MEMORANDUM

Agenda Item No. 14(A)(7)

TO: Honorable Chairwoman Audrey M. Edmonson and Members, Board of County Commissioners

DATE: October 6, 2020

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Resolution rescinding Resolution No. R-1122-14 which allocated $6,000,000.00 of Building Better Communities General Obligation Bond Program Project No. 124 – "Economic Development Fund" to Overtown Gateway Partners, LLC; waiving Building Better Communities General Obligation Bond Program Administrative Rules regarding minimum allocation to Project No. 124 eligible projects; approving allocation of $5,000,000.00 of Project 124 funds to Block 45, LLC; approving terms of and authorizing County Mayor to execute Grant Agreement between the County and Block 45, LLC and to exercise all rights contained therein; and designating remaining $1,000,000.00 as recaptured funds

Resolution No. R-1051-20

The accompanying resolution was prepared and placed on the agenda at the request of Prime Sponsor Chairwoman Audrey M. Edmonson.

Abigail Price-Williams
County Attorney

APW/smm

MEMORANDUM
(Revised)

TO: Honorable Chairwoman Audrey M. Edmonson and Members, Board of County Commissioners

DATE: October 6, 2020

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Agenda Item No. 14(A)(7)

Please note any items checked.

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

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

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

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

_____ **Budget required**

_____ **Statement of fiscal impact required**

_____ **Statement of social equity required**

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

✓ **No committee review**

_____ **Applicable legislation requires more than a majority vote (i.e., 2/3's present ____, 2/3 membership ____, 3/5's ____, unanimous ____, CDMP 7 vote requirement per 2-116.1(3)(h) or (4)(c) ____, CDMP 2/3 vote requirement per 2-116.1(3)(h) or (4)(c) ____, or CDMP 9 vote requirement per 2-116.1(4)(c)(2) ____) to approve**

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

Approved ______________________ Mayor | Agenda Item No. 14(A)(7)
Veto __________ | 10-6-20
Override __________

RESOLUTION NO. R-1051-20

RESOLUTION RESCINDING RESOLUTION NO. R-1122-14 WHICH ALLOCATED $6,000,000.00 OF BUILDING BETTER COMMUNITIES GENERAL OBLIGATION BOND PROGRAM PROJECT NO. 124 – "ECONOMIC DEVELOPMENT FUND" TO OVERTOWN GATEWAY PARTNERS, LLC; WAIVING BUILDING BETTER COMMUNITIES GENERAL OBLIGATION BOND PROGRAM ADMINISTRATIVE RULES REGARDING MINIMUM ALLOCATION TO PROJECT NO. 124 ELIGIBLE PROJECTS; APPROVING ALLOCATION OF $5,000,000.00 OF PROJECT 124 FUNDS TO BLOCK 45, LLC; APPROVING TERMS OF AND AUTHORIZING COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE GRANT AGREEMENT BETWEEN THE COUNTY AND BLOCK 45, LLC AND TO EXERCISE ALL RIGHTS CONTAINED THEREIN; AND DESIGNATING REMAINING $1,000,000.00 AS RECAPTURED FUNDS

WHEREAS, Appendix A to Resolution No. R-914-04 (the "Public Infrastructure Resolution"), lists projects eligible for funding from the Building Better Communities General Obligation Bond Program (the "Bond Program") by project number, municipal project location, commission district, project description, street address, and project funding allocation; and

WHEREAS, one of those projects listed in Appendix A to the Public Infrastructure Resolutions and approved by the voters for funding is Project No. 124 – Economic Development Fund ("Project 124") with a project description that states "Provide infrastructure improvements to spur economic development and attract new businesses to the community in order to create jobs"; and

WHEREAS, the goal of Project 124 is to encourage private sector development that will create jobs and cause economic development which will have long term benefits to the community; and

WHEREAS, this Board has allocated all Project 124 funds to eligible public infrastructure projects, subject to the negotiation by the County Mayor or County Mayor's designee ("County Mayor"), of a grant or interlocal agreement for each of those infrastructure projects to be presented to this Board for approval and has established a waiting list of potential recipients of Project 124 funds who are awaiting Project 124 funds recaptured in the event that the County Mayor is unable to reach agreement with a potential grantee on the terms of the grant or interlocal agreement; and

WHEREAS, this Board, pursuant to Resolution No. R-1122-14, approved an allocation in the amount of $6,000,000.00 from Project 124 to Overtown Gateway Partners, LLC, a Florida limited liability company ("Initial Grantee") to develop a mixed used project on County-owned land located at 152 NW 8th Street, Miami, Florida 33136 ("Block 45 site") and 249 NW 6th Street, Miami, Florida 33136, subject to negotiation of the related grant agreement and this Board's approval thereof; and

WHEREAS, the County Mayor was unable to successfully negotiate a grant agreement with the Initial Grantee and this Board wishes to rescind Resolution No. R-1122-14 and the $6,000,000.00 allocation made to the Initial Grantee; and

