit equal to the appraised value of the property used, taking highest and best transit use into account.
- As long as the grantee retains effective continuing control of the joint development project we do not consider this a disposition of property. Thus, the grantee may retain all revenues from the project as program income. However, if the grantee cedes effective continuing control of the property for transit

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use the grantee could be liable for repayment of the Federal share of the current market value of the property.

Local Supportive Actions

While the preceding criteria are mandatory, the following are factors that will directly affect the successful implementation of any transit-oriented joint development, and warrant consideration in a joint development proposal. To ensure a transit-supportive environment in the community served by the transit system, FTA encourages local governments, transportation agencies, employers, building owners and managers, and public and private developers to work together to implement policies and strategies that will support transit use in daily activities. Supportive land use policies include promoting mixed use and high density development around transit facilities. Urban design enhancements include landscaping, pedestrian and bicycle amenities, safety and security improvements, and improved access to transit services. Transportation management actions include parking management strategies to increase the cost and reduce the number of non-transit parking spaces for single occupant vehicles, priority treatment for transit vehicles, and transit pass programs. Also included would be activities that extend the hours of operation of transit facilities and thereby enhance the perception of safety in the surrounding areas.

Definitions

Joint Development

Joint development projects are commercial, residential, industrial, or mixed use developments that are undertaken in concert with transit facilities. They may include private, and non-profit development activities usually associated with fixed guideway (Rail or Busway) transit systems that are new or being modernized or extended. Joint development projects may also be associated with bus facilities, intermodal transfer facilities (e.g., bus to rail), transit malls, and Federal, State or Local investments in local facilities (such as a bus terminal and tourist facility). FTA funds may be used to facilitate development that enhances transit; they may not be used for purely private development such as construction and permanent financing costs related to the design or construction of purely retail, residential, or other commercial public and private revenue-producing facilities.

Highest and Best Transit Use

The highest and best transit use is that combination of residential, retail, commercial and parking space that results in the highest level of transit support from a combination of project revenues and increased ridership. The term is intended to combine the concepts of highest and best use in real estate assessment with transit-oriented development. In some circumstances, the highest and best use for a property, i.e., that use resulting in the greatest cash price for the property, may not be transit-oriented. Secure storage for construction equipment, or a coin-operated car wash would be examples of non-transit-oriented developments. FTA does not intend to limit the local community's ability to define social or other benefits that it wishes to achieve through a transit-oriented development. Thus, locally preferred plans for ``highest and best transit use'' may be acceptable even if they do not generate the highest possible level of financial return. The Joint Development proposal will indicate the extent to which the highest and best transit use value varies from the traditional highest and best use assessment, and the basis for this variation.

Physically or Functionally Related

Each project must establish the link between transit and the proposed joint development project. Issues to be addressed should include travel time between the joint development and the transit facility, reasonable access between the development and the transit

facility, trip generation rates of the proposed development, and the transit system's share of those trips. Functional relationships should not extend beyond the distance most people will reasonably walk to use a transit service--about 1,500 feet.

Revenue Stream

Research has shown that the siting and development of transit service adds to property values near transit stations, and that collocation of residential, commercial and retail establishments with the transit system enhances social and economic returns for the community. Therefore, a joint development project should be planned to generate revenue for the transit system from this added value. This revenue may take the form of a one-time cash payment for the sale of land, air rights, or some other form of property rights. Or it may be a revenue stream from an installment sale, lease, ground rent, or other compensation as agreed between the transit system and the developer, including but not limited to in-kind services such as construction or maintenance. The payment or revenue stream may be delayed for a time to support the project purpose, but the present value of all revenues must equal the current market value based on the highest and best transit use.

In the case of a program of joint development, conducted on a corridor or system wide level, FTA will evaluate the revenue stream on a portfolio basis, requiring that the sum of revenue streams for all developed properties be equal to the combined appraised value of the land used to generate the revenues, taking into account the highest and best transit use.<SUP>6 There may be instances where the transit system's participation in a joint development project adds value to that project above the value of the land itself. This additional value will allow the transit system to attract development at other, more ``difficult'' properties along the same corridor by making some revenue concessions on these properties.

\6\ Within reason, the grantee may also postpone development of some properties along the corridor, to enhance their final development value. This should be declared in the joint development proposal.

As long as the grantee can demonstrate that it has the ability to retain effective continuing control of the joint development for transit use, i.e. its physical or functional relation to transit, it may retain any proceeds from the project as program income. However, if the grantee cedes effective control over the property for transit use it may be liable for reimbursement of the Federal interest in the property.

Procedures

Joint Development proposals that meet the criteria in this notice may be submitted at any time to the appropriate FTA regional office, listed in attachment A. They should include, at a minimum, the Joint Development agreement, a market and financial assessment of the Joint Development and its impact on the transit system, and a statement of the outcome of planning and coordination between the Joint Development and the transit facility. The proposal should document the projected benefits for the transit system as well as the effective continuing control of the Joint Development project for transit purposes, as outlined in the definition section above.

Authority: 49 U.S.C. 5307, 5309(a)(1)-(5), 5309(a)(7), and

5309(f), as well as 49 CFR Subtitle A.

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Issued on March 10, 1997.
Gordon J. Linton,
Administrator.
Attachment A
Listing of FTA Regions:
Region 1
Volpe National Transportation Systems Center, Kendall Square, 55 Broadway, Suite 920, Cambridge, MA 02142-1093
Region 2
26 Federal Plaza, Suite 2940, New York, NY 10278-0194
Region 3
1760 Market Street, Suite 500, Philadelphia, PA 19103-4124
Region 4
Atlanta Federal Center, 100 Alabama Street, N.W., 17th Floor, Suite T1750, Atlanta, GA 30303
Region 5
55 East Monroe Street, Rm 1415, Chicago, IL 60603-5704
Region 6
Parkview Place, 524 East Lamar Street, Suite 175, Arlington, TX 76011-3900
Region 7
6301 Rockhill Road, Suite 303, Kansas City, MO 64131-1117
Region 8
Columbine Place, 216 16th Street, Suite 650, Denver, CO 80202-5120
Region 9
201 Mission Street, Suite 2210, San Francisco, CA 94105-1831
Region 10
Jackson Federal Building, 915 Second Ave., Suite 3142, Seattle, WA 98174-1002.
[FR Doc. 97-6462 Filed 3-13-97; 8:45 am]
BILLING CODE 4910-57-P

PROPOSAL SUBMISSION PACKAGE
Request for Proposals (RFP) No. 798
Development of Brickell Metromover Property

In response to the Solicitation, Proposer shall RETURN THIS ENTIRE PROPOSAL SUBMISSION PACKAGE as follows:

1. **Form A-1, Cover Page of Proposal**
   Complete and sign (by Proposer or representative of the Proposer who is legally authorized to enter into a contractual relationship in the name of the Proposer) as required.

2. **Proposer Information**
   Complete following the requirements therein.

   Note: The Proposer Information document is available in an electronic format (Word) by submitting a written request via e-mail to the County contact person for this Solicitation.

3. **Affidavits/Acknowledgements**
   Complete and sign the following forms:

   Form A-2, Lobbyist Registration for Oral Presentations
   Form A-3, Acknowledgement of Addenda
   Form A-5, Proposer's Disclosure of Subcontractors and Suppliers
   Form A-6, Fair Subcontracting Policies

4. **Form B-1, Price Proposal Schedule**
   Complete following the requirements therein.

Submit in hardcopy format an original, complete Proposal Submission Package and seven (7) copies of the complete package **by the Proposal Due Date** (see front cover of Solicitation) in a sealed envelope/container addressed as follows:

Proposer's Name Proposer's Address Proposer's Telephone Number	
	Clerk of the Board Stephen P. Clark Center 111 NW 1st Street, 17th Floor, Suite 202 Miami, FL 33128-1983
RFP No.: RFP Title: Proposal Due Date:	

Form A-1

PROPOSER'S NAME (Name of firm, entity or organization):

FEDERAL EMPLOYER IDENTIFICATION NUMBER:

NAME AND TITLE OF PROPOSER'S CONTACT PERSON:

Name: Title:

MAILING ADDRESS:

Street Address: _____

City, State, Zip: _____

TELEPHONE:	*FAX:*	*E-MAIL ADDRESS:*
(____) _____	(____) _____	_____

PROPOSER'S ORGANIZATIONAL STRUCTURE:

____ Corporation ____ Partnership ____ Proprietorship ____ Joint Venture

____ Other (Explain): _____

IF CORPORATION:
Date Incorporated/Organized: _____ State Incorporated/Organized: _____

States registered in as foreign corporation: _____

PROPOSER'S SERVICE OR BUSINESS ACTIVITIES OTHER THAN WHAT THIS SOLICITATION REQUESTS FOR:

LIST NAMES OF PROPOSER'S SUBCONTRACTORS OR SUBCONSULTANTS FOR THIS PROJECT:

LOCAL CERTIFIED SERVICE-DISABLED VETERAN BUSINESS ENTERPRISE:

A Local Certified Service-Disabled Veteran Business Enterprise is a firm that is a) a local business pursuant to Section 2-8.5 of the Code of Miami-Dade County and b) prior to proposal submittal is certified by the State of Florida Department of Management Services as a service-disabled veteran business enterprise pursuant to Section 295.187 of the Florida Statutes. At the time of proposal submission, the Local Certified Service-Disabled Veteran Business Enterprise must affirm in writing its compliance with the certification requirements of Section 295.187 of the Florida Statutes and submit said affirmation and a copy of the actual certification along with the proposal submission.

☐ Place a checkmark here only if affirming Proposer is a certified Local Certified Service-Disabled Veteran Business Enterprise. A copy of the required certification must be submitted with the proposal.

CRIMINAL CONVICTION DISCLOSURE:

Pursuant to Miami-Dade County Ordinance No. 94-34, any individual who has been convicted of a felony during the past ten years and any corporation, partnership, joint venture or other legal entity having an officer, director, or executive who has been convicted of a felony during the past ten years shall disclose this information prior to entering into a contract with or receiving funding from the County.

☐ Place a checkmark here only if Proposer has such conviction to disclose to comply with this requirement.

Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List:

By executing this proposal through a duly authorized representative, the proposer certifies that the proposer is not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, as those terms are used and defined in sections 287.135 and 215.473 of the Florida Statutes. In the event that the proposer is unable to provide such certification but still seeks to be considered for award of this solicitation, the proposer shall execute the proposal through a duly authorized representative and shall also initial this space: _____. In such event, the proposer shall furnish together with its proposal a duly executed written explanation of the facts supporting any exception to the requirement for certification that it claims under Section 287.135 of the Florida Statutes. The proposer agrees to cooperate fully with the County in any investigation undertaken by the County to determine whether the claimed exception would be applicable. The County shall have the right to terminate any contract resulting from this solicitation for default if the proposer is found to have submitted a false certification or to have been placed on the Scrutinized Companies for Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List.

PROPOSER'S AUTHORIZED SIGNATURE

The undersigned hereby certifies that this proposal is submitted in response to this solicitation.

THE EXECUTION OF THIS FORM CONSTITUTES THE UNEQUIVOCAL OFFER OF PROPOSER TO BE BOUND BY THE TERMS OF ITS PROPOSAL. FAILURE TO SIGN THIS SOLICITATION WHERE INDICATED BELOW BY AN AUTHORIZED REPRESENTATIVE SHALL RENDER THE PROPOSAL NON-RESPONSIVE. THE COUNTY MAY, HOWEVER, IN ITS SOLE DISCRETION, ACCEPT ANY PROPOSAL THAT INCLUDES AN EXECUTED DOCUMENT WHICH UNEQUIVOCALLY BINDS THE PROPOSER TO THE TERMS OF ITS OFFER.

Signed By:_____ Date: _____

Print Name: _____ Title: _____

A-1 Rev. 7/29/11

Proposer Information

Proposer's Approach

1. Provide an Executive Summary to include a brief summary of the following:

   (a) Describe the Proposer's general approach to developing, maintaining and managing the proposed project including the approach to focusing density around the Eighth Street Metromover Station and integration of that station into the overall project.
   (b) Provide a history of the Proposer's development background and experience.
   (c) Describe the qualifications of the Developer Team Members (excluding Proposer) and Subcontractors to be assigned to this Project;
   (d) Describe the qualifications of the key personnel to be assigned to this Project; and
   (e) Provide any other information demonstrating the Proposer's ability to complete the development proposed.

2. Provide details outlining Proposer's vision for development of the property being offered in this solicitation including details demonstrating the quality of design, layout, landscaping, construction and project components. Include an explanation of how the development will focus density around the Eighth Street Metromover Station.

3. Provide details for the functional and aesthetic integration of the Eighth Street Metromover into the overall development.

4. Describe the Proposer's plan to mitigate any negative impact to transit operations. The plan should be as detailed as possible and include methods used to anticipate, at the earliest possible time, necessary changes to the plan.

5. Provide a project schedule identifying specific key tasks and duration to successfully complete the Project.

6. Describe Proposer's methodology in obtaining building permits, and regulatory approvals including those from the City of Miami, Miami-Dade County, any other applicable regulatory agencies and non-governmental entities such as Florida Power and Light (FPL).

7. Provide a copy of Proposer's quality control procedures for previous projects and identify what quality control mechanisms shall be implemented for development on transit property.

8. Clearly state if Proposer has taken any exception to the terms of this Solicitation. If so, indicate what alternative is being offered.

9. Describe Proposer's approach to project organization and management, including the responsibilities of Proposer's and other Developer Team Member's management and staff personnel that will perform work on this Project.

10. Provide a site plan of the proposed development showing all structures to be located on or that will have an impact on County property.

Proposer Information

Proposer's Experience, Qualifications, and Past Performance

11. State the number of years that the Proposer has been in existence, the current number of employees, and the primary markets served.

12. Provide detailed information on other projects that the Proposer has either ongoing or completed within the past five years. The information should include a description and location of the project, the total dollar value and any other partners or entities involved in the project.

13. List all contracts, if any, that the Proposer has performed for Miami-Dade County. The County will review all contracts the Proposer has performed for the County in accordance with Section 2-8.1(g) of the Miami-Dade County Code, which requires that "a Bidder's or Proposer's past performance on County Contracts be considered in the selection of Consultants and Contractors for future County Contracts." As such the Proposer must list and describe all work performed for Miami-Dade County and include for each project:

    (a) name of the County Department which administers or administered the contract,
    (b) description of work,
    (c) total dollar value of the contract,
    (d) dates covering the term of the contract,
    (e) County contact person and phone number,
    (f) statement of whether Proposer was the prime contractor or subcontractor, and
    (g) the results of the project.

14. Describe Proposer's past experience in obtaining the necessary permits and approvals from local government authorities and familiarity with the Florida building code.

Relevant Experience and Qualifications of all Key Personnel

15. Provide an organization chart showing all key personnel, including their titles, to be assigned to this Project. This chart must clearly identify the Proposer's employees and those of other Developer Team Members and Subcontractors. Include the functions to be performed by the key personnel. Key personnel include all partners, managers, seniors and other professional staff that will perform work and/or services for this Project.

16. Describe the experience, qualifications and other vital information, including relevant experience on previous projects, of all key personnel.

17. Identify the Proposer's project manager that will be responsible for this Project (at each phase, if applicable) and contact information including the address, phone number and e-mail address.

Note: After proposal submission, but prior to the award of any contract issued as a result of this Solicitation, the Proposer has a continuing obligation to advise the County of any changes, intended or otherwise, to the key personnel identified in its proposal.

Proposer's Financial Experience, Approach and Capability

18. Described Proposer's approach to finance the project and the recourses Proposer intends to utilize. Include documentation to demonstrate Proposer's ability to secure financing for the project.

Proposer Information

19. Provide a financial plan of action indicating how the project will be funded.

20. Provide documentation that supports that the Proposer's financial capacity to undertake the Project described in the Scope of Services. Provide most recent certified business financial statements as of a date not earlier than the end of each Proposer's preceding official tax accounting period, together with a statement in writing, signed by a duly authorized representative, stating that the present financial condition is materially the same as that shown on the balance sheet and income statement submitted, or with an explanation for a material change in the financial condition. A copy of the most recent business income tax return will be accepted if certified financial statements are unavailable.

21. Provide a term sheet and a letter of intent (or a commitment letter) from a lender indicating its willingness to lend an amount necessary for construction financing of the Project or other documents indicating that the selected Developer has sufficient financing to complete the development.

Proposer's Financial Benefits to the County

22. Describe in detail any other financial benefits which will accrue to the County as a result of the proposed project. The financial benefits could include, but not be limited to, such things as improvements and continued maintenance of County property or facilities. If financial benefits in addition to rent are proposed, these benefits should be described in detail and quantified.

Form A-2

AFFIDAVIT OF MIAMI-DADE COUNTY
LOBBYIST REGISTRATION FOR ORAL PRESENTATION

(1) ProjectTitle: _____ Project No.: _____
(2) Department: _____
(3) Proposer's Name: _____
Address: _____ Zip: _____
Business Telephone: (____) _____

(4) **List All Members of the Presentation Team Who Will Be Participating in the Oral Presentation:**

NAME	TITLE	EMPLOYED BY	TEL. NO.

(ATTACH ADDITIONAL SHEET IF NECESSARY)

The individuals named above are Registered and the Registration Fee is <u>not</u> required for the Oral Presentation ONLY.

Any person who appears as a representative for an individual or firm for an oral presentation before a County certification, evaluation, selection, technical review or similar committee must be listed on an affidavit provided by the County. The affidavit shall be filed with the Clerk of the Board at the time the response is submitted. The individual or firm must submit a revised affidavit for additional team members added after submittal of the proposal with the Clerk of the Board prior to the oral presentation. Any person not listed on the affidavit or revised affidavit may not participate in the oral presentation, unless he or she is registered with the Clerk's office and has paid all applicable fees.

Other than for the oral presentation, Proposers who wish to address the county commission, county board or county committee concerning any actions, decisions or recommendations of County personnel regarding this solicitation in accordance with Section 2-11.1(s) of the Code of Miami-Dade County MUST register with the Clerk of the Board and pay all applicable fees.

I do solemnly swear that all the foregoing facts are true and correct and I have read or am familiar with the provisions of Section 2-11.1(s) of the Code of Miami-Dade County as amended.

Signature of Authorized Representative: _____ Title: _____
STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me this _____,
by _____, a _____, who is personally known
(Individual, Officer, Partner or Agent) (Sole Proprietor, Corporation or Partnership)
to me or who has produced _____ as identification and who did/did not take an oath.

_____
(Signature of person taking acknowledgement)

_____
(Name of Acknowledger typed, printed or stamped)

_____ _____
(Title or Rank) (Serial Number, if any)

Form A-3

ACKNOWLEDGEMENT OF ADDENDA

Instructions: Complete Part I or Part II, whichever is applicable.

PART I: Listed below are the dates of issue for each Addendum received in connection with this solicitation.

Addendum #1, Dated _____, 201___

Addendum #2, Dated _____, 201___

Addendum #3, Dated _____, 201___

Addendum #4, Dated _____, 201___

Addendum #5, Dated _____, 201___

Addendum #6, Dated _____, 201___

Addendum #7, Dated _____, 201___

Addendum #8, Dated _____, 201___

Addendum #9, Dated _____, 201___

PART II:

_____ No Addendum was received in connection with this solicitation.

Authorized Signature: _____ Date: _____

Print Name: _____ Title: _____

Firm Name: _____

A-3 - Rev. 1/25/10

FORM A-5
SUBCONTRACTOR/SUPPLIER LISTING
(Ordinance 97-104)

Name of Proposer _____

This form, or a comparable listing meeting the requirements of Ordinance No. 97-104, MUST be completed by all bidders and proposers on County contracts for purchase of supplies, materials or services, including professional services which involve expenditures of $100,000 or more, and all bidders and proposers on County or Public Health Trust construction contracts which involve expenditures of $100,000 or more. **This form, or a comparable listing meeting the requirements of Ordinance No. 97-104, must be completed and submitted even though the bidder or proposer will not utilize subcontractors or suppliers on the contract. The bidder or proposer should enter the word "NONE" under the appropriate heading in those instances where no subcontractors or suppliers will be used on the contract.** A bidder or proposer who is awarded the contract shall not change or substitute first tier subcontractors or direct suppliers or the portions of the contract work to be performed or materials to be supplied from those identified except upon written approval of the County. **The final completion of this form is a condition of award.**

Business Name and Address of First Tier Subcontractor/Subconsultant	Principal Owner	Scope of Work to be Performed by Subcontractor/Subconsultant	(Principal Owner) *Gender*	*Race*

Business Name and Address of Direct Supplier	Principal Owner	Supplies/Materials/Services to be Provided by Supplier	(Principal Owner) *Gender*	*Race*

I certify that the representations contained in this Subcontractor/Supplier Listing are to the best of my knowledge true and accurate.

_____

Signature of Proposer's Authorized Representative | Print Name | Print Title | Date

(Duplicate if additional space is needed)
Form A-5(new 5/7/99)

Form A-6

FAIR SUBCONTRACTING POLICIES
(Section 2-8.8 of the Miami-Dade County Code)

FAIR SUBCONTRACTING PRACTICES

In compliance with Section 2-8.8 of the Miami-Dade County Code, the Proposer submits the following detailed statement of its policies and procedures for awarding subcontracts:

_____

I hereby certify that the foregoing information is true, correct and complete.