WHEREAS, on January 22, 2020, this Board adopted Resolution No. R-58-20, which provides that in instances where the County Mayor is unable to successfully negotiate a grant agreement with a proposed recipient of Project 124 funds to develop County-owned property, after rescission of the allocation, such funds shall first be made available to other eligible applicants to develop the same or similar project on the same County-owned property, prior to re-allocation of the Project 124 funds to other public infrastructure projects; and

WHEREAS, on September 4, 2020, Block 45, LLC, a Florida limited liability company ("Block 45, LLC") submitted an application, attached as Attachment "A" and made a part hereof, for up to $5,000,000.00 of Project 124 funding in order to fund public infrastructure costs associated with the mix-use retail and workforce housing development of the Block 45 site which is a part of the same County-owned site as that proposed to be developed by the Initial Grantee ("Block 45 Project"); and

WHEREAS, the Block 45 Project will create 616 new affordable and workforce housing units as well as 25,000 square feet of retail; and

WHEREAS, this project will create much needed affordable housing while also reducing traffic by increasing residents access to transit; and

WHEREAS, the Block 45 Project is a transit-oriented development within walking distance of the Brightline Downtown Train Station, the Metrorail, the Metro Mover, a city of Miami Trolley and 7 Miami-Dade County bus routes; and

WHEREAS, on December 17, 2019, the Board adopted Ordinance No. 19-127 which expanded the Rapid Transit Zone and created the Historic Overtown/Lyric Theatre Subzone; and

WHEREAS, the Block 45 Project is located within the Historic Overtown/Lyric Theatre Rapid Transit Subzone; and

WHEREAS, on June 15, 2010, the Board adopted Resolution No. R-668-10 which established the Board's policy regarding allocation of Project 124 funds to public infrastructure projects and amended the Bond Program's Administrative Rules to incorporate such policy ("County Policy"); and

WHEREAS, this Board wishes to waive the requirement set forth in County Policy that Project 124 allocations be made to capital projects with a minimum value of $10,000,000.00 and approve an allocation of $5,000,000.00 of Project 124 funds to Block 45, LLC and the terms of a related Grant Agreement between the County and Block 45, LLC, in substantially the form attached as Attachment "B" and made a part hereof,

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

Section 1. The foregoing recitals are approved and incorporated in this resolution.

Section 2. Resolution No. R-1122-14 is rescinded.

Section 3. The requirement set forth in County Policy that each Project 124 allocation be a minimum of $10,000,000.00 is waived and a Project 124 allocation of $5,000,000.00 to Block 45, LLC is approved.

Section 4. This Boards approves a Grant Agreement in substantially the form attached hereto as Attachment "B" and made a part hereof, and authorizes the County Mayor to execute same, for and on behalf of Miami-Dade County, and to exercise any and all other rights conferred therein and to perform all necessary acts to effectuate same.

Section 5. This Board designates the remaining $1,000,000.00 of Project 124 previously allocated pursuant to Resolution No. R-1122-14 as recaptured funds to be made available to eligible Project 124 recipients.

The Prime Sponsor of the foregoing resolution is Chairwoman Audrey M. Edmonson. It was offered by Commissioner **Joe A. Martinez**, who moved its adoption. The motion was seconded by Commissioner **Eileen Higgins** and upon being put to a vote, the vote was as follows:

Audrey M. Edmonson, Chairwoman **aye**
Rebeca Sosa, Vice Chairwoman **aye**

Esteban L. Bovo, Jr.	**aye**	Daniella Levine Cava	**aye**
Jose "Pepe" Diaz	**absent**	Sally A. Heyman	**aye**
Eileen Higgins	**aye**	Barbara J. Jordan	**aye**
Joe A. Martinez	**aye**	Jean Monestime	**absent**
Dennis C. Moss	**aye**	Sen. Javier D. Souto	**aye**
Xavier L. Suarez	**absent**		

The Chairperson thereupon declared the resolution duly passed and adopted this 6th day of October, 2020. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this Resolution and the filing of this approval with the Clerk of the Board.

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

HARVEY RUVIN, CLERK

By: **Melissa Adames**
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency. JRA

Juliette R. Antoine

Attachment A

Economic Development Fund

Building Better Communities
General Obligation Bond Program

EDF General Project Overview

BLOCK 45

Project Title

BLOCK 45, LLC

Name of Business

September 4, 2020

Date Submitted

After review of this *Project Overview* the Office of Economic Development and International Trade may request additional information including a business plan containing a market assessment, financial proformas, and development site plans. The submission of this project overview does not guarantee funding.

Jack Osterholt, Director
Regulatory and Economic Resources Department
STEPHEN P. CLARK CENTER, 111 N.W. 1st STREET, 12th FLOOR MIAMI, FLORIDA 33128
Telephone (305) 375-2883 Fax (305) 679-7895
www.miamidade.gov

MIAMI-DADE COUNTY

ECONOMIC DEVELOPMENT, GENERAL PROJECT OVERVIEW

MIAMI-DADE COUNTY

1. BUSINESS INFORMATION

A. Name of Business Unit: Block 45, LLC

B. Mailing Address: 161 NW 6th Street, Suite 1020
Street Address

Miami	Florida	33136
City	*State*	*Zip Code*

C. Primary Contact Person of Parent Company (if applicable):
Lindsay Lecour

D. Title: Senior Vice President

Mailing Address: 161 NW 6th Street, Suite 1020
Street Address

Miami	Florida	33136
City	*State*	*Zip Code*

Telephone: 305-357-4700 **Fax:** (305) 230.7656

Email: llecour@apcompanies.com **Website:** www.apcompanies.com

E. Federal Employer Identification Number: 83-1600919

F. Unemployment Compensation Number: N/A

G. Florida Sales Tax Registration Number: N/A

H. What is the business's tax year? (ex: Jan 1 to Dec 31): Jan 1 to Dec 31

I. Is this business an active and duly registered for-profit Florida corporation?

Yes ☒ No ☐ If no, please explain: ______

Indicate ownership status: (Note: Responding to this question is voluntary and not required. The County does not use this information as a factor in determining the award of County funds or contracts.) Check all that apply.

Minority Owned Business ☐ Woman Owned Business ☐ Privately Owned Business ■
Publicly Owned Business ☐ None ☐

Is this business an active and duly registered not-for-profit 501(C)(3) Florida corporation?

Yes ☐ No ☒

J. Will the business requesting grant funds own or lease the property where the project will be located?

Own ☐ Lease ■ (Note: Provide a copy of the deed showing ownership or a copy of the lease.) See Exhibit A

K. If the business will own the property, is or will the property be encumbered by any mortgage and if so provide the balance of the mortgage(s). Yes, refer to Capital Investment Overview

2. PROJECT OVERVIEW

A. Which of the following best describes this business[1]:

☒ New business unit to Miami-Dade County creating jobs.

☐ Existing Miami-Dade County business creating/expanding jobs in Miami-Dade.
(If an expansion, how many jobs are currently in the expanding business unit?) ______

☒ Developer building new construction for business Block 45, LLC (name of the company) that will be creating 20 jobs.

[1] Must be a separate business unit or reporting unit of a business unit that is or will be registered with the State of Florida for unemployment compensation purposes.

B. How many individuals are employed at all Florida locations? (FTE[2])

Currently none.

C. Are any jobs being transferred from other Florida locations? There will be no transfer of jobs.

Yes ☐ No ☒ If yes, how many jobs and from where? ____________________

Why are these jobs being transferred? ____________________

D. Project Location Information:

(i) What is the project's proposed location address:

152 NW 8th Street

Street Address

Miami | FL | 33136

City | *State* | *Zip Code*

(ii) What is the project's current location address (if different):

Same as above

Street Address

City | *State* | *Zip Code*

(iii) Is the project location within a current or proposed Brownfield site / area? See Exhibit B

Yes ■ No ☐ If yes, attach a copy of the official document designating the Brownfield area.

(iv) Is the project location in an Enterprise Zone, Empowerment Zone or a Targeted Urban Area as defined in Section 30A-129(2) of the Miami-Dade County, FL Code of Ordinances?

Yes ■ No ☐ If yes, which zone? Central Enterprise Zone, Overtown Targeted Urban Area, Southeast Overtown Park West CRA

E. Give a full description of this proposed project. (Not to exceed 500 words. Be specific.)

See Exhibit C

F. Explain how this proposed project will spur economic development, attract new businesses to Miami-Dade County and create jobs.

See Exhibit D

G. Provide a complete project line item budget, including estimated cost, sources and uses of funds, a detailed description of project elements, and the portion of the project proposing to utilize Economic Development Fund grants. (EDF grants can only be used for public infrastructure.) See Exhibit E

H. What proportion of gross operating revenues from this project are anticipated to represent sales to customers located outside of Miami-Dade County? (If sales are not a reasonable measure, use another basis for measure and provide explanation below.)

TBD % Explain, if necessary: Revenues from food/beverages retail sales

[2] An FTE or "full-time equivalent" job implies at least 35 hours of paid work per week per employment position.

3. JOB AND WAGE OVERVIEW

A. How many new FTE jobs are to be created as part of this project? What are the initial average wage and benefits? See Exhibit F

Occupation	Avg Wage	Avg Benefits	Year 20__	Year 20__	Year 20__	Year 20__	Year 20__	Year 20__
Prof., Scientist	$	$						
Research Tech.								
Senior Mgmt								
Admin. Support								
Production Wrkrs								
Other								

Jobs created, continued

Occupation	Year 20__	Year 20__	Year 20__	Year 20__	Year 20__	Year 20__	Year 20__	Year 20__	Year 20__
Prof., Scientist									
Research Tech.									
Senior Mgmt									
Admin. Support									
Production Wrkrs									
Other									

B. What employee benefits are included above? (e.g. health insurance, 401(k) contributions, vacation and sick leave, etc.) All employee benefits will be included per industry standards.