Signature of Authorized Representative: _____

Title: _____ Date: _____

Firm Name: _____

FORM B-1

Payment Proposal Schedule

INSTRUCTIONS:
The Developer's payment proposal shall be submitted on this Form B-1 "Payment Proposal Schedule", and in the manner stated herein. Developer is requested to fill in the applicable blanks on this form and to make no other marks.

A. Payment Proposal for Initial Rent
The selected Developer shall pay the County an Initial Rent (see Section 2.12, A) which is expected to be at least the equivalent of the appraised fair market rental value for current land rent.

The Proposer shall pay the County _____ dollars
($_____) per month. (Insert written amount.)
(Insert number.)

Such Initial Rent shall be received by the County from the selected Proposer by the first day of the month in advance, without billing, from the award of the agreement by the Board of County Commissioners to the Date of Beneficial Occupancy.

B. Payment Proposal for Guaranteed Monthly Rent and Percentage of Monthly Gross Receipts

1. Guaranteed Monthly Rent (see Section 2.12, B)

The Proposer shall pay the County _____ dollars ($_____) per month.
(Insert written amount.) (Insert number.)

Such Guaranteed Monthly Rent shall be received by the County from the selected Proposer by the first day of the month in advance, without billing, from the Date of Beneficial Occupancy through the termination date of the Agreement.

The minimum acceptable Guaranteed Rent will be based upon the appraised fair market rental value which shall be determined by appraisal(s) performed by independent appraiser(s) selected by the County. The Guaranteed Monthly Rent shall be adjusted upward by three percent (3%) at the end of each Lease Agreement Year. The County reserves the right to reevaluate the Guaranteed Rent every ten (10) years for market conditions.

SWIRE PROPERTIES

Proposal
FOR
Development of Brickell Metromover Property

RFP No. 798

JC Romano, CPPB
Procurement Contracting Officer II
c/o CLERK OF THE BOARD
Stephen P. Clark Center
111 NW 1st Street
17th Floor, Suite 202
Miami, FL 33128

Miami-Dade County RFP No. 798
Proposer Information

Proposer's Approach

1. Provide an Executive Summary to include a brief summary of the following:

   (a) Describe the Proposer's general approach to developing, maintaining and managing the proposed project including the approach to focusing density around the Eighth Street Metromover Station and integration of that station into the overall project.
   (b) Provide a history of the Proposer's development background and experience.
   (c) Describe the qualifications of the Developer Team Members (excluding Proposer) and Subcontractors to be assigned to this Project;
   (d) Describe the qualifications of the key personnel to be assigned to this Project; and
   (e) Provide any other information demonstrating the Proposer's ability to complete the development proposed.

Executive Summary
Introduction to SPI Properties Inc. and its Brickell CitiCentre Project

The Proposer to this RFP is SPI Properties, Inc. ("SPI"), a Miami-based real estate company with over 25 years of successful property development in Miami, including the island community of Brickell Key. SPI owns approximately 9.1 acres of land (the "Property")

that abuts or is otherwise proximate to the Eighth Street Metromover Station. On July 28, 2011 SPI obtained final approval from the City of Miami to develop a 4.68 million square foot, mixed-use development on the Property known as Brickell CitiCentre. Integration of the four Miami-Dade Transit parcels into Brickell CitiCentre represents the best opportunity for the County to focus density around the Eighth Street Metromover Station and promote increased patronage of the Metromover system, to achieve functional and aesthetic integration of the Eighth Street Metromover Station with the Brickell neighborhood, and to provide a long term source of income for the County.

Brickell CitiCentre will be located along S. Miami Avenue and is bounded by S.W. 8th Street to south, S.W. 6 Street to the north, approximately S.W. 1st Avenue to the west, and approximately Brickell Avenue to the east. (See Tab "A" for location of Brickell CitiCentre). Brickell CitiCentre is comprised of portions of four city blocks which have been informally designated as BCC North, BCC West, BCC East and BCC Plaza. (*See* Tab "A" for location and designation of the four city blocks of Brickell CitiCentre). The retail component of Brickell CitiCentre will consist of approximately 535,000 square feet of open-air, destination and neighborhood serving retail across five levels, including a high-end food market. Its residential component consists of 910 residential units in two (2) towers, and its lodging component consists of a hotel and serviced apartment building consisting of approximately 290 rooms and 77 units, respectively. Its office component consists of approximately 925,000 square feet of office space across the Property, including a 78,000 square foot office tower proposed for BCC West, a medical office/wellness center of approximately 95,000 square feet proposed for BCC East, and a tower of approximately 733,000 square feet to replace the building which currently houses Eastern National Bank, located immediately east of the Eighth Street Metromover Station. (*See* Tab "A" for the location of the various project elements).

In addition to this development program, Brickell CitiCentre contemplates a number of significant elements designed to enhance the public realm. Foremost of which is the climate ribbon that serves as unifying theme for the project, connecting the various BCC parcels north towards the Miami River. The climate ribbon will protect patrons from the elements, allowing them to travel along the open air corridors of the retail center and across the pedestrian connections in any weather. The climate ribbon will unify the site above the street, and could potentially generate electric power for the facility through the incorporation of solar panels, as well as assist with collection of rainfall that can be used for various water features on-site. (*See generally,* Tabs "A" and "B").

Finally, with respect to the "Project Site" identified by this RFP, SPI proposes to incorporate the lots into Brickell CitiCentre in three ways. First, Parcel A will be physically

integrated into the North Parcel of Brickell CitiCentre so that the parcel can be developed as a portion of the mixed use building proposed for that block of Brickell CitiCentre. Second, Parcels B, C and D will be improved as a lushly landscaped linear park that would enhance connectivity of the Eighth Street Metromover Station with the Miami River and Miami River Greenway. Finally, Parcels C and D will be improved with a redesigned Metromover Station that would be fully integrated with Brickell Citicentre, enhancing station access, increasing system ridership, and providing a multi-modal connection to the planned Brickell line of the City of Miami trolley. (*See* Tab "C").

1. (a) Describe the Proposer's general approach to developing, maintaining and managing the proposed project including the approach to focusing density around the Eighth Street Metromover Station and integration of that station into the overall project.

SPI proposes to develop and continuously maintain Parcel A as a wholly integrated part of Brickell CitiCentre. Parcel A will be completely incorporated into Proposer's Brickell CitiCentre North parcel, planned to contain a condominium tower of 455 luxury residences, some 139,000 square feet of multi-level retail and a parking facility for 1,200 vehicles.

In addition to the 535,000 square foot retail center, Phase One of the Brickell CitiCentre project will also contain a 290 room high end hotel, 77 units of service apartments, 95,000 square feet of wellness/medical offices, all on Proposer's property immediately west of Parcels C and D of the "Project Site." An additional 455 unit residential tower and 78,000 square foot office building on Proposer's west parcel comprise the balance of the planned Brickell CitiCentre Phase One mix of uses and density concentrated around the 8th Street Metromover station.

As part of the Brickell CitiCentre development, Proposer also intends to create direct connections between the Metromover station encumbering Parcels C and D and the third retail level of Shops Brickell CitiCentre, resulting in the 8th Street Metromover Station becoming a major, energized and attractive destination on the Brickell loop and providing critical transit access to the shopping center to the immediate west of the "Project Site." (*See* Tab "D", which depicts escalators connecting to the redesigned and enhanced Eight Street MetroMover Station, which would be located behind the "restaurant cube").

Upon development of Brickell CitiCentre Phase Two, planned to be a 733,000 Square Foot multi-tenant office building to the immediate east of the "Project Site," a similar connection and sense of arrival will be undertaken, incorporating the MetroMover station into the office building at the sky lobby level. Continuous maintenance and security patrol of

both "gateway" connections would become part of the operating costs of the respective phases.

By completion of Brickell CitiCentre Phase One, estimated to occur by December 2015, Proposer intends to install and thereafter continuously maintain a lushly landscaped promenade under the Metromover guideway on Parcels D, C and B with decorative lighting, substantial cosmetic enhancements to ground level Metromover entrances and exits on 7th and 8th Streets, and meandering pathways that can link to, and form a part of, the Miami River Greenway. (See Tab "E"). Continuous maintenance of the "Brickell CitiCentre Riverwalk" would become part of the overall project's operating costs.

(b) Provide a history of the Proposer's development background and experience.

As noted above, SPI is a Miami-based real estate company with over 25 years of successful property development history in Miami. Its record of achievement in Miami is best expressed by the island community of Brickell Key, where SPI has successfully built and sold over 2,400 luxury residential units in eight towers (unit totals include the Jade at Brickell Bay located at 1333 Brickell Bay Drive), the 350,000 square foot award-winning Courvoisier Centre office complex and the ultra-luxury hotel Mandarin Oriental Miami, in which SPI still retains a 75 percent ownership interest.

SPI's overall capital investment in Miami now exceeds $1 billion. Most recently SPI has invested $73 million to assemble and obtain entitlements for the nine acre development site in the heart of Brickell, which will be developed as the 4.68 million square foot Brickell CitiCentre. Brickell CitiCentre, for which an additional $1 Billion capital investment is contemplated, will directly abut the "Project Site" that is the subject of the RFP on both the east and the west.

Proposer's capability to carry out a project of the planned magnitude of Brickell CitiCentre, and by extension the proposed improvements to the "Project Site", which are intended to make transit an activated and critical part of the Brickell CitiCentre development, is indicated by the financial strength of SPI's parent company, the publically-traded SPI Pacific Holdings which in turn is part of the nearly 200 year old SPI Group. SPI Pacific Holdings has historically funded SPI projects from internal corporate lines, which enables SPI to proceed with development on the basis of projected return on corporate capital rather than being constrained by conventional real estate financing. (*See* Tab "F" for background on Proposer's parent company).

(c) Describe the qualifications of the Developer Team Members (excluding Proposer) and Subcontractors to be assigned to this Project;

The architectural and engineering team already at work on design/development of the US $1 Billion Brickell CitiCentre for SPI will be the same team charged with designing the improvements and connections described in section a) as planned for the "Project Site." These firms are as follows:

- Project architect: Arquitectonica
- Traffic Engineer: Kimley Horn & Associates
- Structural Engineers: MKA, Seattle
- MEP Engineers: Cosentini Associates and TLC, New York and Miami
- LEED Engineers: Cosentini Associates, New York
- Landscape Design: Arquitectonica GEO, Miami
- Climate Ribbon Design: Hugh Dutton Associates, Paris
- Civil Engineers: Kimley-Horn & Associates, Miami

The contractor for Brickell CitiCentre has not yet been selected, but it is anticipated that the overall construction contract for Brickell CitiCentre would include the construction or installation of any improvements and landscaping that would be applied to the Project Site. SPI is presently considering five international construction consortia with bonding capacity and experience sufficient to execute the Brickell CitiCentre project. That selection process is expected to be completed with a contract awarded by second quarter of 2012, with construction expected to commence shortly thereafter.

(d) Describe the qualifications of the key personnel to be assigned to this Project; and

The development team at SPI is comprised of a capable core staff of professionals, many of whom have worked for SPI Properties for terms of 10 to 30+ years, and have, therefore, been responsible for the successful completion of over six million square feet of condominium, office and hotel property in the Brickell market. The development team will be led by Chris Gandolfo, Vice President and project leader – an SPI employee for 13 years. Mr. Gandolfo will be supported by:

- Stephen L. Owens, President, with SPI for 30+ years
- Megan Kelly, EVP, Asset Management, with SPI for 20+ years
- Gregg Toland, CFO, with SPI for 30+ years

SPI's expanding team for Brickell CitiCentre includes senior construction managers David Bixby and Jeff Benson, both long-term SPI employees, as well as recently transferred Jolyon Culbertson, Retail Strategy Director of the parent company and recently hired construction cost accountant David Gross. SPI's project team for Brickell CitiCentre is expected to number 38-40 by second quarter of 2012

(e) Provide any other information demonstrating the Proposer's ability to complete the development proposed.

As indicated above, SPI has already successfully developed twelve luxury office, residential or hotel towers in downtown Miami in closed proximity to the "Project Site." With the corporate backing of parent company SPI Pacific Holdings, one of Asia's leading real estate developers of large-scale, urban mixed use developments of a scale and complexity of Brickell CitiCentre, SPI has both the financial and technical wherewithal to execute the improvements which are contemplated by SPI's response to the subject RFP.

2. Provide details outlining Proposer's vision for development of the property being offered in this solicitation including details demonstrating the quality of design, layout, landscaping, construction and project components. Include an explanation of how the development will focus density around the Eighth Street Metromover Station.

Proposer's vision for development of the subject property is to incorporate Parcel A, the 8th Street MetroMover Station and the green space underlying the guideway from 8th Street north to 6th Street into SPI's 4.68 million square foot Brickell CitiCentre project.

SPI envisions a substantial cosmetic upgrade to the station itself, both at the platform and ground level, that will transform the 8th Street Metromover Station into an exciting, inviting destination in its own right. The key elements designed and funded by SPI would include installation of decorative lighting, landscaping, improvements to signage and other graphics, and refurbishment of the hardscape and vertical access systems. (*See* Tab "C").

In addition, and as previously described, the vision includes the construction of physical gateway linkages between the Metromover station and Brickell CitiCentre. In Phase One of Brickell CitiCentre, it is envisioned that this connection would include sophisticated

arrival landings with bridges to the third level of the shopping center, intended to provide Metromover passengers with a direct access to Brickell CitiCentre, specifically the dining deck, movie theater and other entertainment options. Improved signage, graphics and a gateway design will reinforce a transit-oriented sense of arrival at a cosmopolitan destination.

At grade, the planned landscaping and green space treatments planned for the Brickell CitiCentre project would be extended under the Metromover guideway to create inviting public space for walking and biking, with linkage to the Miami River Greenway to the north. SPI would fund and implement these improvements toward the end of the Phase One construction, estimated to finish by December of 2015, with interim use of the area to be construction staging. (*See* Tabs "A" and "E").

Finally, as envisioned by this proposal, SPI proposes to develop and continuously maintain Parcel A as a wholly integrated part of Brickell CitiCentre. Parcel A will be completely incorporated into Proposer's Brickell CitiCentre North parcel, planned to contain a condominium tower of 455 luxury residences, some 139,000 square feet of multi-level retail and a parking facility for 1,200 vehicles. The 2.15 acre Brickell CitiCentre North parcel (including Parcel A) will consist of approximately 1.4 million gross square feet of development, which includes both underground and above-grade parking. This will be a particularly dense component of the Brickell CitiCentre project, and its location immediately adjacent to the Metromover line will help increase ridership and use of the MDT parcels. (*See* Tab "A").

3. Provide details for the functional and aesthetic integration of the Eighth Street Metromover into the overall development.

SPI proposes to functionally and aesthetically integrate the 8th Street Metromover station into Brickell CitiCentre, consistent with MDTA parameters for security, transit safety, required clearances and hours of operation. Gateway features, able to be secured by Brickell CitiCentre personnel but with direct connection between the station platform and the third level of the shopping center to the immediate west, will be constructed by Proposer as part of Phase One of the Brickell CitiCentre project. (*See* Tab "D"). In Phase Two, a comparable gateway feature and connection to the sky lobby of the 650,000 square foot office building planned for Brickell CitiCentre immediately to the east would be added by Proposer.

4. Describe the Proposer's plan to mitigate any negative impact to transit operations. The plan should be as detailed as possible and include methods used to anticipate, at the earliest possible time, necessary changes to the plan.

Because SPI's proposed improvements to the Eighth Street Metromover Station and entrance(s) are intended to be substantially cosmetic, there is no anticipated negative impact of any consequence to transit operations. Specifically, refurbishment of vertical transportation to the station platform would be phased in such a way as to assure passenger accessibility is maintained at all times. Proposer anticipates working closely with MDT to assure that construction of Brickell CitiCentre generally, and the improvements planned for the "Project Site" in particular, can be safely carried out with appropriate hoardings and other construction barriers such that transit operations carry on normally and safely.

5. Provide a project schedule identifying specific key tasks and duration to successfully complete the Project

Project Schedule for Brickell CitiCentre is attached. (*See* Tab "G"). As previously mentioned, the improvements for the "Project Site" would be carried out toward the end of construction of Phase One. The sky bridge or other connection to Phase Two would be carried out toward the end of construction of Phase Two.

6. Describe Proposer's methodology in obtaining building permits, and regulatory approvals including those from the City of Miami, Miami-Dade County, any other applicable regulatory agencies and non-governmental entities such as Florida Power and Light (FPL).

On July 29, 2011, the City of Miami approved a "Special Area Plan" for Brickell CitiCentre, which approves all of the proposed improvements to the "Project Site". Additional approvals have been obtained from Miami-Dade County Department of Public Works and DERM, FPL, FDOT (partial) and are being pursued for Miami-Dade County WASD. Pursuant to the approved SAP, the proposed improvements to the "Project Site" would be included in the Phase One building permit, for which SPI expects application to be processed first quarter of 2012.

7. Provide a copy of Proposer's quality control procedures for previous projects and identify what quality control mechanisms shall be implemented for development on transit property.

On approximately five million square feet of prior Miami development executed by SPI, quality control procedures have successfully been implemented by SPI in conjunction

with its selected project contractors. These procedures will be likewise be undertaken in connection with construction of Brickell CitiCentre and may include secure laydown, security and dust control fencing, busing construction workers (est. 1,700 jobs) from remote parking, third party progress inspection, erection of secure access walkways, etc. Management of the estimated $500,000,000 in construction of Brickell CitiCentre will comply with every local statutory requirement and, as previously indicated, the selected contractor is expected to be a major international concern able to bring a worldwide perspective on construction best practices to the Brickell CitiCentre job.

8. Clearly state if Proposer has taken any exception to the terms of this Solicitation. if so, indicate what alternative is being offered.

Three exceptions to the terms of this solicitation are noted below:

1. SPI has proposed an alternate payment proposal in addition that provided on form B-1. Both the B-1 and B-1 Alternate are independently valid proposals.

2. Please note our response to No. 20 of Proposer's Information.

3. SPI takes exception to the supervision of "Form A-5, subcontractors/supplier listing" as that term currently reads on the following grounds:

   a. We question whether the requirements of Ordinance 97-104 are applicable to SPI's proposal as it does not involve a County "construction contract that involves expenditure of $100,000.00 or more". Rather, SPI's proposal does not require any County funds and all construction herein will be funded solely with private funds.

   b. Even if the requirements of A-5 are deemed applicable, SPI has not yet selected a general contractor or any sub-contractors for this project. Such determinations are scheduled to be made by March 30, 2012.

   c. Notwithstanding these exceptions, SPI is committed to transparent and robust local subcontracting and will develop a program whereby local subcontractors may register to receive notification of subcontracting opportunities associated with development of the Project.

9. Describe Proposer's approach to project organization and management, including the responsibilities of Proposer's and other Developer Team Member's management and staff personnel that will perform work on this Project.

As mentioned before, SPI's contractor will be selected by competitive bid from among four or five major international construction consortia currently under consideration, and will be charged with construction of Brickell CitiCentre including the improvements proposed by SPI for the "Project Site."

10. Provide a site plan of the proposed development showing all structures to be located on or that will have an impact on County property.

A site plan of Brickell CitiCentre is provided. (*See* Tab "A").

Proposer's Experience, Qualifications, and Past Performance

11. State the number of years that the Proposer has been in existence, the current number of employees, and the primary markets served.

SPI Properties Inc was incorporated in the State of Florida in 2009. Prior to that time, SPI Properties Inc was a D/B/A of SPI Pacific Holdings Inc, a Utah corporation doing business in Miami, Florida since 1986.

12. Provide detailed information on other projects that the Proposer has either ongoing or completed within the past five years. The information should include a description and location of the project, the total dollar value and any other partners or entities involved in the project.

Proposer completed the ASIA condominium on Brickell Key in 2008 consisting of 123 luxury condominium apartments. ASIA is located on the north bayfront of Brickell Key, overlooking the mouth of the Miami River and the downtown skyline. Financed entirely from internal corporate resources by SPI, ASIA was completed at a cost of $105 million.

13. List all contracts, if any, that the Proposer has performed for Miami-Dade County. The County will review all contracts the Proposer has performed for the County in accordance with Section 2-8.1(g) of the Miami-Dade County Code, which requires that "a Bidder's or Proposer's past performance on County Contracts be considered in the selection of Consultants and Contractors for future County Contracts." As such the Proposer must list and describe all work performed for Miami-Dade County and include for each project:

(a) name of the County Department which administers or administered the contract,
(b) description of work,
(c) total dollar value of the contract,
(d) dates covering the term of the contract,
(e) County contact person and phone number,
(f) statement of whether Proposer was the prime contractor or subcontractor, and
(g) the results of the project.

Not applicable.

14. Describe Proposer's past experience in obtaining the necessary permits and approvals from local government authorities and familiarity with the Florida building code.

Over a 25 year period, Proposer has successfully obtained building permits to construct in Miami 2,400 high rise residential units in eight (8) towers, a twenty-story, 326 room luxury hotel, and 350,000 square feet of office space in two (2) towers.