C. If this is an existing business located in Miami-Dade, then how many jobs are expected to be retained as part of this project? (Jobs in jeopardy of leaving Miami-Dade should only be included here.) N/A (Note: EDF grants cannot be used solely for the purpose of retaining existing jobs.)

D. What is the business' principal industry classification code? (Use North American Industry Classification System – NAICS.): 5311, 72251

If more than one NAICS code applies, then provide a breakdown of the project's primary business activities:

Business Unit Activities	NAICS Code	% of Project Revenues (total = 100%)	Annualized Wages Total ($)
Real Estate Management	5311	95 %	$ 585,000
Restaurants	72251	5 %	$ TBD
		%	$

4. CAPITAL INVESTMENT OVERVIEW

A. Describe the capital investment in real and personal property (Examples: construction of new facility; remodeling of facility; upg rading, replacing, or buying new equipment. Do not include the value of land purchased for construction of a new building but include architect, engineering and design costs). See Exhibit G

B. List the anticipated amount (thousands of dollars) and type of major capital investment to be made by the applicant in connection with this project: (Attach separate schedule if investment will be made over more than five years) See Exhibit G

	Year ____	Year ____	Year ____	Year ____	Year ____
Land	$	$	$	$	$
New Construction (excl. public infrastructure)	$	$	$	$	$
Building Renovations	$	$	$	$	$
Manufacturing Equipment	$	$	$	$	$
R & D Equipment	$	$	$	$	$
Other Equipment (computer equipment, office furniture, etc)	$	$	$	$	$
Total Capital Investment	**$**	**$**	**$**	**$**	**$**

C. What is the estimated square footage of the new or expanded facility? +/- 851,000 GSF

D. What is the deadline to make the location decision (date)? Completed

E. What is the anticipated date that construction will begin? Q4 2021

F. What is the anticipated construction completion date? Q1 2024
(If this project is being built in phases, then provide a commencement and completion date for each phase.)

G. What is the anticipated date that operations will commence? Q1 2024

H. Submit documentation demonstrating financial capacity and financial commitments using other non-County sources to complete the project. See Exhibit G

5. PUBLIC INFRASTRUCTURE NEEDS

A. Describe the type of public infrastructure investment needed. See Exhibit H

B. What is the total anticipated cost of public infrastructure needed for this project? $5,000,000

C. EDF grants will be disbursed only after the public infrastructure investments are complete and negotiated performance benchmarks are met. Describe the business's capacity to finance the public infrastructure costs. See Exhibit H

6. ECONOMIC IMPACT AND CORPORATE RESPONSIBILITY

A. Provide a brief synopsis of any special economic impacts/benefits the project is expected to stimulate in the community, the County, and the rest of South Florida. See Exhibit I

B. Will business operations being supported with an Economic Development Fund grant establish a plan for maximizing the employment of persons with family incomes less than 80% of the County's median household income, or persons living in Census Block Groups where 50% of residents live in households with income less than 80% of the median? If yes, explain how that plan will be developed and implemented. See Exhibit I

C. Will the business operations be conducted in LEED certified (or equivalent energy efficiency rating system) buildings? If yes, at what level of certification

Yes ☒ No ☐ LEED Silver Standard or equivalent

D. List and explain any criminal or civil fines or penalties or ongoing investigations or debarments that have been performed/imposed upon the company, its executives, its principals or its affiliates and any bankruptcy proceedings (within the past 10 years) of the applicant or its parent company. Do not leave this question blank. If there are no issues to be identified, write "NONE." Failure to disclose this information may result in this application being denied. NONE

E. Is the company current with all its state, local and federal taxes? If no, please explain.

Yes ☒ No ☐

F. Provide any additional information you wish considered as part of this review of your request for incentives or items that may provide supplementary background information on your project or company.

7. SIGNATURES

Application Completed By:

[signature]
Signature

llecour@apcompanies.com
Email Address

Howard D. Cohen
Name

To the best of my knowledge, the information included in this application is accurate.

Chief Executive Officer
Title

Block 45, LLC
Company

Signature (Authorized Company Officer) REQUIRED

Address, if different than mailing address

Randy Weisburd
Name

Phone number

President
Title

Fax Number

Block 45, LLC
Company

Email Address

Address, if different than mailing address

September 3, 2020
Date

Phone number

Lindsay Lecour
Name of contact person, if different than above

Fax Number

305-357-4715
Phone Number

rweisburd@apcompanies.com
Email Address

Address

September 3, 2020
Date

Address

D. List and explain any criminal or civil fines or penalties or ongoing investigations or debarments that have been performed/imposed upon the company, its executives, its principals or its affiliates and any bankruptcy proceedings (within the past 10 years) of the applicant or its parent company. Do not leave this question blank. If there are no issues to be identified, write "NONE." Failure to disclose this information may result in this application being denied. NONE

E. Is the company current with all its state, local and federal taxes? If no, please explain.

Yes ☒ No ☐

F. Provide any additional information you wish considered as part of this review of your request for incentives or items that may provide supplementary background information on your project or company.

7. SIGNATURES

Application Completed By:

Signature

Howard D. Cohen
Name

Chief Executive Officer
Title

Block 45, LLC
Company

Address, if different than mailing address

Phone number

Fax Number

Email Address

Date

Lindsay Lecour
Name of contact person, if different than above

305-357-4715
Phone Number

Address

Address

llecour@apcompanies.com
Email Address

To the best of my knowledge, the information included in this application is accurate.

Randy Weisburd

Signature (Authorized Company Officer) REQUIRED

Randy Weisburd
Name

President
Title

Block 45, LLC
Company

Address, if different than mailing address

Phone number

Fax Number

rweisburd@apcompanies.com
Email Address

September 3, 2020
Date

Exhibit A

ATLANTIC PACIFIC COMMUNITIES

DEVELOPMENT OF BLOCK 45
AT 152 NW 8TH STREET, MIAMI, FL

LEASE AGREEMENT NO. RFP-00700

Table of Contents

DEVELOPMENT OF BLOCK 45
AT 152 NW 8TH STREET, MIAMI, FL

LEASE AGREEMENT

THIS LEASE AGREEMENT, dated as of the 15th day of July, 2019, made by and between MIAMI-DADE COUNTY, a political subdivision of the State of Florida, through the Department of Transportation and Public Works, having its principal office and place of business at 701 N.W. 1st Court, Miami, Florida 33136 (hereinafter called "Landlord" or "DTPW"), and Atlantic Pacific Communities, LLC, having an office and place of business at 2950 S. W. 27th Avenue, Suite 200, Miami, Florida 33133 (hereinafter called "Tenant").

WITNESSETH:

A. Landlord owns and controls certain real property located at 152 NW 8th Street, Miami, FL 33136, known as Block 45 (hereinafter referred to as the "Property" or the "Demised Premises"), consisting of approximately 90,000 square feet, including all air rights, as more particularly described in Exhibit A attached hereto and made a part hereof. As of the Execution Date, Landlord, by and through its Department of Transportation and Public Works (DTPW) maintains operational control of the Property, which is located in the City of Miami in the Southeast Overtown Park West Community Redevelopment Area, County of Miami-Dade, Florida.

B. Landlord has recognized the potential for public and private benefits through the development of the Property, as described by the Tenant's proposal, in accordance with Exhibit B.

C. Tenant submitted to Landlord its technical proposal in response to a Request for Proposals (RFP – 00700) for the development of the Property, which response was selected by the Landlord as being the most appropriate use for the Property. The Tenant's response has been negotiated by the parties and the agreed upon terms are memorialized into this Lease. The development of the Property so proposed by Tenant, as amended from time to time by Tenant with Landlord's approval, is referred to herein as the "Development Concept."

D. Landlord therefore desires to lease the Property to the Tenant, in its "as-is", "where-is" condition, to enable the Tenant to develop the Property consistent with the Development Concept, and as provided for in this Lease. Tenant desires to lease the Property, in its "as-is", where-is" condition, from Landlord for such purposes.

E. Landlord and Tenant mutually covenant and agree that this Lease is made upon the agreements, terms, covenants and conditions hereinafter set forth. Capitalized terms used in this Lease without being defined elsewhere herein shall have the definitions set forth in Article 2 hereof.

ARTICLE 1.

PREMISES GENERAL TERMS OF LEASE

1.1 Lease of the Property.

In accordance with (a) Chapter 125, Florida Statutes; (b) the powers granted to Landlord pursuant to the 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, the Landlord agrees, pursuant to the terms of this Lease, and does hereby lease unto Tenant, its successors and assigns, and Tenant does hereby take and hire, upon and subject to the conditions and limitations herein expressed, the Property in its "As-Is" "Where-Is" condition, with any and all faults; to have and to hold the same unto Tenant, its successors and assigns, for the Term (as defined herein below). Tenant shall have and hold, exclusively, the development rights pertaining to the Property, subject to the terms, conditions, covenants and procedures set forth herein.

1.2 Term of Lease.

(a) Execution Date. This Lease shall become effective on the date of the County's signature by a duly authorized representative of the County ("Execution Date"). The Execution Date shall be referenced on the first (1st) page of this Lease. Further, Landlord and Tenant agree that despite the Execution Date of this Lease, the Tenant shall not have any right to occupy the Property or commit any act upon the Property except as described in this Lease until the occurrence of the Commencement Date.

(b) Commencement Date. This Lease shall commence on the day following the expiration of (i) the Due Diligence Period and (ii) any right of Tenant to terminate this Lease pursuant to Paragraph 1.2(e), subject to extension under Paragraph 1.2(e) or for Economic Unavoidable Delay (the "Commencement Date"). Tenant shall not have any obligations or liabilities under this Lease with respect to the Property prior to the Commencement Date, except for any liabilities or obligations expressly described in this Lease as being an obligation of Tenant prior to the Commencement Date. Upon the Commencement Date occurring, the parties shall execute and deliver a written confirmation of the Commencement Date in recordable form (the "Commencement Date Confirmation").