15. Provide an organization chart showing all key personnel, including their titles, to be assigned to this Project. This chart must clearly identify the Proposer's employees and those of other Developer Team Members and Subcontractors. Include the functions to be performed by the key personnel. Key personnel include all partners, managers, seniors and other professional staff that will perform work and/or services for this Project

Please refer to Tab "H".

16. Describe the experience, qualifications and other vital information, including relevant experience on previous projects, of all key personnel.

Development of Brickell CitiCentre, to include the improvements proposed herein, will be led by Vice President Christopher Gandolfo, a 13 year SPI veteran, who has directly overseen the following projects: (i) predevelopment of SPI Properties Ltd Dazhongli, a 4 million square foot mixed use project underway in Shanghai; (ii) the 1 million square foot JADE at Brickell Bay; and (iii) the 326 key, luxury hotel Mandarin Oriental Miami, amongst other projects.

17. Identify the Proposer's project manager that will be responsible for this Project (at each phase, if applicable) and contact information including the address, phone number and e-mail address.

Vice President Christopher Gandolfo, 501 Brickell Key Drive, Suite 600, Miami, FL 33131, (305) 371-3877, cgandolfo@swireprops.com. Hiring is on-going for contractors and sub-contractors.

Proposer's Financial Experience, Approach and Capability

18. Described Proposer's approach to finance the project and the recourses Proposer intends to utilize. Include documentation to demonstrate Proposer's ability to secure financing for the project.

SPI has historically financed projects from internal resources, typically a line of credit supported by corporate guarantee. As a publically traded company based in Asia, SPI's parent company enjoys unparalleled access to low cost capital. Therefore, it is anticipated that Brickell CitiCentre will be financed in the same fashion.

19. Provide a financial plan of action indicating how the project will be funded.

SPI currently has sufficient working capital through a corporate line from HSBC to carry the Brickell CitiCentre project, including the improvements proposed for the "Project Site," through the design development phase now underway and intended to be completed by the Spring of 2012. Thereafter, it is expected that parent company resources will be obtained, in lieu of conventional bank financing, to fund the construction of the project's initial phase.

20. Provide documentation that supports that the Proposer's financial capacity to undertake the Project described in the Scope of Services. Provide most recent certified business financial statements as of a date not earlier than the end of each Proposer's preceding official tax accounting period, together with a statement in writing, signed by a duly authorized representative, stating that the present financial condition is materially the same as that shown on the balance sheet and income statement submitted, or with an explanation for a material change in the financial condition. A copy of the most recent business income tax return will be accepted if certified financial statements are unavailable.

As a part of publically traded company listed on the Hang Seng exchange, SPI 's financial reporting is wholly consolidated into the results of SPI Pacific Ltd. Proposer does not

provide separate financial records. Kindly refer to the SPI Pacific Ltd. 2010 Annual Report (www.SPIpacific.com) which indicates the property division, including SPI , generated a 2010 operating profit of $3.5 billion. (*See* Tab "F").

21. Provide a term sheet and a letter of intent (or a commitment letter) from a lender indicating its willingness to lend an amount necessary for construction financing of the Project or other documents indicating that the selected Developer has sufficient financing to complete the development.

As noted above, SPI has the resources to self-finance this project.

Proposer's Financial Benefits to the County

22. Describe in detail any other financial benefits which will accrue to the County as a of the proposed project. The financial benefits could include, but not be limited to, such things as improvements and continued maintenance of County property or facilities. If financial benefits in addition to rent are proposed, these benefits should be described in detail and quantified result.

In addition to the rental payments enumerated in B-1, Payment Proposal Schedule, the indirect financial and operational benefits to MDT resulting from the incorporation of the "Project Site", including the Metromover station, cannot be overstated and include the following:

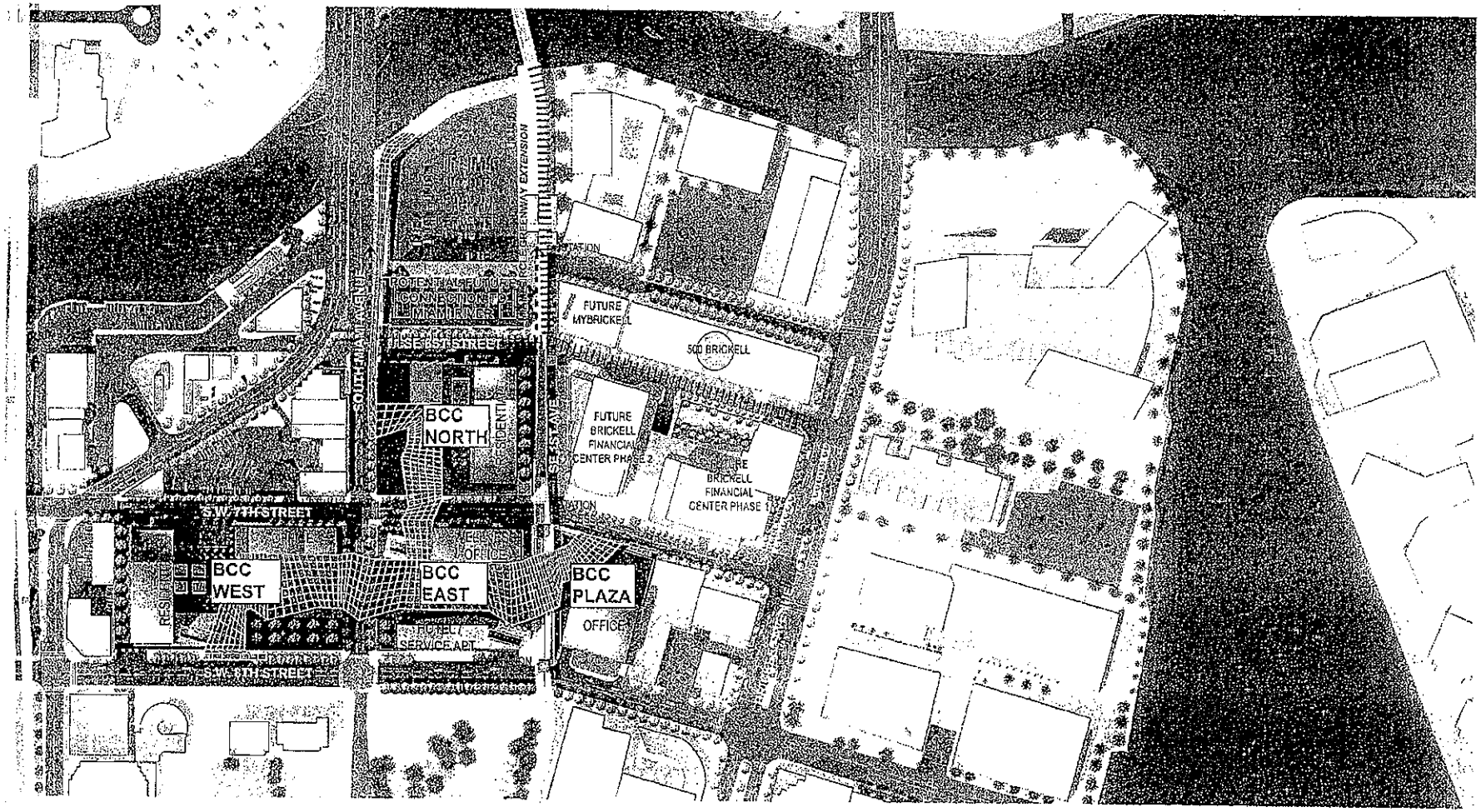
- Refurbishment of the 8th Street Metromover station platform, graphic representation, entrances, vertical transportation and cross walk sufficient to blend into the overall quality and design sophistication of Brickell CitiCentre

- Installation of a lushly landscaped public open space under the Metromover guideway at a sufficient level of finish to blend with other public plazas designed for Brickell CitiCentre and provide well-marked pedestrian and bicycle linkages to the Riverwalk.

- Maintenance of the landscape and other features will be an ongoing expense of Brickell CitiCentre

- Provision of two gateway features incorporating Metromover into the Brickell CitiCentre project, which features will be built and, thereafter, maintained and

patrolled as an expense of the Brickell CitiCentre project. Creation of an exciting "seamless" connection between the Metromover platform at the 8th Street station with the intensity of mixed use development planned for Brickell CitiCentre is expected greatly to enhance the shared destination of both, thereby increasing the project's appeal and Metromover ridership.



ARQUITECTONICA

1920 OAK AVENUE, MIAMI FLORIDA 33133 USA
Tel. 305.372.1812 Fax.305.372.1176
www.arquitectonica.com

SWIRE PROPERTIES
BUILDING EXCEPTIONAL VALUE

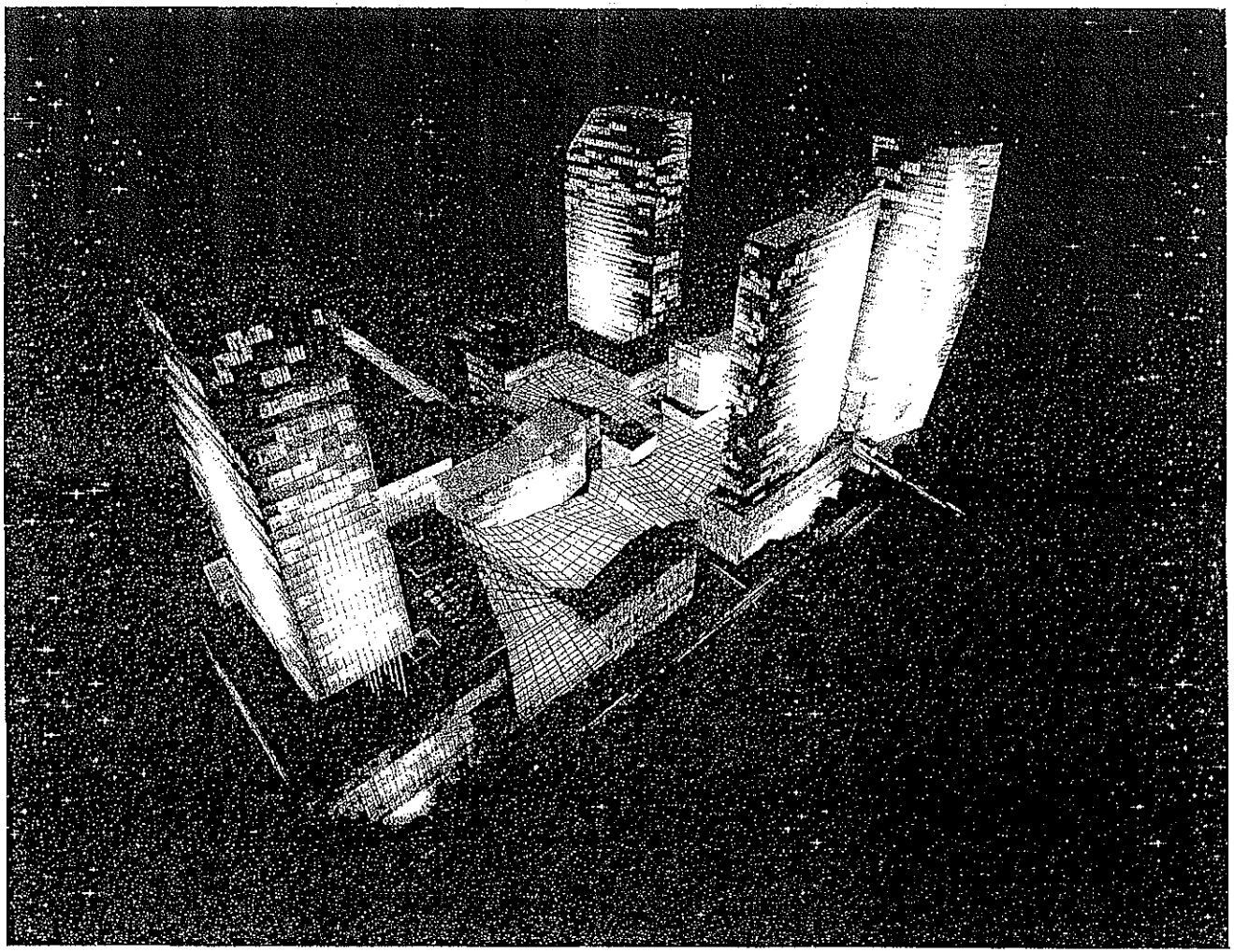
BRICKELL CITICENTRE

SPECIAL AREA PLAN

OVERALL SITE PLAN

A0.10

MAY 03, 2011



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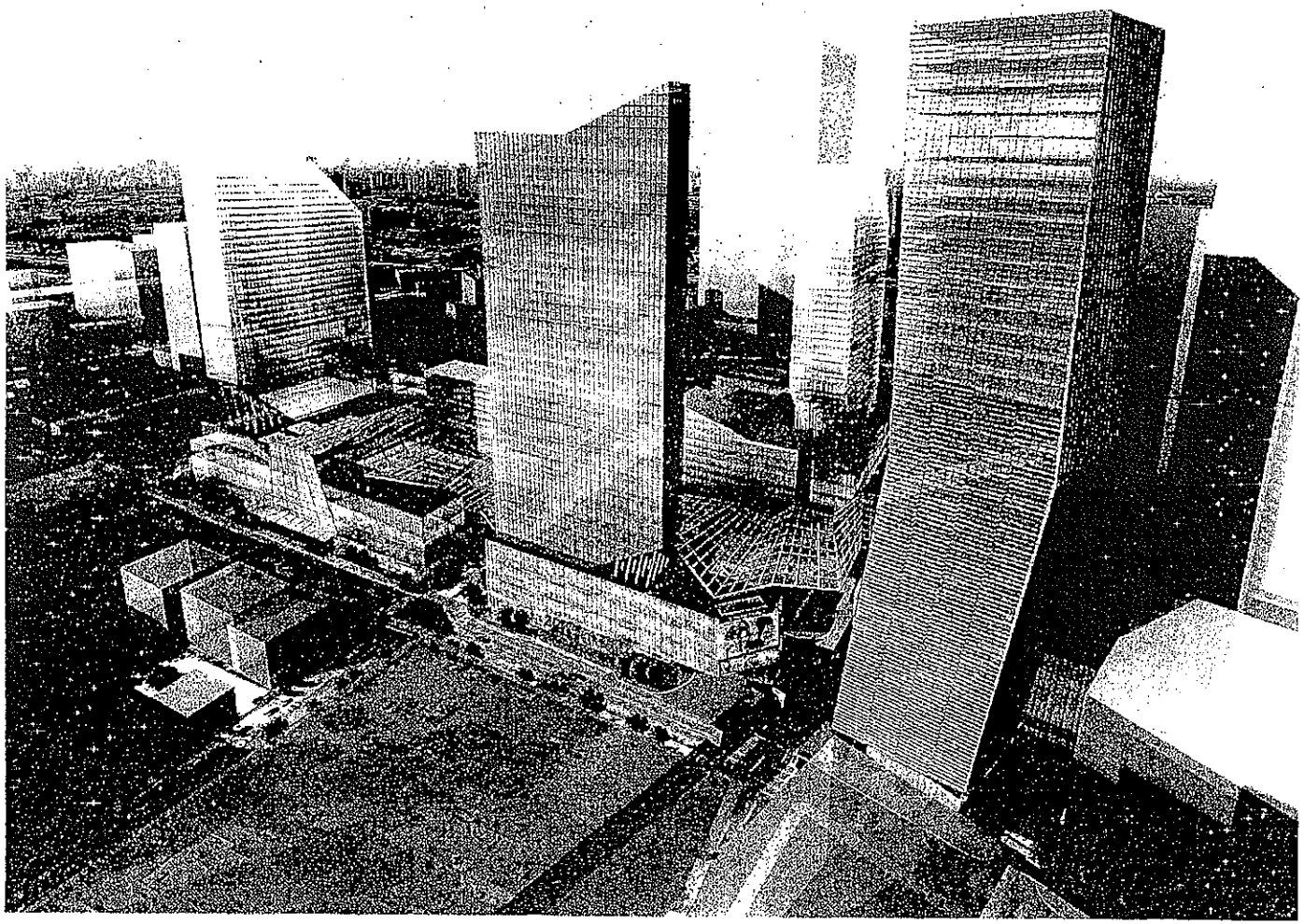
SWIRE PROPERTIES
BUILDING EXCEPTIONAL VALUE