(c) Term. The term of this Lease ("Term") shall be for a period of ninety (90) Lease Years commencing on the Commencement Date and ending ninety (90) years, thereafter unless sooner terminated pursuant to the terms hereof; provided, however, that, Tenant shall have the right to request an extension to the Term of this Lease pursuant to Florida Statutes. As of the expiration of the Term, the Property shall automatically revert back to the Landlord, along with any and all Buildings and Improvements (as defined herein below) thereon, except Tenant's or third parties' removable personal property, which shall automatically become the sole property of the Landlord, without any type of compensation, payment and/or obligation to the Tenant.

(d) Possession. Landlord shall deliver possession of the Property to the Tenant on the Commencement Date, at which time Tenant shall take possession thereof; provided, however, that from and after the Execution Date, Tenant shall have the right, without the prior written permission of the Landlord, to enter upon the Property for the purpose of conducting investigations of the Property, which right shall include the responsibility of the Tenant to hold the Landlord harmless from and against any and all actions, suits, claims and causes of action, arising from Tenant's activities on the Property during this period and to secure and maintain the appropriate insurance as reasonably dictated by the Landlord. Such investigations by the Tenant may include soil tests, hazardous materials tests, and other studies and analyses, and to take such other steps or actions as Tenant deems necessary to determine the feasibility (economic or otherwise) of the Project. Any soil or other invasive testing of the Property by Tenant shall be subject to the approval of Landlord.

(e) Early Termination by Tenant. The Tenant shall immediately (within thirty (30) days of Tenant's receipt thereof) provide to the Landlord, specifically the Department of Transportation and Public Works, a courtesy copy of the results of any and all testing performed on the Property, including, but not limited to soil compaction testing and soil and/or groundwater environmental testing. In the event that the Tenant determines, in Tenant's sole discretion, based upon the results of its testing, and other inspections and studies, that the development of the Project is not economically, legally, and/or physically feasible, the Tenant shall have the right, within one hundred eighty (180) days of the Execution Date (the "Due Diligence Period"), to terminate this Lease upon written notice to the Landlord, in which event Landlord and Tenant shall be released from all further obligations under this Lease, except for those obligations which are specifically stated herein to survive such termination. If the results of Tenant's inspections reflect site conditions (the "Unforeseen Conditions") that would require Tenant (1) to remediate the Demised Premises or any portion thereof (such as, by way of example and not limitation, remediation of any environmental condition) to develop and use the Demised Premises as contemplated in this Lease, (2) to increase the scope of development work or redesign the Project or any portion thereof to address such site conditions (such as, by way of example and not limitation, the discovery of underground conditions or facilities that require relocation and/or cannot be relocated), and/or (3) to incur any other unforeseen cost or suffer any other delays or adverse impacts relative to the Project, Tenant shall so notify Landlord of such Unforeseen Conditions and the estimated amount of the costs, delays or other adverse impacts resulting therefrom, whereupon, Landlord and Tenant shall negotiate in good faith, acting reasonably, appropriate adjustments to the terms of this Lease (such as, by way of example and not limitation, credits against Rent, contributions by Landlord to the increased costs resulting from such Unforeseen Conditions, extensions of construction timeframes and commencement of Rent, and/or other adjustments to the economic terms of this Lease) mutually acceptable to the parties. If the parties are unable to achieve a mutually acceptable agreement within sixty (60) days following Tenant's initial notice to Landlord of Unforeseen Conditions hereunder, then Tenant shall have the right, in its sole discretion, (x) to terminate this Lease and its obligations hereunder, in which event Landlord and Tenant shall be released from all further obligations under this Lease, except for those obligations which are specifically stated herein to survive such termination, or (y) to proceed with the Project under the terms and conditions of this Lease.

Any and all delays caused by or associated with such Unforeseen Conditions shall be deemed Unavoidable Delays for purposes of this Lease.

1.3 Conditions Precedent to Effectiveness of Lease.

The Federal Transit Administration ("FTA") and the Miami-Dade County Board of Commissioners shall have approved the execution of this Lease.

1.4 Conditions Precedent to Commencement of Construction.

Precedent to construction:

(a) Tenant shall comply with the DTPW submittal and review process by submitting the Preliminary Plans of the Project at the appropriate stage of the Project;

(b) Tenant shall have submitted to Landlord a copy of a letter of intent that Tenant has received from a lending institution, such as, by way of example and not limitation, a bank, savings bank, savings and loan, pension fund, insurance company, real estate investment trust or other real estate investment entity, to finance construction of the Project, if such financing is being obtained;

(c) Tenant and Landlord agree that all construction and development plans within the Demised Premises or that impacts any County facilities shall be subject to the review and approval of DTPW to assure the public safety and the System's integrity and operation. Precedent to any construction, excavation, demolition, restoration, testing or staging within the Property, Tenant shall submit to the DTPW Right-of-Way, Utilities and Property Management Division through the DTPW Director, or his or her designee, copies of plans, drawings and calculations showing the relationship between the proposed activities and the System, as defined herein. The drawings and calculations shall have sufficient detail to allow DTPW to determine if such activities are likely to impact the System and the extent of that impact, if any. The drawings and calculations shall include, if applicable, the following:

(i) Site plan;

(ii) Drainage area maps and calculations;

(iii) Sheeting and shoring drawings and calculations;

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

(v) Structural drawings;

(vi) Geotechnical reports;

(vii) Settlement monitoring, mitigation and remediation plan, if applicable;

(viii) Proposed sequence of activities.