BRICKELL CITICENTRE

SPECIAL AREA PLAN

PRELIMINARY MASSING

A4.01



ARQUITECTONICA

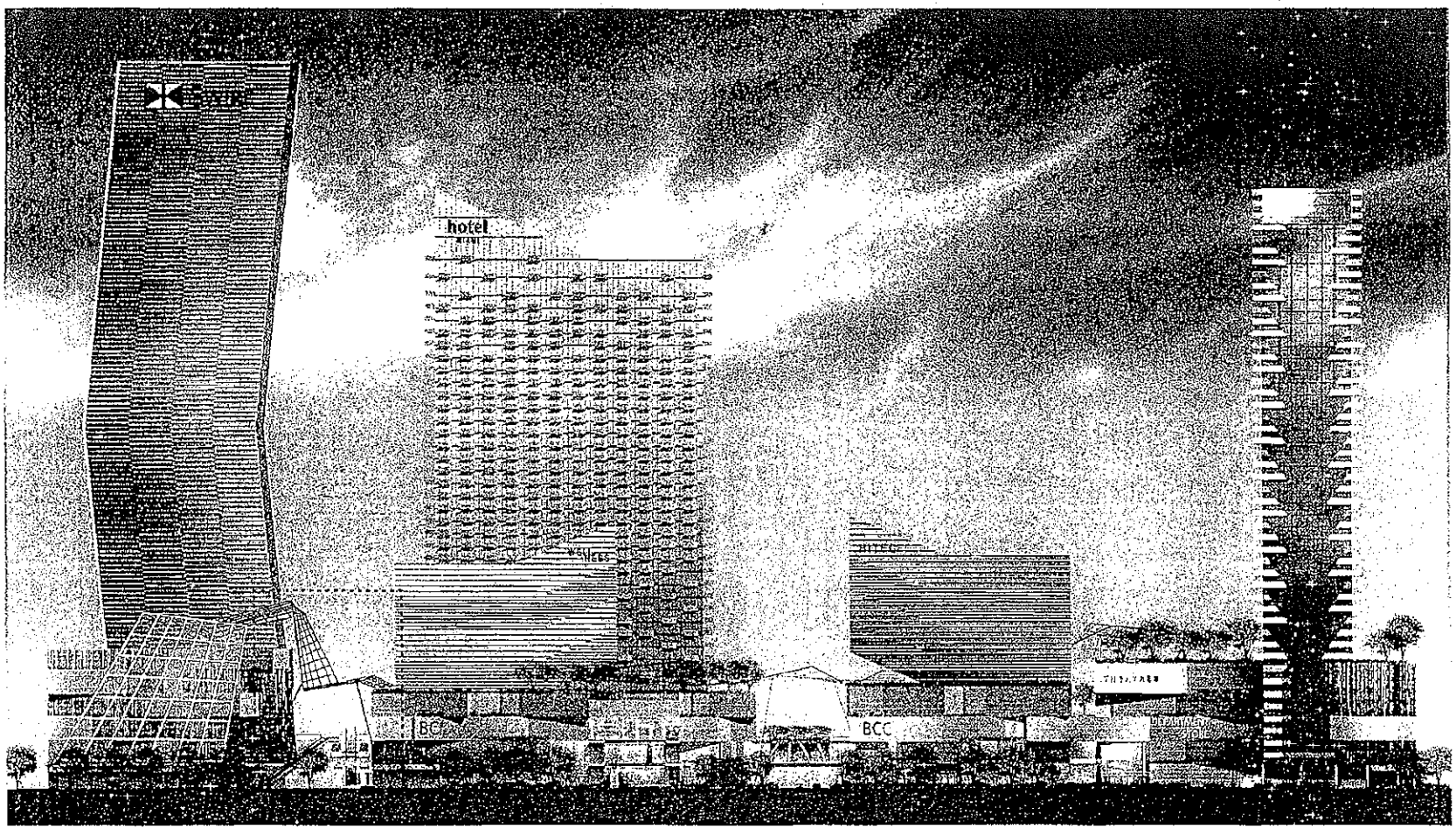
SWIRE PROPERTIES
BUILDING EXCEPTIONAL VALUE

BRICKELL CITICENTRE

SPECIAL AREA PLAN

PRELIMINARY MASSING

A4.02



METROMOVER
STATION/ CONNECTION

ARQUITECTONICA

SWIRE PROPERTIES
BUILDING EXCEPTIONAL VALUE

BRICKELL CITICENTRE

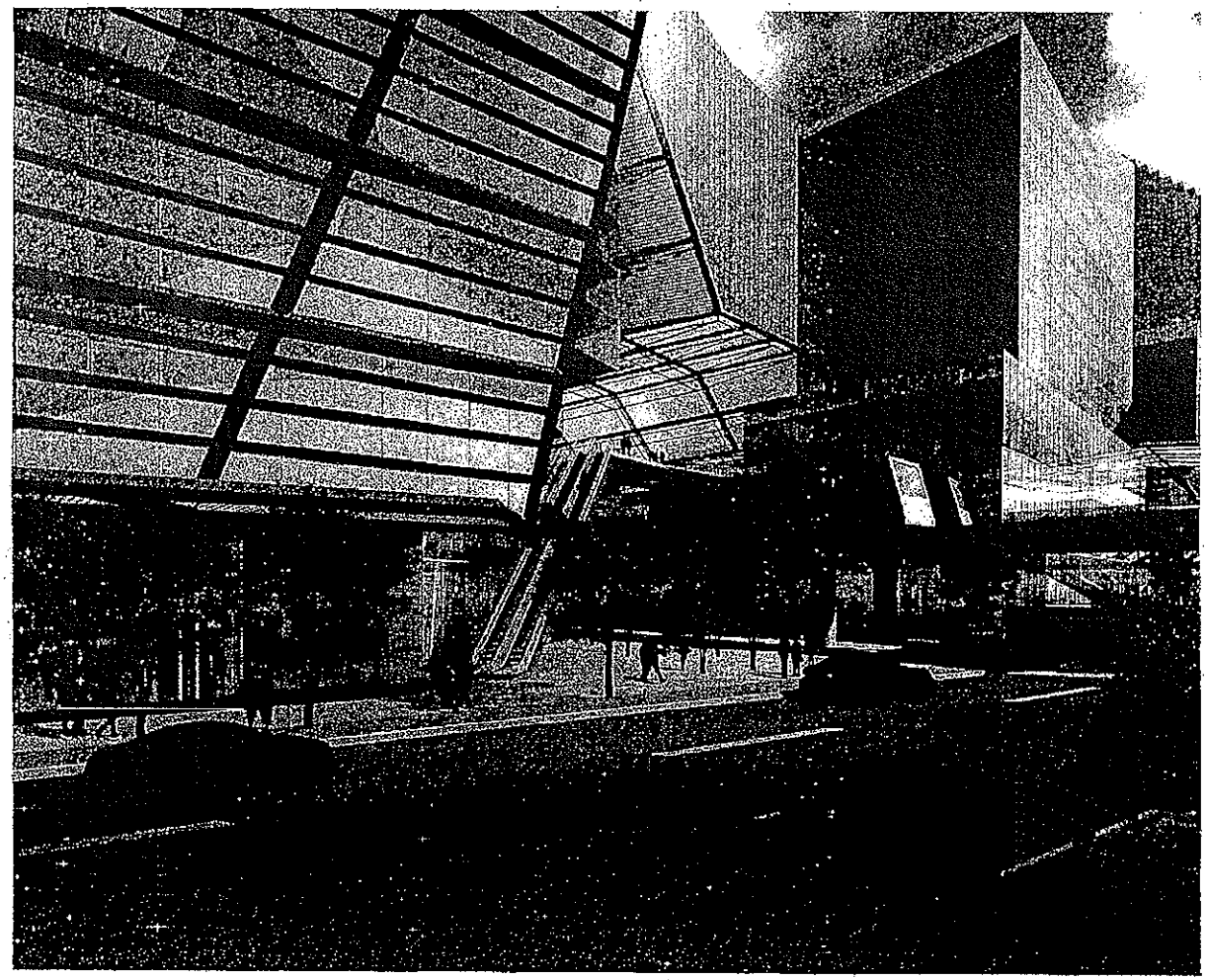
SPECIAL AREA PLAN

SCALE: 1"=80'-0"

OVERALL NORTH ELEVATION DESIGN STANDARD

A2.03

JUNE 29 2011



KEY PLAN

ARQUITECTONICA

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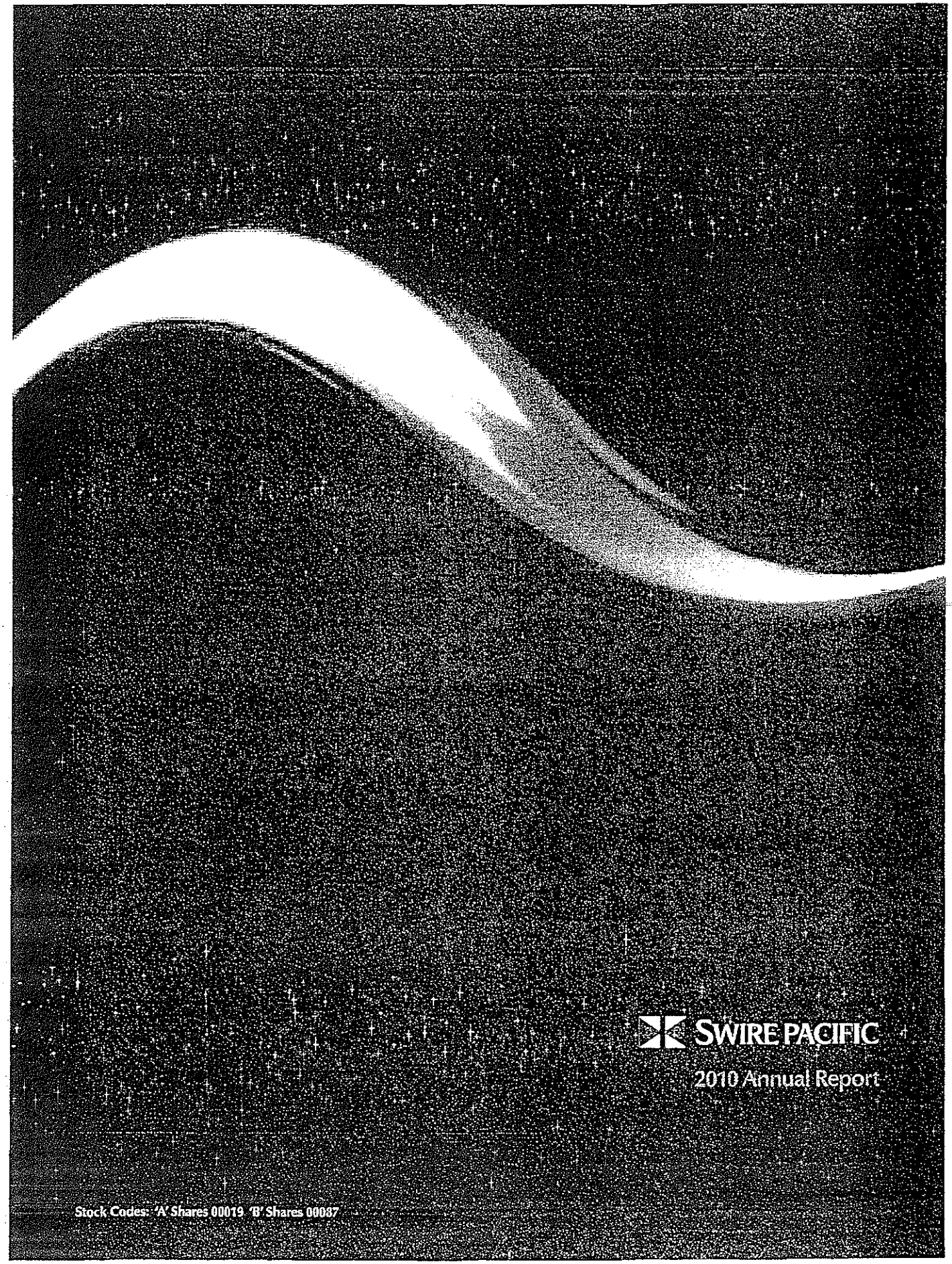
SWIRE PROPERTIES
BUILDING EXCEPTIONAL VALUE

BRICKELL CITICENTRE

PRELIMINARY MASSING

A4.05

MAY 03, 2011

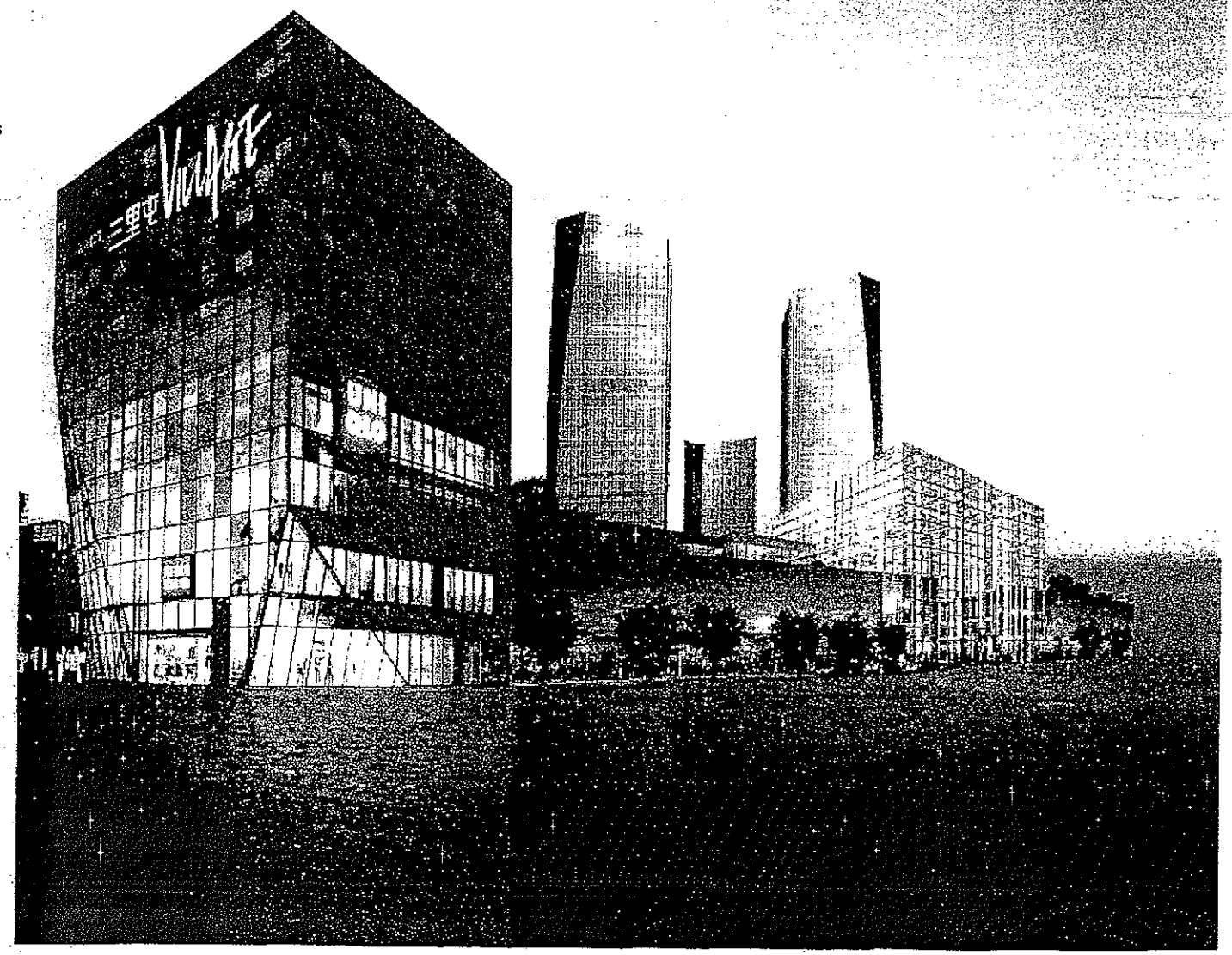


SWIRE PACIFIC

2010 Annual Report

Stock Codes: 'A' Shares 00019, 'B' Shares 00087

BUILDING FUTURE COMMUNITIES



PROPERTY DIVISION

Swire Properties' property investment portfolio in Hong Kong comprises office and retail premises in prime locations, as well as hotel interests, serviced apartments and other luxury residential accommodation. The completed portfolio in Hong Kong totals 15.1 million square feet of gross floor area. In Mainland China, Swire Properties has interests in major commercial mixed-use developments in Beijing, Shanghai, Guangzhou and Chengdu, which will total 8.6 million square feet on completion. Of this, 1.6 million square feet has already been completed.

Swire Properties wholly owns and manages two hotels in Hong Kong, one hotel in Mainland China and four small hotels in the United Kingdom, and has 20% interests in four other hotels in Hong Kong. In the United States, Swire Properties owns a 75% interest in the Mandarin Oriental Hotel in Miami, Florida.

Swire Properties' trading portfolio comprises land and residential apartments under development in Hong Kong and Florida and the remaining units for sale at 5 Star Street and Island Lodge in Hong Kong and at the ASIA residential development in Miami.

Particulars of the Group's key properties are set out on pages 183 to 193.

	2010 HK$M	2009 HK$M (Restated)
Turnover		
Gross rental income derived from		
Offices	4,222	4,115
Retail	3,357	3,060
Residential	296	268
Other revenue*	78	83
Property investment	7,953	7,526
Property trading	779	643
Hotels	518	172
Total turnover	9,250	8,341
Operating profit/(loss) derived from		
Property investment	6,553	5,607
Valuation gains on investment properties	20,381	14,383
Property trading	147	70
Hotels	(144)	(474)
Total operating profit	26,937	19,586
Share of post-tax profits from jointly controlled and associated companies	1,686	186
Attributable profit	26,008	17,361

* Other revenue is mainly estate management fees.

Additional information is provided below to reconcile reported and underlying profit attributable to shareholders. These reconciling items principally adjust for the effect of HKAS 40 on investment properties, and the amended HKAS 12 on deferred tax.

	Note	2010 HK$M	2009 HK$M (Restated)
Reported attributable profit		**26,008**	17,361
Adjustments re investment properties:			
Revaluation of investment properties	(a)	(22,274)	(14,483)
Deferred tax on revaluation movements	(b)	852	818
Realised profit on sale of investment properties	(c)	211	32
Depreciation of investment properties occupied by the Group	(d)	23	13
Non-controlling interests' share of revaluation movements less deferred tax		42	88
Impairment of hotels held as part of mixed-used developments less deferred tax	(e)	–	137
Underlying attributable profit		**4,862**	3,966
Adjustment to reverse fair value gain on put option in respect of non-controlling interest in Sanlitun Village	(f)	(12)	(107)
Underlying attributable profit after adjusting for Sanlitun Village put option		**4,850**	3,859

Notes:

(a) This represents the Group's net revaluation movements plus the Group's share of net revaluation movements of jointly controlled and associated companies.

(b) This represents deferred tax on the Group's net revaluation movements plus the Group's share of deferred tax on the net revaluation movements of jointly controlled and associated companies. As a result of the early adoption of the amended HKAS 12, deferred tax is no longer provided on net revaluation movements in respect of investment properties in Hong Kong. However, deferred tax continues to be provided on net revaluation movements in respect of investment properties in Mainland China at the corporate income tax rate of 25%.

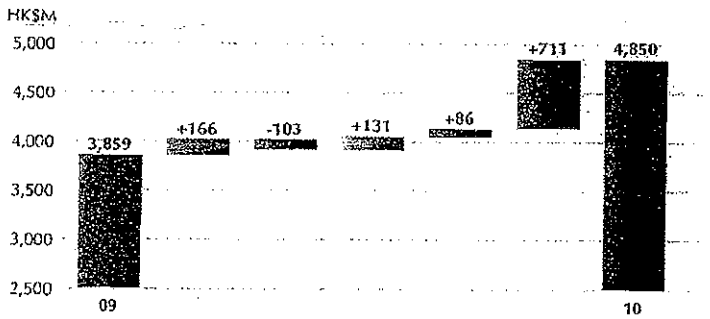
(c) Prior to the implementation of HKAS 40, changes in the fair value of investment properties were recorded in the revaluation reserve rather than the income statement. On sale, the revaluation gains were transferred from the revaluation reserve to the income statement.

(d) Prior to the implementation of HKAS 40, no depreciation was charged on investment properties occupied by the Group.

(e) Under HKAS 40, hotel properties are stated in the accounts at cost less accumulated depreciation and any provision for impairment losses, rather than at fair value. If HKAS 40 did not apply, those wholly-owned or jointly controlled hotel properties held for the long-term as part of mixed-use property developments would be accounted for as investment properties. Accordingly, any increase or write-down in their value would be recorded in the revaluation reserve rather than the income statement.

(f) The value of the put option in favour of the owner of a non-controlling interest in Sanlitun Village is calculated principally by reference to the estimated fair value of the portions of the Sanlitun Village investment property in which the minority partner is interested.

PROPERTY DIVISION MOVEMENT IN UNDERLYING PROFIT



2010 Results Summary

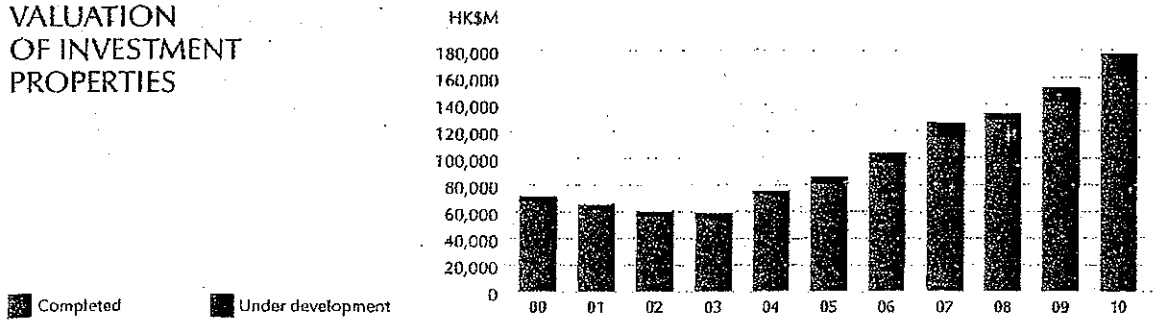
Attributable profit from the Property Division for the year was HK$26,008 million compared to a restated HK$17,361 million in 2009. These figures include net property valuation gains, before deferred tax in Mainland China, of HK$22,274 million and HK$14,483 million in 2010 and 2009 respectively and net gains of HK$707 million arising in connection with the disposal of interests in two investment properties in Hong Kong during 2010.

The increase in recurring profit from property investment reflects an increase in net rental income from the office, retail and residential portfolios, partially offset by an increase in finance charges and operating expenses as a result of the expanded scale of operations in Mainland China. In 2009 non-recurring items included the reversal of certain provisions. The change in non-recurring items in 2010 largely reflected the absence of such a reversal in 2010.

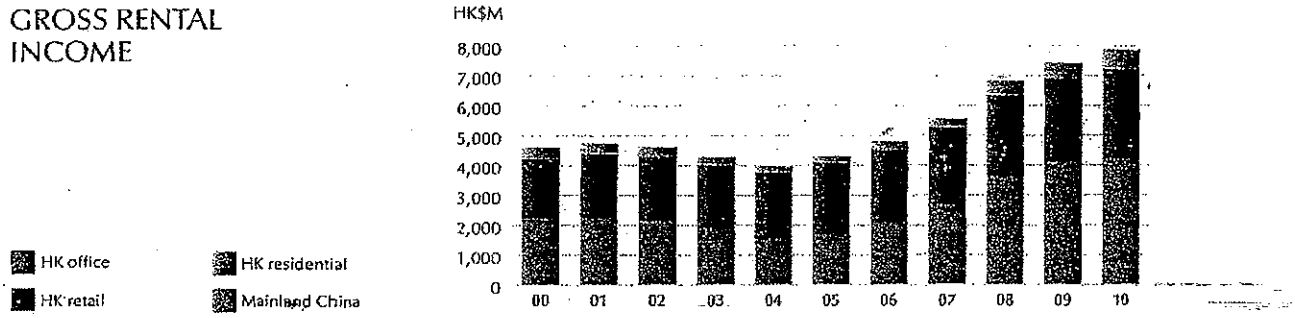
Gross rental income amounted to HK$7,875 million in 2010, compared with HK$7,443 million in 2009, reflecting a measure of reversionary rental growth and an encouraging increase in retail turnover rent.

A trading profit of HK$147 million was recognised in 2010. This comprised profits on closings of residential units at 5 Star Street and Island Lodge in Hong Kong and at the ASIA development in Miami, and a profit accrued during the course of redevelopment of a property at 53 Stubbs Road in Hong Kong.

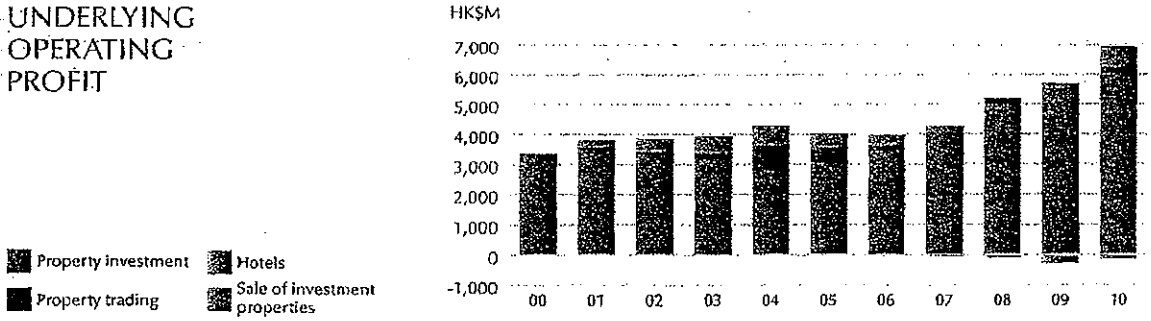
VALUATION OF INVESTMENT PROPERTIES



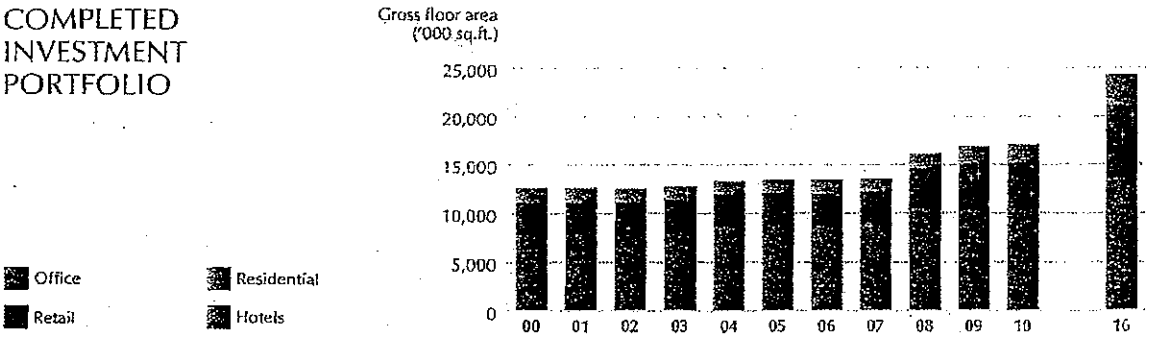
GROSS RENTAL INCOME



UNDERLYING OPERATING PROFIT



COMPLETED INVESTMENT PORTFOLIO



Pacific Place is one of Hong Kong's iconic addresses, attracting high quality international and luxury retail brands.

Key Changes to the Property Portfolio During 2010

During the course of the year Swire Properties secured full ownership of the 81,346 square foot Sincere Insurance office building in Wanchai. An extensive refurbishment programme is expected to commence in 2011 and to be completed in 2012.

In April, Swire Properties entered into an agreement with Swire Pacific Limited to redevelop a property owned by Swire Pacific Limited at 53 Stubbs Road in Hong Kong. The 12-storey residential building of 68,242 square feet is expected to be completed in 2011. Under the agreement, Swire Pacific Limited has agreed to pay the cost of the redevelopment and to pay to Swire Properties a fee for undertaking the redevelopment. The profit made under this agreement is eliminated in the consolidated accounts of Swire Pacific.

In June, Swire Properties acquired a 50% interest in 146-148 Argyle Street, a 88,555 square foot residential development project in Kowloon, Hong Kong. Swire Properties is leading the design and construction of the development, with completion expected in 2013.

In September, Swire Properties acquired from the majority shareholder the 80% interest which it did not already own in the 620,148 square foot PCCW Tower office property in TaiKoo Place, Hong Kong. In November, a 50% interest in PCCW Tower was sold to Grosvenor Asia Pacific Limited.

In December 2010, Swire Properties acquired an effective 50% interest in a 762,251 square foot site in the Daci Temple area of the Jinjiang District of Chengdu, Mainland China. The acquisition was made in joint venture with Sino-Ocean Land Holdings Limited. The site will be redeveloped into 2.2 million square feet of commercial mixed-use space. A phased completion of the development is expected from 2014.

Investment Properties

Hong Kong

Offices

Swire Properties' completed office portfolio comprises 10.5 million square feet of space in Hong Kong, including 2.2 million square feet at Pacific Place in Admiralty, 1.6 million square feet at Cityplaza, 6.2 million square feet at TaiKoo Place in Island East and 0.2 million square feet at Festival Walk in central Kowloon.

PROPERTY INVESTMENT PORTFOLIO – GROSS FLOOR AREA

('000 SQUARE FEET)

Location	At 31st December 2010 Offices	Retail	Hotels	Residential	Total	At 31st December 2009 Total
Completed						
Pacific Place	2,186	711	496	443	3,836	3,833
TaiKoo Place	6,180*	–	–	–	6,180	5,994
Cityplaza	1,633	1,105	200	–	2,938	2,937
Festival Walk	229	980	–	–	1,209	1,209
Others	265	608	47	18	938	940
– Hong Kong	10,493	3,404	743	461	15,101	14,913
– Mainland China	–	1,387	169	–	1,556	1,556
– United States	–	–	259	–	259	259
– United Kingdom	–	–	196	–	196	184
Total completed	10,493	4,791	1,367	461	17,112	16,912
Under and pending development						
– Hong Kong	145	–	–	68	213	215
– Mainland China	2,926	2,834	1,174	54	6,988	6,397
Total	13,564	7,625	2,541	583	24,313	23,524

Gross floor area represents 100% of space owned by Group companies and the Group's attributable share of space held by jointly controlled and associated companies. A schedule of the principal properties of the Group and its jointly controlled and associated companies is given on pages 189 to 193.

* Includes 1.8 million square feet of techno-centres.

2010 Results

Gross rental income for the year increased by 3% over 2009, to HK$4,222 million.

Rental reversions at Pacific Place were positive, reflecting the strong economy and firm demand from tenants in the financial services sector. At Island East, reversions were also positive as tenants sought extra space. At 31st December 2010 the office vacancy rate was 1%.

Swire Properties has a range of office tenants operating in different sectors. The top ten office tenants occupy approximately 22% of total space at 31st December 2010. Approximately one-third of the office space is occupied by companies operating in the financial services sector.

2011 Outlook

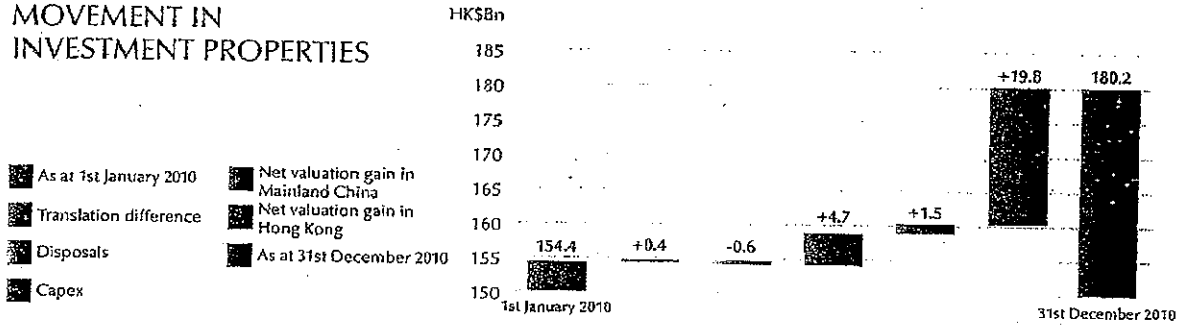
The Group's office portfolio is virtually fully let. The Group has no new space coming to market during 2011.

Tenancies accounting for approximately 15% (by floor area) of the Group's leased office space are due to expire in 2011, with a further 15% due to expire in 2012.

At Pacific Place, continued strong demand from the financial services sector and the lack of new supply is expected to result in higher rents. Island East remains a location of choice for tenants wishing to relocate to lower cost office space in a decentralised location, and hence demand for space is likely to continue to be strong.

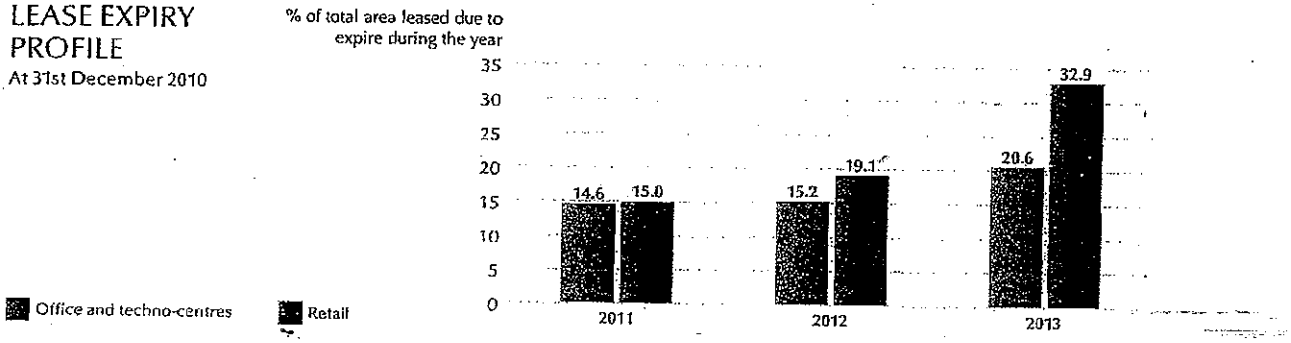
One Island East with its dramatic architecture.

MOVEMENT IN INVESTMENT PROPERTIES



LEASE EXPIRY PROFILE

At 31st December 2010



Retail

Swire Properties manages four retail malls in Hong Kong: The Mall at Pacific Place, comprising 0.7 million square feet; Cityplaza in Island East, comprising 1.1 million square feet; Festival Walk in central Kowloon, comprising 1.0 million square feet; and Citygate Outlets at Tung Chung, comprising 0.5 million square feet. The malls are wholly-owned by Swire Properties, except for Citygate Outlets, in which it has a 20% interest.

2010 Results

Gross rental income from the retail portfolio was HK$3,013 million in 2010, an increase of 8% over 2009.

Rental reversions were positive at all retail properties, and were particularly strong at Pacific Place. This reflected strong retail sales during the year.

Occupancy at the Group's wholly-owned malls was effectively 100% throughout the year.

Retail sales in the Group's retail malls were 16% higher in 2010 than in 2009.

2011 Outlook

Consumer demand and accordingly competition for retail space are expected to remain strong. Active management of the tenant mix should continue to facilitate increased retail sales in the Group's malls.

In Hong Kong, tenancies accounting for approximately 11% (by floor area) of the Group's leased retail space are due to expire in 2011, with a further 17% due to expire in 2012.

Residential

The completed residential portfolio comprises Pacific Place Apartments and a small number of luxury houses and apartments.

Gross rental income for 2010 was HK$296 million, an increase of 10% over 2009.

Occupancy at the residential portfolio was approximately 90% at 31st December 2010.

Demand for serviced apartments is expected to remain strong in 2011.

Investment Properties under Construction

The Pacific Place design improvement project is proceeding largely on schedule.

Foundation works are proceeding at 28 Hennessy Road, formerly known as Tai Sang Commercial Building, with completion expected in 2012. The building will provide 145,390 square feet of office and retail space.

Construction work at 53 Stubbs Road is progressing largely on schedule.

Mainland China

Retail

Swire Properties owns and manages one major retail centre in Mainland China.

Sanlitun Village comprises two neighbouring sites in the Chaoyang district of Beijing. The Village South (776,909 square feet of gross retail space and 451 car parking spaces) and The Village North (519,399 square feet of gross retail space and 410 car parking spaces). Retail tenants in Sanlitun Village represent a diverse range of international brands. The Village South includes the largest Adidas store in the world and Mainland China's largest Apple store. It concentrates on global mid-market brands with a broad appeal. Tenants at The Village North are principally retailers of leading luxury brands.

Gateway China Fund I, a fund managed by Gaw Capital Partners, owns 20% of the Sanlitun Village development. The fund has an option to sell its 20% interest to Swire Properties before the end of 2013.

2010 Results

Gross rental income was HK$344 million compared to HK$258 million in 2009.

The trading performance at Sanlitun Village in 2010 was encouraging. At 31st December 2010, occupancy was 95% at The Village South and 80% at The Village North.

The put option in respect of the non-controlling interest in Sanlitun Village is recognised in the accounts. The movement in its fair value during the year resulted in a reduction in net finance charges of HK$12 million.

2011 Outlook

Sanlitun Village is a destination of choice for young, affluent Beijing residents. Its appeal is expected to be reinforced in 2011 by further improvement works designed to enhance footfall and circulation.

Retail conditions are expected to benefit in 2011 from the continued strength of the Mainland China economy. Results from Sanlitun Village are expected to continue to improve accordingly.

Sanlitun Village is a modern, cosmopolitan destination in a popular area of Beijing.

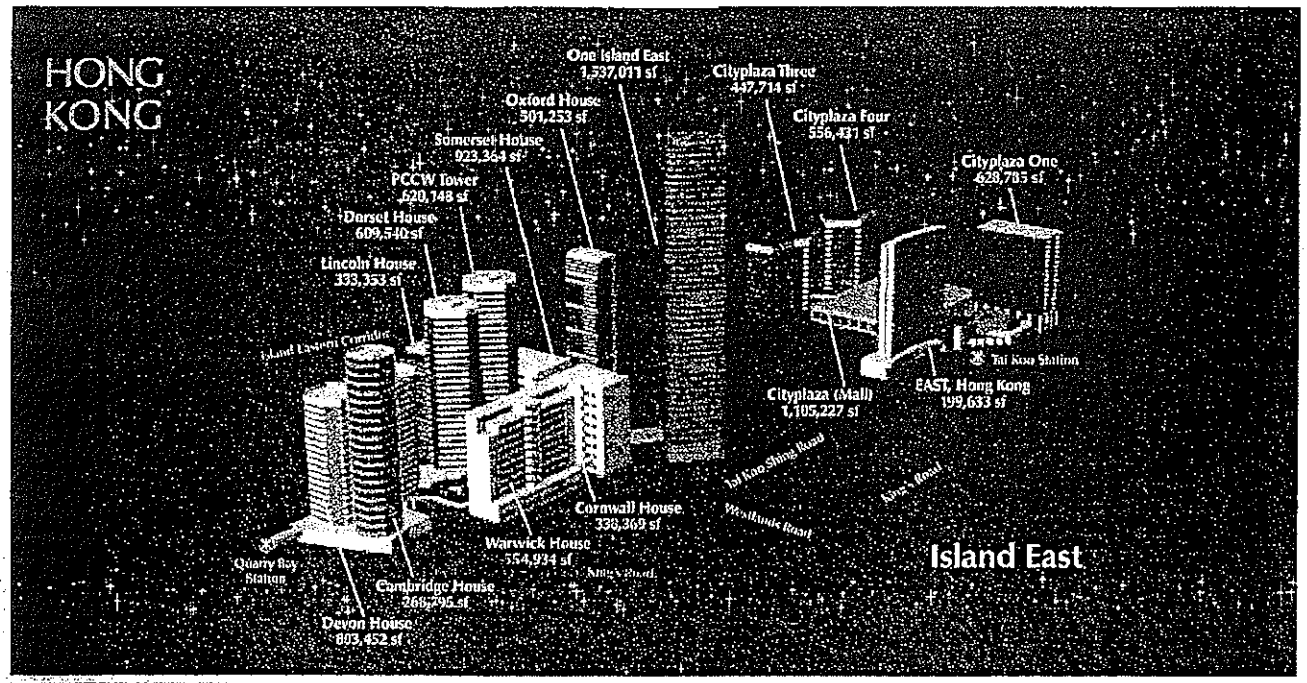
Investment Properties

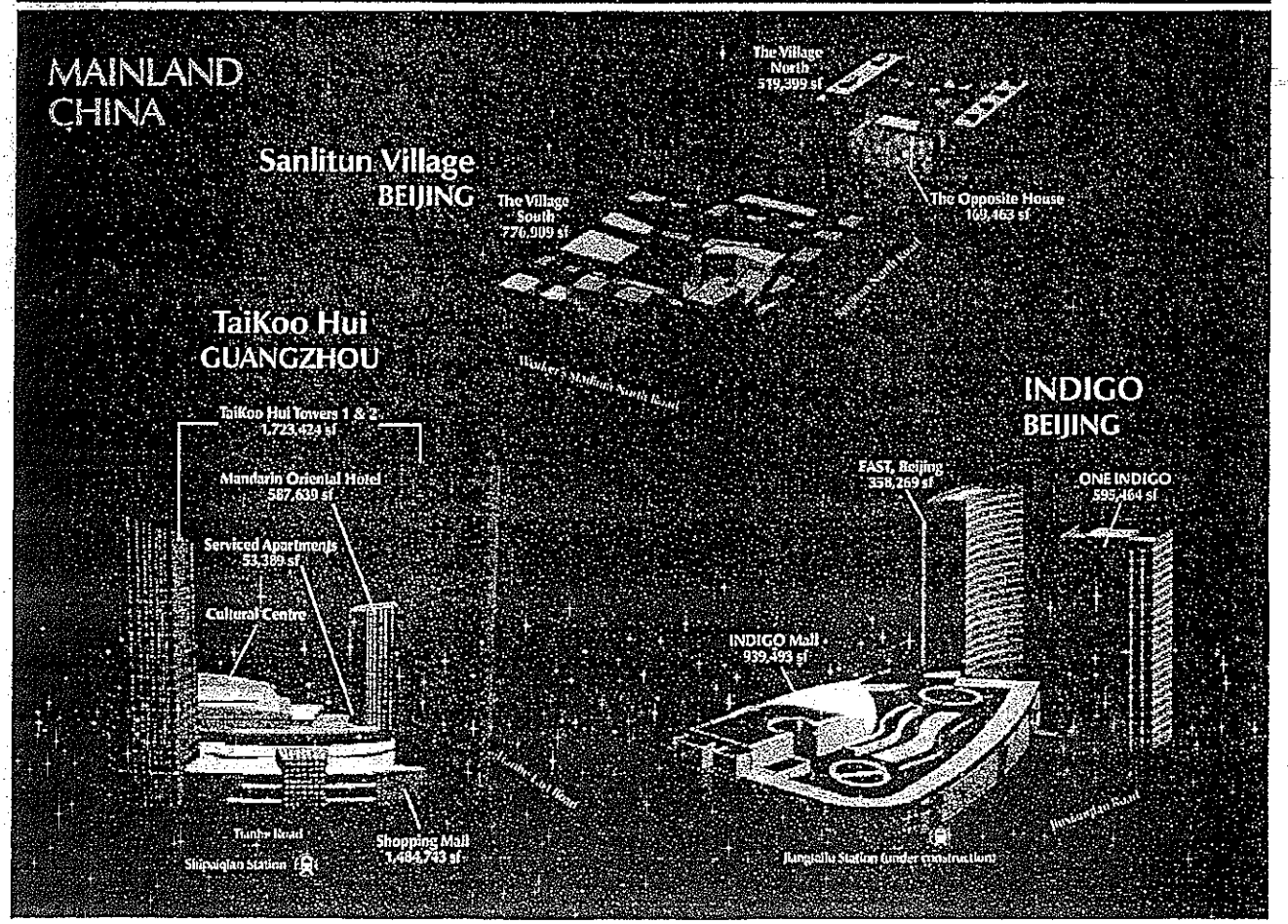
	Group			Company
	Completed HK$M	Under Construction HK$M	Total HK$M	Total HK$M
At 1st January 2010	141,129	13,279	154,408	1,195
Translation differences	287	245	532	–
Change in composition of Group	–	189	189	–
Additions	578	3,937	4,515	213
Disposals	(592)	(57)	(649)	–
Transfer upon completion	23	(23)	–	–
Other net transfers from property, plant and equipment	812	(6)	806	–
Other net transfers to property under development for sale	–	(897)	(897)	–
Fair value gains	18,526	2,818	21,344	887
	160,763	19,485	180,248	2,295
Add: Initial leasing costs	170	–	170	–
At 31st December 2010	160,933	19,485	180,418	2,295
At 1st January 2009	128,640	5,899	134,539	1,195
Translation differences	1	8	9	–
Transferred from property, plant and equipment and leasehold land on adoption of revised HKAS 40	–	4,336	4,336	–
Additions	525	2,136	2,661	88
Disposals	–	(59)	(59)	(169)
Transfer upon completion	3,115	(3,115)	–	–
Transfers between category	(1,417)	1,417	–	–
Other net transfers to property, plant and equipment	(31)	3	(28)	–
Other net transfers to leasehold land	(121)	–	(121)	–
Other net transfers to property under development for sale	–	(1,335)	(1,335)	–
Fair value gains	10,417	3,989	14,406	81
	141,129	13,279	154,408	1,195
Add: Initial leasing costs	85	–	85	–
At 31st December 2009	141,214	13,279	154,493	1,195