Tenant shall submit three (3) sets, full-sized or half-sized print copies and an electronic copy of all such plans, drawings and calculations.

Any such proposed construction, excavation, demolition, restoration, testing or staging within in the Property may commence only after DTPW has completed its review and the DTPW Director or designee has issued written approval of the plans, drawings and calculations. Notwithstanding anything herein, in the event that any construction or construction related activities (use of equipment, storage of materials, etc.) shall occur within thirty (30) feet of the System, all such construction or construction related activities shall be in compliance with the latest edition of the Miami-Dade County Adjacent Safety Manual or its replacement.

Landlord shall review plans, drawings and calculations within a reasonable period of time; however, such review periods may depend upon the volume, complexity and potential impact on transit facilities and operations. Landlord reserves the right at all times to disapprove of plans, drawings and calculations in whole or in part if Landlord, in its sole discretion, determines that transit operations or facilities may be unacceptably impacted and/or to request additional information. If the Landlord, in its sole discretion, determines that activities undertaken or authorized by the Tenant, or planned to be undertaken or authorized by the Tenant, may impact the System, facilities or operations, the Landlord may require the Tenant to submit a plan to monitor, mitigate and remediate any such impacts. The plan must be approved by the Landlord in writing prior to the commencement of any such activities. If directed by the Landlord, the Tenant must immediately mitigate all such impacts as specified by the Landlord and Tenant shall immediately remediate all damage or impacts caused by activities performed or authorized by the Tenant, to the satisfaction of the Landlord, at Tenant's sole expense. Additionally, the Landlord shall have the right to slow or stop any activities that the Landlord, in its sole discretion, determines to be potentially hazardous to the System's facilities, and/or operations or to Miami-Dade County employees, patrons or to the public. Landlord shall not incur any expense as a result of such actions.

1.5 Performance and Payment Bonds.

At least ten (10) days before Tenant commences any construction work related to any portion of the Project or any materials are purchased from a supplier, Tenant shall deliver to the Landlord and record in the public records of the County, a payment and performance bond equal to the total cost of construction of the Project as reflected in the construction contract, as amended, between Tenant and its general contractor. Each payment and performance bond shall be in compliance with all applicable laws and the form substantially prescribed by Section 255.05, Florida Statutes, and in compliance with the applicable requirements of Sections 255.05(1)(a) and (c), Section 255.05(3), and Section 255.05(6), and shall name the Landlord and the Tenant beneficiaries thereof, as joint obligees. Tenant shall not allow any mechanics liens or materialman's liens, or liens, judgments or encumbrances of any kind ("Encumbrances"), to be placed on, or to cloud title of, Landlord's fee simple interest in the Property and shall indemnify Landlord for any costs, expenses, or damages Landlord incurs by reason thereof, in the event that any such Encumbrance is not removed as a lien on the Landlord's fee simple interest in the Property within thirty (30) days after Tenant receives written notice from Landlord demanding removal of such Encumbrance, and in which case such Encumbrance shall be deemed a Tenant Event of Default. Tenant shall promptly take all steps required to promptly remove or otherwise resolve all such Encumbrances of which Tenant has been given actual notice, without waiver of Tenant's right to contest Encumbrances pursuant to Paragraph 12.1 hereof.

Alternatively to the 255.05 payment and performance bond, Tenant may: (1) provide the Landlord with an alternate form of security in the form of a certified check that the Landlord may deposit in a County-controlled bank account or an irrevocable letter of credit in a form and for an amount that is acceptable to the Landlord ("Alternative Security"), to remain in place until evidence reasonably satisfactory to the Landlord is submitted to demonstrate all contractors performing improvements on the Project have been paid and the Project has obtained Completion of Construction, and such Alternative Security shall meet the specifications set forth below; (2) require that each prime contractor hired by Tenant to perform work and/or make improvements on the Project shall provide a performance bond with a surety insurer authorized to do business in the State of Florida as a surety in an amount not less than 100% of his/her/its respective contract in a form acceptable to the Landlord to insure that his/her construction work shall be completed by the contractor or, on its default, his/her surety and shall name the Landlord as an additional obligee and shall meet the specifications set forth below; and (3) require that each prime contractor hired by Tenant to perform work and/or make improvements on the Project shall provide a payment bond with a surety insurer authorized to do business in the State of Florida as a surety in an amount not less than 100% of his/her/its respective contract in a form acceptable to the Landlord to secure the completion of such prime contractor's work free from all liens and claims of sub-contractors, mechanics, laborers and material men under such prime contractor and shall name the Landlord as an additional obligee and payee. The Alternative Security and the bond(s) shall comply with the requirements of Section 255.05.