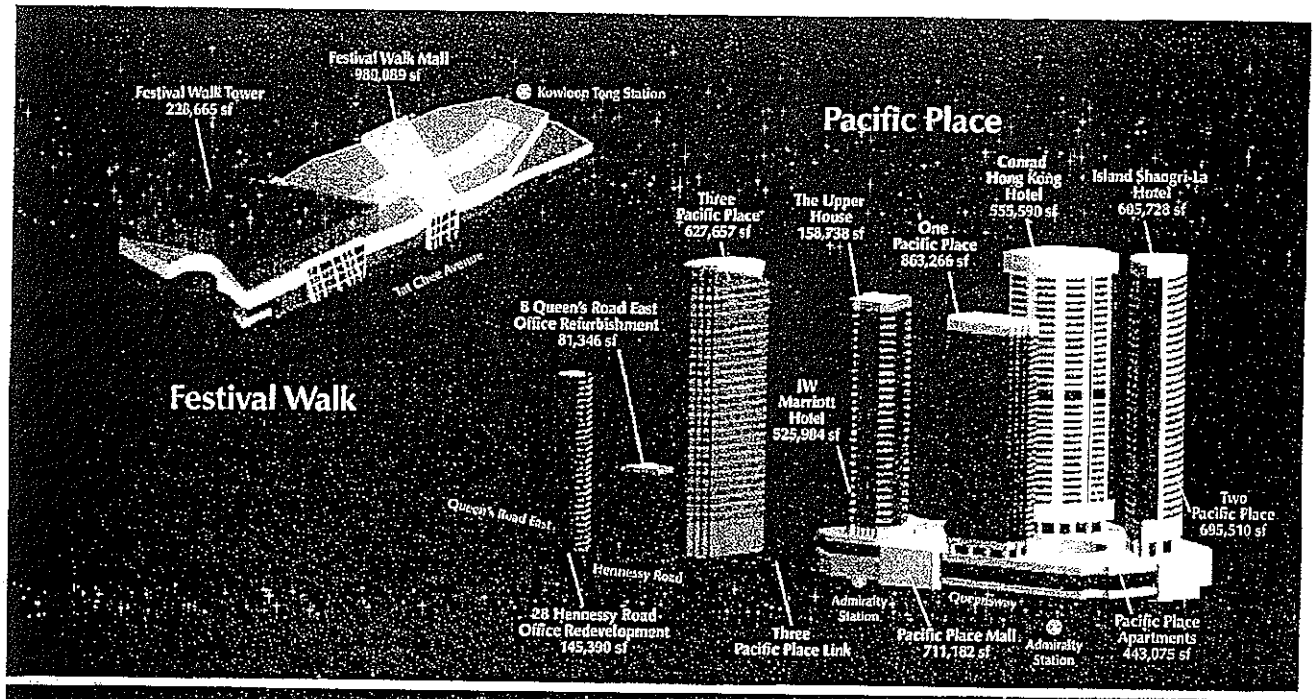
Geographical Analysis of Investment Properties

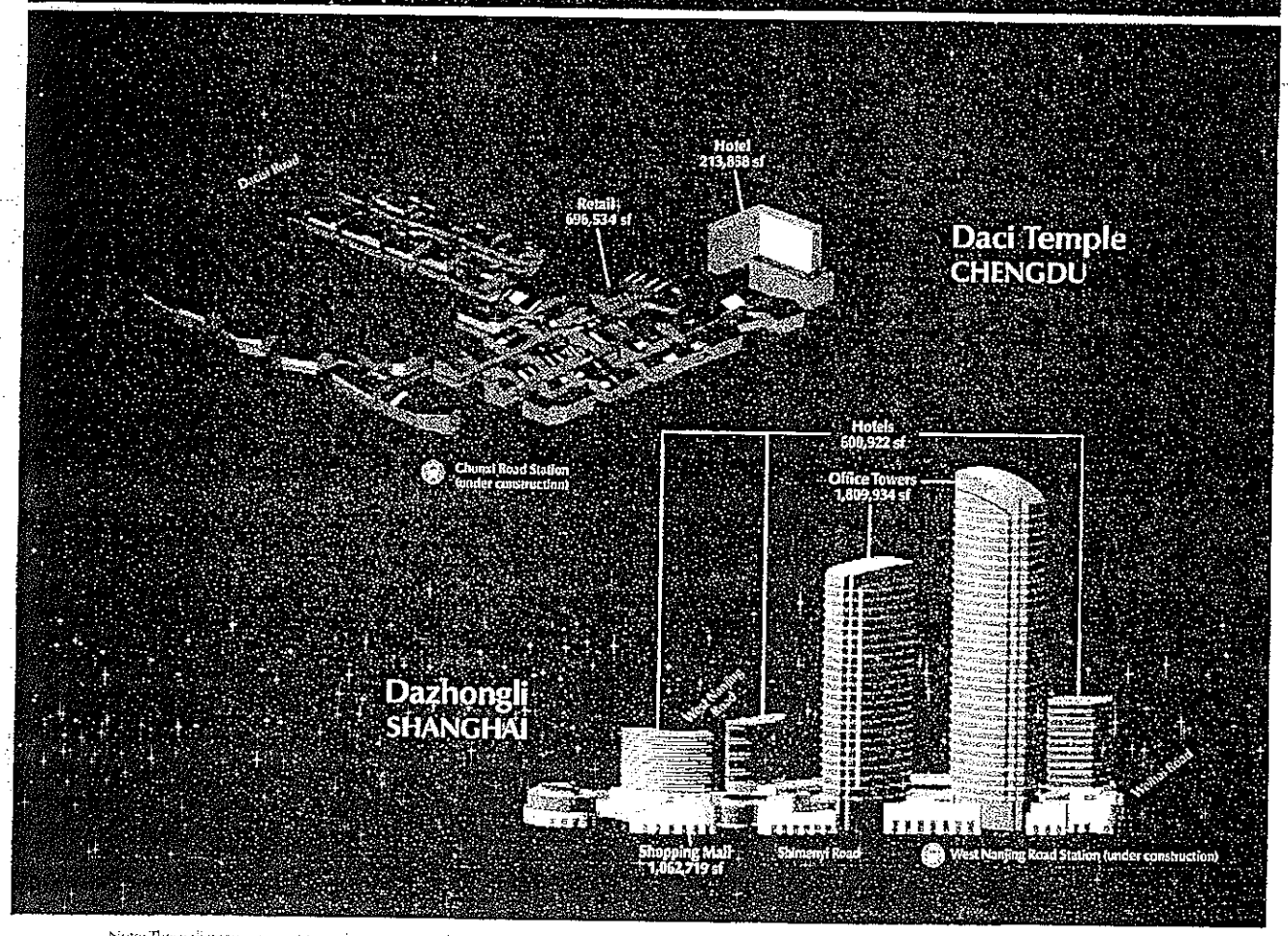
	Group		Company	
	2010 HK$M	2009 HK$M	2010 HK$M	2009 HK$M
Held in Hong Kong:				
On medium-term leases (10 to 50 years)	39,154	34,534	–	–
On long-term leases (over 50 years)	123,827	106,061	2,295	1,195
	162,981	140,595	2,295	1,195
Held in Mainland China				
On medium-term leases (10 to 50 years)	17,267	13,813		
	180,248	154,408		

Note:
The Group figures in the table above comprise investment properties owned within the Property Division as well as a small number of properties owned by Swire Pacific Limited which are managed within the Property Division. The Company figures represent those investment properties owned directly by Swire Pacific Limited.

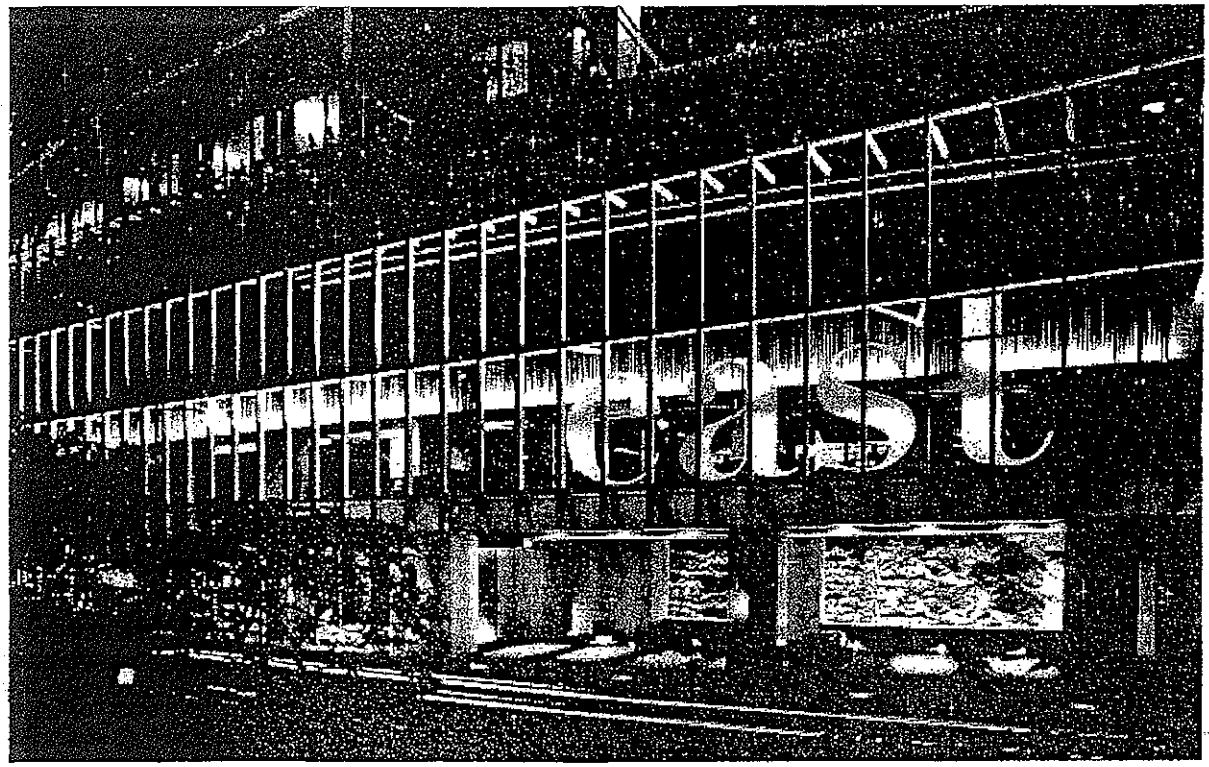

HONG KONG
One Island East
1,537,011 sf
Cityplaza Three
447,714 sf
Oxford House
501,253 sf
Cityplaza Four
556,431 sf
Somerset House
923,364 sf
PCCW Tower
620,148 sf
Cityplaza One
628,785 sf
Dorset House
609,540 sf
Lincoln House
333,353 sf
Island Eastern Corridor
Tai Koo Station
EAST, Hong Kong
199,633 sf
Cityplaza (Mall)
1,105,227 sf
Tai Koo Shing Road
King's Road
Cornwall House
338,369 sf
Westlands Road
Warwick House
554,934 sf
Quarry Bay Station
Island East
Cambridge House
268,295 sf
Devon House
803,452 sf


MAINLAND CHINA
The Village North
519,399 sf
Sanlitun Village
BEIJING
The Village South
776,909 sf
The Opposite House
169,463 sf
Sanlitun North Road
TaiKoo Hui
GUANGZHOU
Workers' Stadium North Road
INDIGO
BEIJING
TaiKoo Hui Towers 1 & 2
1,723,424 sf
EAST, Beijing
358,269 sf
ONE INDIGO
595,464 sf
Mandarin Oriental Hotel
587,639 sf
Serviced Apartments
53,389 sf
Cultural Centre
INDIGO Mall
939,493 sf
Tianhe East Road
Jianguomen Road
Tianhe Road
Shipaiqiao Station
Shopping Mall
1,484,743 sf
Jianguomen Station (under construction)

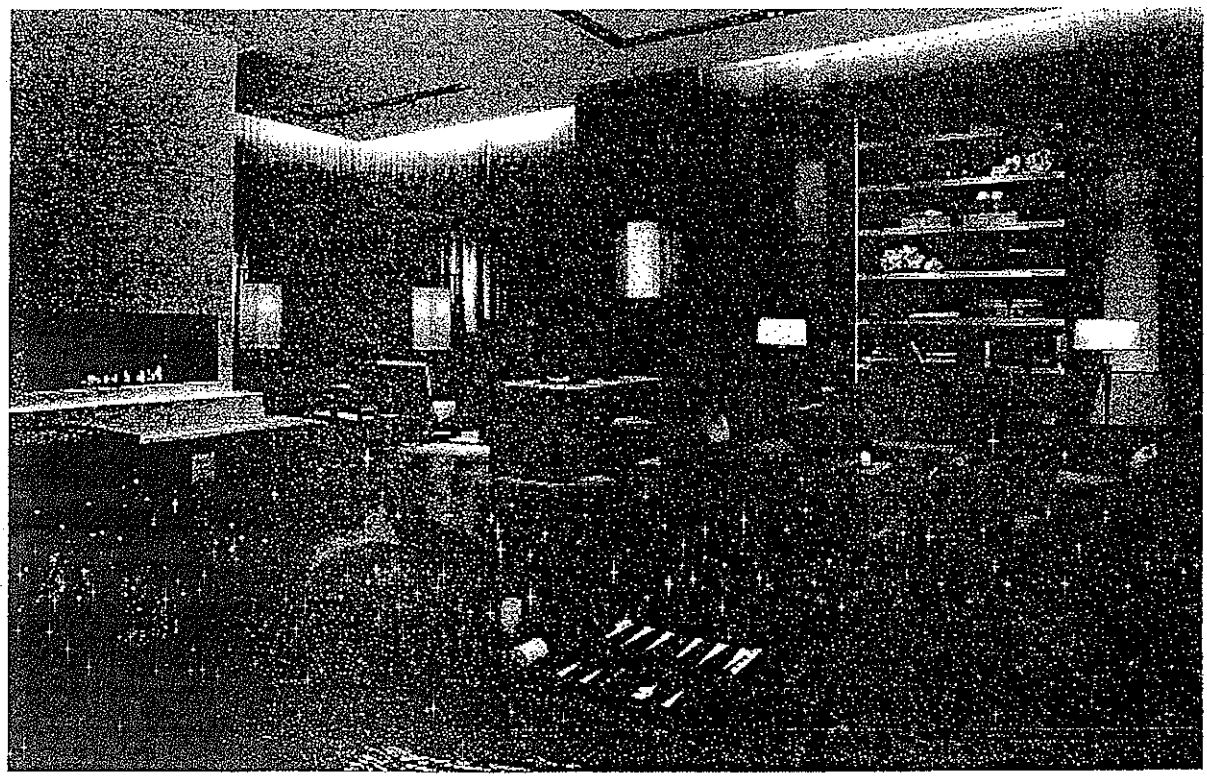




Note: These diagrams [illegible]

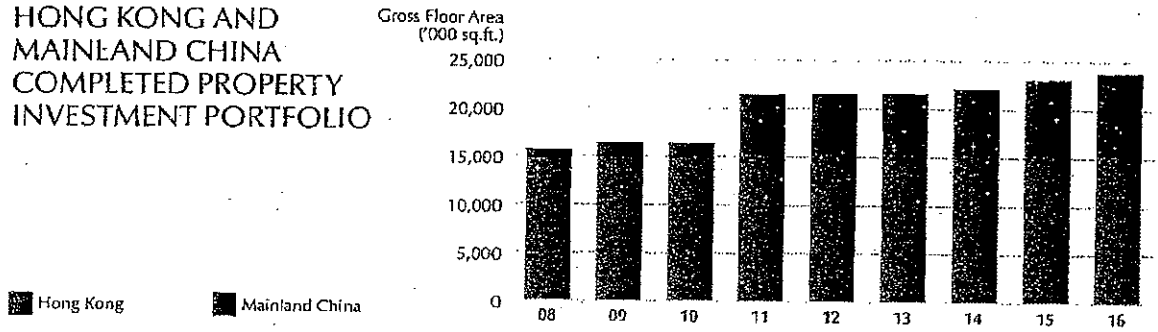


EAST, a lifestyle hotel for business travellers in Hong Kong, opened in January 2010.



The warm and inviting Sky Lounge at The Upper House in Hong Kong.

HONG KONG AND MAINLAND CHINA COMPLETED PROPERTY INVESTMENT PORTFOLIO



Investment Properties under Construction

The phased opening of TaiKoo Hui, a mixed-use commercial complex in the Tianhe district of Guangzhou, is planned to start in April 2011. The development comprises one retail podium, two office towers, one hotel tower, which also contains serviced apartments, and a cultural centre.

The total commercial space at TaiKoo Hui is 3.8 million square feet. Approximately 88% of the lettable retail space has been leased or committed, with tenants including retailers of major international and national brands. More than half of the lettable office space has been leased or committed. The 262 room hotel and 24 serviced apartments will be operated by Mandarin Oriental, and are scheduled to open in 2012.

The 1.9 million square foot mixed-use INDIGO development, located at Jiangtai in the Chaoyang district of Beijing, is expected to open from the latter part of 2011. 40% of the lettable retail space has been pre-let.

Design development, which includes site clearance and resettlement, is almost complete at the Dazhongli Project in the Jing'an district of Shanghai. The expected opening of this 3.5 million square foot mixed-use development has been deferred to 2015 due primarily to the construction of a metro station adjacent to the site. If this timing is to be achieved, some construction works need to be done in conjunction with those for the metro station. Further delays may occur if approval to start construction is not obtained before the start of the excavation works for the metro station.

Work is expected to commence at the Daci Temple site in Chengdu later this year with completion expected in phases from 2014.

Valuation of Investment Properties

The portfolio of investment properties was valued at 31st December 2010 (98% by value having been valued by DTZ Debenham Tie Leung) on the basis of open market value. The amount of this valuation, before associated deferred tax in Mainland China, was HK$180,248 million compared to HK$154,408 million at 31st December 2009 and HK$160,135 million at 30th June 2010.

Under HKAS 40, hotel properties are not accounted for as investment properties but are included within property, plant and equipment at cost less accumulated depreciation and any provision for impairment losses.

Hotels

Hong Kong

Swire Properties wholly-owns and manages two hotels in Hong Kong, The Upper House, a 117-room luxury hotel at Pacific Place which opened in 2009, and EAST, a 345-room hotel at Cityplaza which opened in January 2010. Both these hotels performed above expectations during the year, with their brands becoming well established in the market. Café Gray, the restaurant at The Upper House, was awarded a Michelin Star in December 2010.

Swire Properties has a 20% interest in each of the JW Marriott, Conrad Hong Kong and Island Shangri-La hotels at Pacific Place and in the Novotel Citygate in Tung Chung. All of these non-managed hotels performed strongly in 2010.

Mainland China

The Opposite House, a 99-room luxury hotel at Sanlitun Village, Beijing, is wholly-owned by the Swire Properties group and is managed by Swire Hotels. The hotel saw a strong rebound in business in 2010, benefiting from increasing international recognition and a recovery in the Beijing hotel market.

PROFILE OF CAPITAL COMMITMENTS FOR INVESTMENT PROPERTIES AND HOTELS

	Expenditure	Forecast year of expenditure				Commitments
	2010 HK$M	2011 HK$M	2012 HK$M	2013 HK$M	2014 & beyond HK$M	At 31st Dec 2010 HK$M
Hong Kong projects	3,031	1,322	570	82	21	1,995
Mainland China projects	2,983	5,523	1,166	1,802	1,370	9,861
UK hotels	137	105	33	–	–	138
USA hotels	14	6	–	–	–	6
Total	**6,165**	6,956	1,769	1,884	1,391	**12,000***

* The capital commitments represent the Group's capital commitments plus the Group's share of the capital commitments of jointly controlled companies. The Group is committed to funding HK$2,459 million of the capital commitments of jointly controlled companies.

USA

Swire Properties has a 75% interest in the 326-room Mandarin Oriental Hotel in Miami. Trading conditions remained difficult in 2010 against an unhelpful US economic background.

United Kingdom

The Group owns four small hotels in Bristol, Exeter, Cheltenham and Brighton. Occupancy and room rates at the Bristol and Brighton hotels are satisfactory. The hotel in Cheltenham, now named The Montpellier Chapter, re-opened in December 2010 after extensive refurbishment. The Exeter hotel is undergoing refurbishment and will open in the first quarter of 2012.

2011 Outlook

The hotels in Hong Kong and Mainland China are expected to perform well in 2011 against a strong economic background. The UK and the US hotels will continue to be affected by relatively weak market conditions, although revenues are expected to improve in 2011.

Capital Expenditure and Commitments for Investment Properties and Hotels

Capital expenditure in 2010 on Hong Kong investment properties and hotels, including completed projects, amounted to HK$3,031 million (2009: HK$1,964 million). Outstanding capital commitments at 31st December 2010 were HK$1,995 million (31st December 2009: HK$2,266 million).

Capital expenditure in 2010 on Mainland China investment properties and hotels, including the Group's share of the capital expenditure of jointly controlled companies, amounted to HK$2,983 million (2009: HK$3,724 million). Outstanding capital commitments at 31st December 2010 were HK$9,861 million (2009: HK$8,831 million), including the Group's share of the capital commitments of jointly controlled companies of HK$6,952 million (2009: HK$5,316 million). The Group is committed to funding HK$2,459 million (31st December 2009: HK$227 million) of the capital commitments of jointly controlled companies in Mainland China.

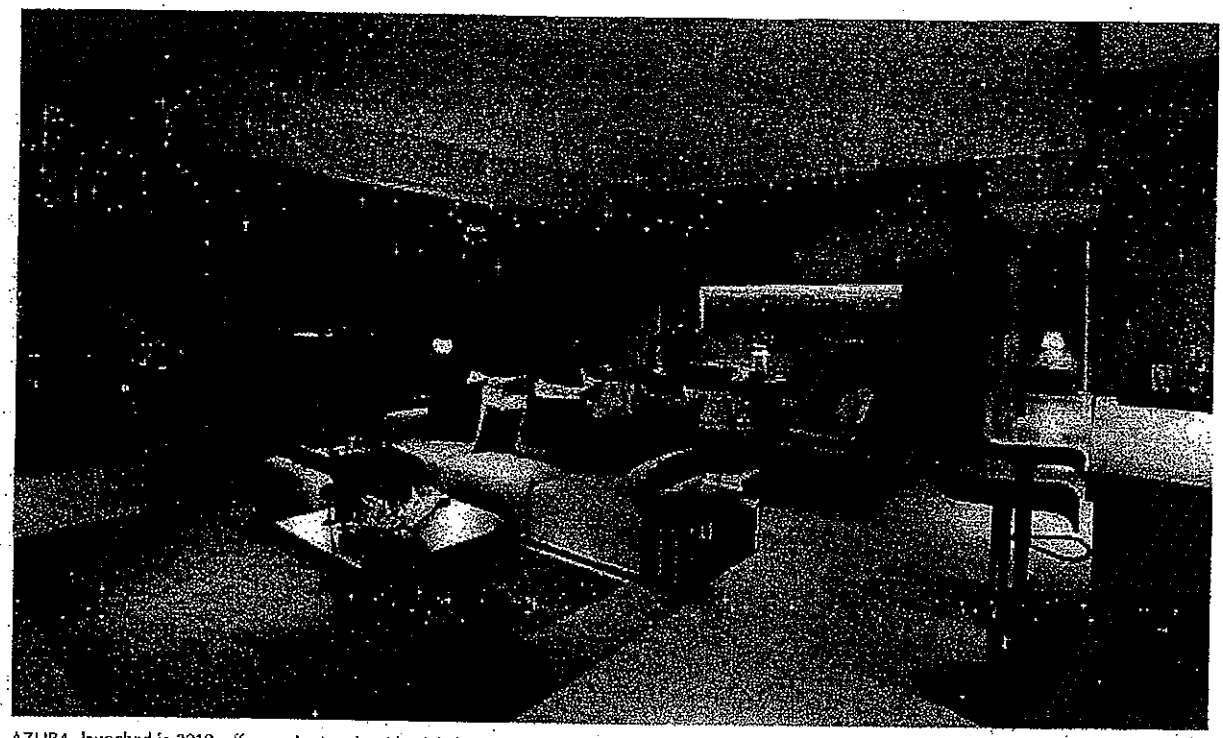
Property Trading

Swire Properties' trading portfolio principally comprises properties and land under development in Hong Kong and Florida. In addition, there are completed apartments for sale at 5 Star Street and Island Lodge in Hong Kong and at the ASIA development in Miami, Florida.

AUDITED FINANCIAL INFORMATION

Property Trading Portfolio at Cost

	Group 2010 HK$M	Group 2009 HK$M
Properties held for development		
Freehold land	443	441
Properties for sale		
Completed properties – development costs	388	407
Completed properties – freehold land	9	10
Completed properties – leasehold land	4	–
Properties under development – development costs	673	293
Leasehold land under development for sale	4,443	2,562
	5,517	3,272



AZURA, launched in 2010, offers understated residential elegance in Mid-Levels West in Hong Kong.

Hong Kong

50 of the 126 units at the AZURA development on Seymour Road have been pre-sold, with sales prices reflecting the strong market for residential properties in 2010. Construction work is progressing on schedule, with completion expected in 2012. Swire Properties has a controlling interest in this development.

Construction work at the 75,805 square foot residential development at 63 Seymour Road is progressing, with completion expected in 2013.

Construction work at the 151,944 square foot residential development at Sai Wan Terrace, in which Swire Properties has a controlling interest, is progressing, with completion expected in 2013.

Construction work at the 165,792 square foot residential development at 33 Seymour Road is progressing, with completion expected in 2014. Demolition work is progressing at the adjacent site at 92-102 Caine Road. This site is to be redeveloped so as to provide 195,531 square feet of residential space, with completion expected in 2015.

178 of the 184 units at Island Lodge in North Point have been sold. Swire Properties is entitled to reimbursement of redevelopment costs and a share of the net proceeds of sales under an agreed arrangement with China Motor Bus Company Limited, which owns the property.

The 17,663 square foot residential development at 5 Star Street was completed in 2010 with 22 of the 25 units sold.

Demolition work is in progress at the 146-148 Argyle Street site. Completion of this project is expected in 2013.

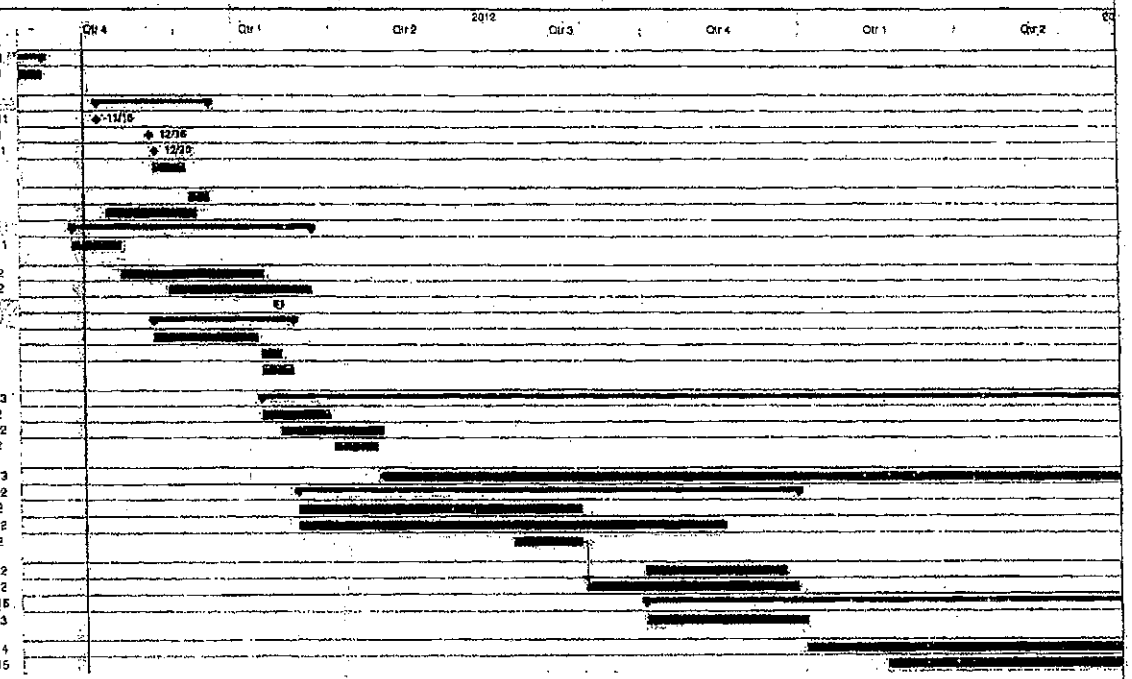
USA

Sales of 82 of the 123 units have been closed at the ASIA residential development in Miami since the development was completed in March 2008 with a further 25 units having been leased. The real estate market in South Florida continues to suffer from difficult economic conditions and tight credit availability. Swire Properties has provided vendor financing in a number of transactions.

Martin Cubbon

BRICKELL CITICENTRE
PROJECT SCHEDULE
11/8/11

ID	Task Name	Duration	Start	Finish
1	1 SAP Approval Process	0 days	Thu 7/28/11	Thu 7/28/11
2	2 Schematic Design Phase	17 days	Thu 9/22/11	Fri 10/14/11
3	2.1 Schematic Design Owner Review / Cost Estimate SD Update	17 days	Thu 9/22/11	Fri 10/14/11
4	3 50% Design Development Phase	48 days	Wed 11/16/11	Fri 1/20/12
5	3.1 Swire - Confirm roof scope	0 days	Wed 11/16/11	Wed 11/16/11
6	3.2 Swire - Decision: Sheet Pile or CSM	0 days	Fri 12/16/11	Fri 12/16/11
7	3.3 MPA Submittal	0 days	Tue 12/20/11	Tue 12/20/11
8	3.4 50% Design Development Owner Review / Cost Estimate DD Update	15 days	Mon 12/19/11	Fri 1/6/12
9	3.5 Private Provider reviews DD Progress set	10 days	Mon 1/9/12	Fri 1/20/12
10	3.6 Wind Tunnel Testing / Report	40 days	Mon 11/21/11	Fri 1/13/12
11	4 Pile and Soil Freeze Test Phase	101 days	Tue 11/1/11	Tue 3/20/12
12	4.1 Bid & Negotiate test pile installation and soil freeze	21 days	Tue 11/1/11	Tue 11/29/11
13	4.2 Pile Load - Mobilization / Testing / Report	60 days	Wed 11/30/11	Tue 2/21/12
14	4.3 Soil Freeze - Mobilization / Testing / Report	60 days	Wed 12/28/11	Tue 3/20/12
15	5 Submission Phase permit before March 17, 2012	1 day	Thu 3/1/12	Thu 3/1/12
17	6 100% Design Development Phase	60 days	Mon 12/19/11	Fri 3/16/12
18	6.1 100% Design Development	45 days	Mon 12/19/11	Fri 2/17/12
19	6.2 SAP Review Set	10 days	Mon 2/20/12	Fri 3/2/12
20	6.3 100% Design Development Owner Review / Update Cost Estimate	15 days	Mon 2/20/12	Fri 3/16/12
21	7 Foundation Phase	391 days	Mon 2/20/12	Mon 8/19/13
22	7.1 Foundation Bid Set	30 days	Mon 2/20/12	Fri 3/30/12
23	7.2 Foundation Bidding & Negotiation	42 days	Fri 3/2/12	Mon 4/30/12
24	7.3 Phase Building Permit Submittal/Review/Approval	20 days	Mon 4/2/12	Fri 4/27/12
25	7.4 Foundations incl. Bathtub	340 days	Tue 5/1/12	Mon 8/19/13
26	8 Construction Documents Phase	210 days	Mon 3/12/12	Fri 12/28/12
27	8.1 B2 - L1- Podium Construction Documents	120 days	Mon 3/12/12	Fri 8/24/12
28	8.2 Superstructure Construction Documents	180 days	Mon 3/12/12	Fri 11/16/12
29	8.3 SAP Permit Submittal/Review/Approval - Approval required for building permit	30 days	Mon 7/16/12	Fri 8/24/12
30	8.4 Full Building Permit Submittal/Review/Approval	60 days	Mon 10/1/12	Fri 12/21/12
31	8.5 Fire Permit Submittal / Review / Approval	90 days	Mon 8/27/12	Fri 12/28/12
32	9 Above-Grade Construction Phase	706 days	Mon 10/1/12	Mon 6/15/15
33	9.1 Above-Grade Building Bidding & Negotiation Phase	68 days	Mon 10/1/12	Wed 1/2/13
34	9.2 B2 - L1 Construction Phase	360 days	Wed 1/2/13	Tue 5/20/14
35	9.3 Superstructure Construction Phase	605 days	Mon 2/18/13	Mon 6/15/15



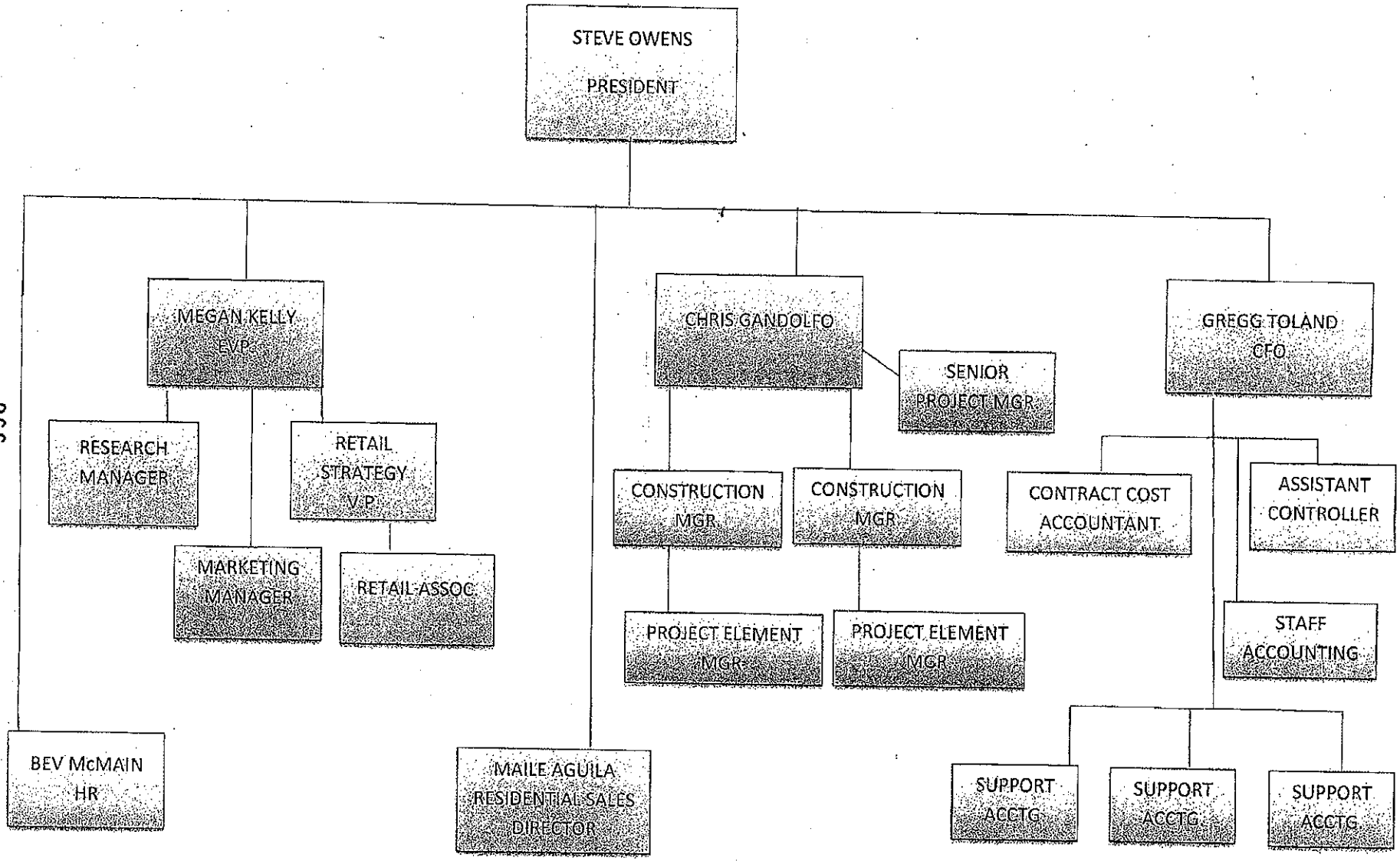
BRICKELL CITICENTRE
PROJECT SCHEDULE

Task | Split | Milestone | Summary | Project Summary | External Tasks | External Milestone | Inactive Task | Inactive Milestone | Inactive Summary | Manual Task | Duration-only | Manual Summary Rollup | Manual Summary | Start-only | Finish-only | Progress | Deadline

Project Schedule 11-8-11.mpp , Printed Tue 11/8/11

Tue 11/8/11 10:15 AM

SPI MIAMI
ORGANIZATION CHART



Form A-1

PROPOSER'S NAME (Name of firm, entity or organization): Swire Properties, Inc.

FEDERAL EMPLOYER IDENTIFICATION NUMBER: 271494513

NAME AND TITLE OF PROPOSER'S CONTACT PERSON:

Name: Chris Gandolfo Title: VP Development

MAILING ADDRESS:

Street Address: 501 Brickell Key Drive, Suite 600

City, State, Zip: Miami, FL 33131

TELEPHONE:	*FAX:*	*E-MAIL ADDRESS:*
(305) 371-3877	(305) 371-9324	cgandolfo@swireprops.com

PROPOSER'S ORGANIZATIONAL STRUCTURE:

✓ Corporation ___ Partnership ___ Proprietorship ___ Joint Venture

___ Other (Explain): ___

IF CORPORATION:

Date Incorporated/Organized: 1986 State Incorporated/Organized: FL 2009

States registered in as foreign corporation: N/A

PROPOSER'S SERVICE OR BUSINESS ACTIVITIES OTHER THAN WHAT THIS SOLICITATION REQUESTS FOR: Real Estate Developer

LIST NAMES OF PROPOSER'S SUBCONTRACTORS OR SUBCONSULTANTS FOR THIS PROJECT: Subconsultants: Arquitectonica, Kimley Horn & Associates, MKA, Cosentini, Arquitectonica GEO, Hugh Dutton Associates. Subcontractors: See Sections 1(c) and 8 of respon

LOCAL CERTIFIED SERVICE-DISABLED VETERAN BUSINESS ENTERPRISE:

A Local Certified Service-Disabled Veteran Business Enterprise is a firm that is a) a local business pursuant to Section 2-8.5 of the Code of Miami-Dade County and b) prior to proposal submittal is certified by the State of Florida Department of Management Services as a service-disabled veteran business enterprise pursuant to Section 295.187 of the Florida Statutes. At the time of proposal submission, the Local Certified Service-Disabled Veteran Business Enterprise must affirm in writing its compliance with the certification requirements of Section 295.187 of the Florida Statutes and submit said affirmation and a copy of the actual certification along with the proposal submission.

☐ Place a checkmark here only if affirming Proposer is a certified Local Certified Service-Disabled Veteran Business Enterprise. A copy of the required certification must be submitted with the proposal.

CRIMINAL CONVICTION DISCLOSURE:

Pursuant to Miami-Dade County Ordinance No. 94-34, any individual who has been convicted of a felony during the past ten years and any corporation, partnership, joint venture or other legal entity having an officer, director, or executive who has been convicted of a felony during the past ten years shall disclose this information prior to entering into a contract with or receiving funding from the County.

☐ Place a checkmark here only if Proposer has such conviction to disclose to comply with this requirement.

Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List:

By executing this proposal through a duly authorized representative, the proposer certifies that the proposer is not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, as those terms are used and defined in sections 287.135 and 215.473 of the Florida Statutes. In the event that the proposer is unable to provide such certification but still seeks to be considered for award of this solicitation, the proposer shall execute the proposal through a duly authorized representative and shall also initial this space: CG. In such event, the proposer shall furnish together with its proposal a duly executed written explanation of the facts supporting any exception to the requirement for certification that it claims under Section 287.135 of the Florida Statutes. The proposer agrees to cooperate fully with the County in any investigation undertaken by the County to determine whether the claimed exception would be applicable. The County shall have the right to terminate any contract resulting from this solicitation for default if the proposer is found to have submitted a false certification or to have been placed on the Scrutinized Companies for Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List.

PROPOSER'S AUTHORIZED SIGNATURE

The undersigned hereby certifies that this proposal is submitted in response to this solicitation.

THE EXECUTION OF THIS FORM CONSTITUTES THE UNEQUIVOCAL OFFER OF PROPOSER TO BE BOUND BY THE TERMS OF ITS PROPOSAL. FAILURE TO SIGN THIS SOLICITATION WHERE INDICATED BELOW BY AN AUTHORIZED REPRESENTATIVE SHALL RENDER THE PROPOSAL NON-RESPONSIVE. THE COUNTY MAY, HOWEVER, IN ITS SOLE DISCRETION, ACCEPT ANY PROPOSAL THAT INCLUDES AN EXECUTED DOCUMENT WHICH UNEQUIVOCALLY BINDS THE PROPOSER TO THE TERMS OF ITS OFFER.

Signed By: _____ Date: 11-9-2011

Print Name: J Megan Riley Title: EVP

A-1 Rev. 7/29/11

Form A-2

AFFIDAVIT OF MIAMI-DADE COUNTY
LOBBYIST REGISTRATION FOR ORAL PRESENTATION

(1) Project Title: Development of Brickell Metrorail Property Project No.: 798
(2) Department: Department of Procurement Management
(3) Proposer's Name: Swire Properties, Inc.
Address: 501 Brickell Key Drive, Suite 600, Miami, FL Zip: 33131
Business Telephone: (305) 371-3877

(4) List All Members of the Presentation Team Who Will Be Participating in the Oral Presentation:

NAME	TITLE	EMPLOYED BY	TEL. NO.
Steve Owens	President	Swire	(305) 371-3877
Megan Kelly	VP	Swire	(305) 371-3877
Chris Gandolfo	VP	Swire	(305) 371-3877
Anne Cotter	Architect	Arquitectonica	(305) 572-1812

(ATTACH ADDITIONAL SHEET IF NECESSARY)

The individuals named above are Registered and the Registration Fee is <u>not</u> required for the Oral Presentation ONLY.

Any person who appears as a representative for an individual or firm for an oral presentation before a County certification, evaluation, selection, technical review or similar committee must be listed on an affidavit provided by the County. The affidavit shall be filed with the Clerk of the Board at the time the response is submitted. The individual or firm must submit a revised affidavit for additional team members added after submittal of the proposal with the Clerk of the Board prior to the oral presentation. Any person not listed on the affidavit or revised affidavit may not participate in the oral presentation, unless he or she is registered with the Clerk's office and has paid all applicable fees.

Other than for the oral presentation, Proposers who wish to address the county commission, county board or county committee concerning any actions, decisions or recommendations of County personnel regarding this solicitation in accordance with Section 2-11.1(s) of the Code of Miami-Dade County MUST register with the Clerk of the Board and pay all applicable fees.

I do solemnly swear that all the foregoing facts are true and correct and I have read or am familiar with the provisions of Section 2-11.1(s) of the Code of Miami-Dade County as amended.

Signature of Authorized Representative: _____ Title: EVP
STATE OF FLORIDA
COUNTY OF MIAMI-DADE

The foregoing instrument was acknowledged before me this 9th day of November, 2011
by MEGAN Kelly, a EVP, Swire Properties, Inc. who is personally known
(Individual, Officer, Partner or Agent) (Sole Proprietor, Corporation or Partnership)
to me or who has produced _____ as identification and who did/did not take an oath.

_____
(Signature of person taking acknowledgement)
DIANA PEREZ-GATA
(Name of Acknowledger typed, printed or stamped)
NOTARY PUBLIC EE101480
(Title or Rank) (Serial Number, if any)

DIANA PEREZ-GATA
NOTARY PUBLIC
STATE OF FLORIDA
Comm# EE101480
Expires 8/8/2015

Revised 2/7/05

Form A-3

ACKNOWLEDGEMENT OF ADDENDA

Instructions: Complete Part I or Part II, whichever is applicable.

PART I: Listed below are the dates of issue for each Addendum received in connection with this solicitation.

Addendum #1, Dated October 18, 2011

Addendum #2, Dated November 7, 2011

Addendum #3, Dated _____, 201___

Addendum #4, Dated _____, 201___

Addendum #5, Dated _____, 201___

Addendum #6, Dated _____, 201___

Addendum #7, Dated _____, 201___

Addendum #8, Dated _____, 201___

Addendum #9, Dated _____, 201___

PART II:

____ No Addendum was received in connection with this solicitation.

Authorized Signature: _____ Date: 11-9-2011

Print Name: J Meegan Kelly Title: EVP

Firm Name: Swire Properties Inc.

A-3 - Rev. 1/25/10

FORM A-5
SUBCONTRACTOR/SUPPLIER LISTING
(Ordinance 97-104)

Name of Proposer Swire Properties, Inc.

This form, or a comparable listing meeting the requirements of Ordinance No. 97-104, **MUST** be completed by all bidders and proposers on County contracts for purchase of supplies, materials or services, including professional services which involve expenditures of $100,000 or more, and all bidders and proposers on County or Public Health Trust construction contracts which involve expenditures of $100,000 or more. **This form, or a comparable listing meeting the requirements of Ordinance No. 97-104, must be completed and submitted even though the bidder or proposer will not utilize subcontractors or suppliers on the contract. The bidder or proposer should enter the word "NONE" under the appropriate heading in those instances where no subcontractors or suppliers will be used on the contract.** A bidder or proposer who is awarded the contract shall not change or substitute first tier subcontractors or direct suppliers or the portions of the contract work to be performed or materials to be supplied from those identified except upon written approval of the County. **The final completion of this form is a condition of award.**

Business Name and Address of First Tier Subcontractor/Subconsultant	Principal Owner	Scope of Work to be Performed by Subcontractor/Subconsultant	(Principal Owner) Gender	Race
See exceptions				
at Section 8 to SPI response -				
no contractors or subcontractors				
have been selected yet				

Business Name and Address of Direct Supplier	Principal Owner	Supplies/Materials/Services to be Provided by Supplier	(Principal Owner) Gender	Race
See exceptions				
at Section 8 to SPI response -				
no contractors or subcontractors				
have been selected yet				

I certify that the representations contained in this Subcontractor/Supplier Listing are to the best of my knowledge true and accurate.

Signature of Proposer's Authorized Representative	Print Name	Print Title	Date
		EVP	11-9-2011

(Duplicate if additional space is needed)
Form A-5(new 5/7/99)

Form A-6

FAIR SUBCONTRACTING POLICIES
(Section 2-8.8 of the Miami-Dade County Code)

FAIR SUBCONTRACTING PRACTICES

In compliance with Section 2-8.8 of the Miami-Dade County Code, the Proposer submits the following detailed statement of its policies and procedures for awarding subcontracts:

SPI is committed to transparent and robust local subcontracting and will develop a program whereby local subcontractors may register to receive notification of subcontracting opportunities associated with development of the Project.

I hereby certify that the foregoing information is true, correct and complete.

Signature of Authorized Representative: _____

Title: VP DEVELOPMENT Date: 09 NOV 11

Firm Name: SQUARE PROPERTIES

Form A-6 Rev. 2/13/01

FORM B-1

Payment Proposal Schedule

INSTRUCTIONS:
The Developer's payment proposal shall be submitted on this Form B-1 "Payment Proposal Schedule", and in the manner stated herein. Developer is requested to fill in the applicable blanks on this form and to make no other marks.

A. Payment Proposal for Initial Rent
The selected Developer shall pay the County an Initial Rent (see Section 2.12, A) which is expected to be at least the equivalent of the appraised fair market rental value for current land rent.

The Proposer shall pay the County Four Thousand One Hundred Sixty Six and 67/100 (Insert written amount) dollars ($4166.67) per month. (Insert number.)

Such Initial Rent shall be received by the County from the selected Proposer by the first day of the month in advance, without billing, from the award of the agreement by the Board of County Commissioners to the Date of Beneficial Occupancy.

B. Payment Proposal for Guaranteed Monthly Rent and Percentage of Monthly Gross Receipts

1. Guaranteed Monthly Rent (see Section 2.12, B)

The Proposer shall pay the County Three Thousand One Hundred Thirty and 06/100 (Insert written amount.) dollars ($3130.06) per month. (Insert number.)

Such Guaranteed Monthly Rent shall be received by the County from the selected Proposer by the first day of the month in advance, without billing, from the Date of Beneficial Occupancy through the termination date of the Agreement.

The minimum acceptable Guaranteed Rent will be based upon the appraised fair market rental value which shall be determined by appraisal(s) performed by independent appraiser(s) selected by the County. The Guaranteed Monthly Rent shall be adjusted upward by three percent (3%) at the end of each Lease Agreement Year. The County reserves the right to reevaluate the Guaranteed Rent every ten (10) years for market conditions.

FORM B-1 Alternate

Payment Proposal Schedule

A. Payment Proposal for Initial Rent

Proposer shall pay the County Four Thousand One Hundred and Sixty Six and 67/100 ($4,166.67) Dollars per month for a four (4) year term commencing from the date of award of the agreement by the Board of County Commissioners to the Date of Beneficial Occupancy.

B. Payment Proposal for Guaranteed Rent

Proposer shall pay the County One Million One Hundred Thousand and No/100 ($1,100,000) Dollars on the Date of Beneficial Occupancy as pre-payment of Guaranteed Rent. On the first anniversary of the Date of Beneficial Occupancy; and continuing Ninety-Eight (98) years thereafter for a total term of Ninety-Nine (99) years, Proposer shall pay the County Two Thousand One Hundred and No/100 ($2,100) Dollars per year in guaranteed annual rent.

Due to Proposer's prepayment of Guaranteed Rent, the County agrees that subsequent payment of the Guaranteed Rent shall be held constant for the balance of the term.

Memorandum

MIAMI-DADE COUNTY

Date: December 9, 2011

To: Miriam Singer, CPPO
Director
Department of Procurement Management

From: J.C. Romano, CPPB
Procurement Contracting Officer
Chairperson, Evaluation/Selection Committee

Subject: Report of Evaluation/Selection Committee for RFP No. 798 Development of Brickell Metromover Property.

The County issued a solicitation to obtain proposals from qualified firms to lease and develop the Brickell Metromover property.

The Evaluation/Selection Committee has completed the evaluation of proposals submitted in response to the solicitation following the guidelines published in the solicitation.

Committee meeting date:

November 29, 2011 (kick-off meeting)
December 7, 2011 (Evaluation/Selection committee and final scoring)

Verification of compliance with contract measures:
Not applicable since no contract measures were assigned to this solicitation.

Verification of compliance with minimum qualification requirements:
The solicitation did not have any minimum qualification requirements.

Local Certified Service-Disabled Veteran's Business Enterprise Preference:
Veteran's Preference was considered in accordance with the applicable ordinance. The proposer did not qualify for the preference.

Summary of scores:

The final scores are as follows:

Proposer	*Technical and Financial Criteria Score*	*Price/Cost Submitted*
	(max.5,000)	
1. Swire Properties	4,200	(A)$4166.67/ (B)$3130.06
(A) Initial Rent (B) Guaranteed Monthly Rent		

The Evaluation/Selection Committee decided not to hold oral presentations as the sole proposer demonstrated that the firm was technically qualified and financially sound.

Local Preference:
Local Preference was considered in accordance with applicable ordinance, but did not affect the outcome as there was only one proposer.

Negotiations:

The Evaluation/Selection Committee recommends that the County enter into negotiations with the highest ranked proposer, Swire Properties. The following individuals will participate in the negotiations:

J.C. Romano, Procurement Contracting Officer 2, Procurement Management Division, ISD
Froilan Baez, Utility Relocation Manager, MDT
Judy Emerson, Transit Planning Section Supervisor, MDT

Consensus Statement: The Evaluation/Selection Committee recommends Swire Properties for the following reasons: 1) The design submitted for the site integrates the Metromover station to the planned CitiCenter and provides direct access for patrons to the Metromover; 2) The firm has experience in developing similar projects around the world including multiple building projects in Miami-Dade County; 3) The architectural firm, Arquitectonica, selected by Swire Properties is an established local firm with worldwide experience; and 4) The financial review report provided is in line with the industry standards. The report demonstrates the firm's ability to self finance the planned CitiCenter project, which will have a small section developed on the Metromover property.

Copies of the score sheets are attached for each Evaluation/Selection Committee member, as well as a composite score sheet.

Approved

Miriam Singer
Asst. Director

12/15/11
Date

Not Approved

Miriam Singer
Director

Date

RFP No. 798

Development of Brickell Metromover Property
PRELIMINARY EVALUATION OF PROPOSALS

COMPOSITE SCORE SHEET

SELECTION CRITERIA / PROPOSERS	Swire Properties
A.) Proposer's approach to focusing density around the Eight Street Metromover Station and to achieving functional and aesthetic integration of the station into the overall development, including, but not be limited to, the quality of the following aspects of the project: - design - layout - landscaping - construction - project components - mitigation of negative impacts on transit operations during construction *(Max Points: 2000 [400 pts per Review Team Member])*	1835
B.) Proposer's relevant experience, qualifications, and past performance in completing successful commercial developments. *(Max Points: 1000 [200 pts per Review Team Member])*	770
C.) Relevant experience and qualifications of all key personnel of Proposer, design team, construction contractor and subcontractors, that will be assigned to this project. *(Max Points: 750 [150 pts per Review Team Member])*	540
D.) Proposer's financial strength and capability to secure financing. *(Max Points: 750 [150 pts per Review Team Member])*	630
E.) Financial Benefit to the County. Initial Rent and Guaranteed Rent as described in Section 2.12 of the solicitation, and any other additional financial benefits to the County. *(Max Points: 500 [100 pts per Review Team Member])*	425
TOTAL POINTS	**4200**
Local Preference* *(Highest ranked proposer's total points - 6% = Local Preference range)*	

Signature: J. C. [illegible] Print Name: 12/9/11

Chairperson: [illegible] 12/12/11

Reviewed By

12/09/2011

RFP NO. 798
Development of Brickell Metromover Property
Evaluation of Proposals

Lana Moorey (PWWMD)

EVALUATION CRITERIA	Swire Properties
A.) Proposer's approach to focusing density around the Eight Street Metromover Station and to achieving functional and aesthetic integration of the station into the overall development, including, but not be limited to, the quality of the following aspects of the project: - design - layout - landscaping - construction - project components - mitigation of negative impacts on transit operations during construction (Max Points: 400)	360
B.) Proposer's relevant experience, qualifications, and past performance in completing successful commercial developments. (Max Points: 200)	100
C.) Relevant experience and qualifications of all key personnel of Proposer, design team, construction contractor and subcontractors, that will be assigned to this project. (Max Points: 150)	100
D.) Proposer's financial strength and capability to secure financing. (Max Points: 150)	80
E.) Financial Benefit to the County. Initial Rent and Guaranteed Rent as described in Section 2.12 of the solicitation, and any other additional financial benefits to the County. (Max Points: 100)	70
TOTAL POINTS *(Maximum 1000 Points)*	710

RFP NO. 798
Development of Brickell Metromover Property
Evaluation of Proposals

Curt Williams (PERA)

EVALUATION CRITERIA	Swire Properties
A.) Proposer's approach to focusing density around the Eight Street Metromover Station and to achieving functional and aesthetic integration of the station into the overall development, including, but not be limited to, the quality of the following aspects of the project: - design - layout - landscaping - construction - project components - mitigation of negative impacts on transit operations during construction (Max Points: 400)	360
B.) Proposer's relevant experience, qualifications, and past performance in completing successful commercial developments. (Max Points: 200)	180
C.) Relevant experience and qualifications of all key personnel of Proposer, design team, construction contractor and subcontractors, that will be assigned to this project. (Max Points: 150)	140
D.) Proposer's financial strength and capability to secure financing. (Max Points: 150)	140
E.) Financial Benefit to the County. Initial Rent and Guaranteed Rent as described in Section 2.12 of the solicitation, and any other additional financial benefits to the County. (Max Points: 100)	80
TOTAL POINTS *(Maximum 1000 Points)*	900

RFP NO. 798
Development of Brickell Metromover Property
Evaluation of Proposals

Patrick Wong (PERA)

EVALUATION CRITERIA	Swire Properties
A.) Proposer's approach to focusing density around the Eight Street Metromover Station and to achieving functional and aesthetic integration of the station into the overall development, including, but not be limited to, the quality of the following aspects of the project: - design - layout - landscaping - construction - project components - mitigation of negative impacts on transit operations during construction (Max Points: 400)	325
B.) Proposer's relevant experience, qualifications, and past performance in completing successful commercial developments. (Max Points: 200)	140
C.) Relevant experience and qualifications of all key personnel of Proposer, design team, construction contractor and subcontractors, that will be assigned to this project. (Max Points: 150)	100
D.) Proposer's financial strength and capability to secure financing. (Max Points: 150)	110
E.) Financial Benefit to the County. Initial Rent and Guaranteed Rent as described in Section 2.12 of the solicitation, and any other additional financial benefits to the County. (Max Points: 100)	75
TOTAL POINTS *(Maximum 1000 Points)*	**750**

RFP NO. 798
Development of Brickell Metromover Property
Evaluation of Proposals

Nilia Carteya (Transit)

EVALUATION CRITERIA	Swire Properties
A.) Proposer's approach to focusing density around the Eight Street Metromover Station and to achieving functional and aesthetic integration of the station into the overall development, including, but not be limited to, the quality of the following aspects of the project: - design - layout - landscaping - construction - project components - mitigation of negative impacts on transit operations during construction (Max Points: 400)	390
B.) Proposer's relevant experience, qualifications, and past performance in completing successful commercial developments. (Max Points: 200)	200
C.) Relevant experience and qualifications of all key personnel of Proposer, design team, construction contractor and subcontractors, that will be assigned to this project. (Max Points: 150)	50
D.) Proposer's financial strength and capability to secure financing. (Max Points: 150)	150
E.) Financial Benefit to the County. Initial Rent and Guaranteed Rent as described in Section 2.12 of the solicitation, and any other additional financial benefits to the County. (Max Points: 100)	100
TOTAL POINTS *(Maximum 1000 Points)*	890

RFP NO. 798
Development of Brickell Metromover Property
Evaluation of Proposals

Frollan Baez (Transit)

EVALUATION CRITERIA	Swire Properties
A.) Proposer's approach to focusing density around the Eight Street Metromover Station and to achieving functional and aesthetic integration of the station into the overall development, including, but not be limited to, the quality of the following aspects of the project: - design - layout - landscaping - construction - project components - mitigation of negative impacts on transit operations during construction (Max Points: 400)	400
B.) Proposer's relevant experience, qualifications, and past performance in completing successful commercial developments. (Max Points: 200)	150
C.) Relevant experience and qualifications of all key personnel of Proposer, design team, construction contractor and subcontractors, that will be assigned to this project. (Max Points: 150)	150
D.) Proposer's financial strength and capability to secure financing. (Max Points: 150)	150
E.) Financial Benefit to the County. Initial Rent and Guaranteed Rent as described in Section 2.12 of the solicitation, and any other additional financial benefits to the County. (Max Points: 100)	100
TOTAL POINTS *(Maximum 1000 Points)*	950

Memorandum

MIAMI-DADE COUNTY

Date: November 15,2011

To: Those Listed Below

From: Carlos A. Gimenez
Mayor

Subject: Appointment of Selection Committee for Internal Services Department and Transit Department– RFP No. 798

In accordance with Administrative Order 3-34, I am hereby appointing those listed below as the Selection Committee for Internal Services Department and Transit Department's Development of Brickell Metromover Property – RFP No. 798:

Selection Committee
J. C. Romano, ISD (Non-Voting Chairperson)
Froilan Baez, Transit
Nilia Cartaya, Transit
Patrick Wong, PERA
Curt Williams, PERA
Lana Moorey, PWWMD
Miguel J. Riera, MDAD (Alternate)
Judy Emerson, Transit (Technical Advisor)

You are directed to assist me in the selection process considering the factors delineated in the solicitation. If you are unable to participate in the selection process, contact this office through Small Business Development (SBD) by memorandum from your department director documenting the reason why you cannot participate. Only in cases of **dire** urgency may you be excused from participation.

Each Selection Committee member shall be responsible for evaluating, rating and ranking the proposals based on the criteria and procedure contained in the solicitation. The Selection Committee will meet to review the written proposals. If required, the Selection Committee will select firms to make oral presentations to the Selection Committee at a properly noticed public hearing. If proposers are invited to make oral presentations, the Selection Committee may re-rate and re-rank the proposals based upon the written documents combined with the oral presentation. You may utilize staff of the issuing department and the using agency to conduct a preliminary review of the proposals for responsiveness. All requests for responsiveness determinations shall be made in writing by the issuing department to the County Attorney's Office.

The alternate committee member will serve only in the event of an approved substitution. No substitution of committee members shall be allowed after the first official meeting of the committee. The Department of Procurement Management (DPM) may substitute the chairperson to ensure the appropriate level of staffing expertise as deemed necessary to accommodate the needs of this solicitation.

Upon completion of the evaluation process, the Selection Committee Chairperson shall prepare and submit a memorandum to include a narrative of the evaluation and justification of the recommended firm(s) with attach supporting documentation which MUST include the following information:

Name of firm(s)
Quality Rating Score
Price
Adjusted Score (if applicable)
Committee's Overall Ranking

This report should be submitted to me through DPM for review and consideration.

As a matter of administrative policy and to maintain a fair and impartial process, all individuals appointed to the Selection Committee (including the Chairperson) and staff are instructed to refrain from discussing the solicitation with prospective lobbyist and/or consultants. Selection Committee members are reminded that in accordance with the Cone of Silence Ordinance 98-106, they are restrictions on communications regarding the solicitation with potential proposers, service providers, lobbyists, consultants, or any member of the County's professional staff. Violation of this policy could lead to termination of County service.

All questions must be directed to the staff contact person designated by the issuing department.

c: Lester Sola, Director, ISD
Ysela Llort, Interim Director, Transit
Charles Danger, Interim Director, PERA
Kathleen Woods-Richardson, Director, PWWMD
Jose Abreu, Director, MDAD
Jack Osterholt, Deputy Mayor/Interim Director, SPEED
Mario Goderich, Interim Assistant Director, SPEED

Selection Committee
J. C. Romano, ISD (Non-Voting Chairperson)
Froilan Baez, Transit
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Judy Emerson, Transit (Technical Advisor)

SELECTION COMMITTEE
INTERNAL SERVICES DEPARTMENT AND TRANSIT DEPARTMENT
REQUEST FOR PROPOSALS
DEVELOPMENT OF BRICKELL METROMOVER PROPERTY

RFP NO. 798

Committee Member/ Title	Department	Start Year With County	Ethnicity/ Gender	Education	Professional License(s)/ Certification(s)	Telephone #
J. C. Romano, CPPB (Non-Voting Chairperson)		---	---	---	---	
Froilan Baez Utility Relocation Manager	Transit	1987	Hispanic Male	Bachelors of Science in Construction	General Engineering Contractors	786.469.5244
Nilia Cartaya Principal Planner	Transit	2007	Hispanic Female	Masters Degree in Urban Systems	None	786.469.5283
Patrick Wong Chief, Air Division	PERA	1980	Black Male	Bachelors of Science in Mechanical Engineering	None	305.372.6934
Curt Williams Manager	PERA	1989	Black Male	Bachelors in Civil Engineering	None	305.372.6818
Lana Moorey Sr. Professional Engineer	PWWMD	1994	White Female	Bachelors in Civil Engineering	None	305.375.2863
Miguel J. Riera Engineer 3 (Alternate)	MDAD	2003	Hispanic Male	Masters of Science in Civil Engineering	None	305.876.0596
Judy Emerson Transit Planning Section Supervisor (Technical Advisor)	Transit	2001	White Female	Bachelor of Arts in Sociology	None	786.469.5073