If Tenant provides the Alternative Security, Tenant shall also comply with the following obligations:

(a) Tenant shall obtain a Conditional Release of Lien from each of its prime contractor(s) at the time each progress payment is made.

(b) Tenant shall obtain an Unconditional Release of Lien from each of its prime contractor(s) within five (5) business days after payment is made.

(c) In the event Tenant's contractor(s) claim non-payment(s), and/or fail to timely provide Unconditional Releases of Lien within the timeframe stipulated under these terms, Tenant reserves the right but not the obligation to:

(i) Reduce the amount(s) in question from the cash deposit(s) or security posted until the claim(s) is/are liquidated; or

(ii) Appropriate funds for such payment(s) from any cash deposit(s) or security posted and make payment(s) directly to the claimant(s).

In either case, Tenant shall within ten (10) business days of the Landlord's notification to deposit an amount equal to the reduced/disbursed amount in the Landlord's escrow account or increase the Alternative Security to replenish the original amount of the cash deposit(s) or security posted.

The rights of Landlord under all payment and performance bonds shall be subordinate to the rights of any lender providing construction financing to Tenant.

1.6 Discontinued Use of Station or System.

Landlord covenants and agrees with Tenant that Landlord will not discontinue or cease the operation of the Station, or reduce the use of the Station in any material manner, for a period of thirty (30) years commencing on the Commencement Date. In the event Landlord, directly or indirectly, during the first thirty (30) years of the Term, discontinues or ceases the operation of the Station, or changes the use or operation of the Station in any way that has (or would reasonably be expected to have) a materially adverse financial impact on the Project despite such covenant and agreement, then Tenant shall be entitled to modifications to this Lease to account for the materially adverse financial impact of such change(s) upon the Project. Such proposed modifications may include, without limitation, proposed adjustment to Participation Rent, and in addition (if construction of the Project shall not have been completed), proposed modifications to the specifications of the Project including number of residential units and amount of parking. Tenant shall notify Landlord that Tenant is entitled to modifications to this Lease under this Section within eighteen (18) months following the date of the discontinuance, cessation or material reduction in use of the Station, and Landlord and Tenant shall negotiate in good faith to reach agreement on modifications to this Lease to account for the materially adverse financial impact of such change(s) upon the Project. If Tenant does not initiate such negotiations within said 18-month period, the right to do so shall be deemed waived. If Landlord and Tenant are unable to reach agreement on modifications to the Lease within sixty (60) days following Tenant's initiation of the negotiation procedure contemplated hereunder, then (i) either party may request the expert resolution process set forth below to resolve any dispute with respect to the proposed modifications to this Lease to account for the materially adverse financial impact of such changes upon the Project or, alternatively, (ii) Tenant shall have the right, in its sole discretion, to terminate this Lease and its obligations hereunder by giving written notice to Landlord at any time after the expiration of said 60-day period, and any obligations of Tenant under this Lease (including without limitation the obligation to pay Rent) shall cease and abate as of the date of the giving of such notice, and in such event, this Lease shall terminate on the date set forth in such notice, or if no such date is provided, then on the fifteenth (15th) day following Landlord's receipt of notice of termination. Any deadlines under this Lease shall be tolled during periods of negotiation and dispute resolution proceedings under this Section. If either party requests the expert resolution process under clause (i) above, the parties shall have a period of thirty (30) days from such request to mutually agree on one expert who, at a minimum, must have at least ten (10) years of relevant experience in the subject matter in dispute, to resolve same. If the parties fail to agree, each party shall have an additional thirty (30) days to select an individual meeting the same minimum qualifications set forth above, and the two (2) experts selected shall select a third expert who, together with the two (2) experts selected by the parties, shall resolve the dispute in question. If any party fails to make its respective selection of an expert within the additional 30-day period provided for above, then the remaining party's selection shall select the additional expert and the two (2) experts shall resolve the dispute in question. Once the expert(s) have been selected in accordance with this provision, the expert(s) shall render a decision on the dispute within a period of thirty (30) days.

ARTICLE 2.

DEFINITION OF CERTAIN TERMS

2.1 **Definitions**.

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

(a) 15% Design Plans shall have the meaning ascribed to such term in Paragraph 4.5(b).

(b) 85% Design Plans shall have the meaning ascribed to such term in Paragraph 4.5(c).

(c) Affordable Units shall mean dwelling units affordable to natural persons or families whose total annual household income does not exceed 60 percent of the Miami-Dade County area median income, adjusted for household size.

(d) Alternative Security shall have the meaning ascribed to such term in Paragraph 1.5.

(e) APP shall have the meaning ascribed to such term in Paragraph 4.16.

(f) APC shall have the meaning ascribed to such term in Paragraph 17.1.

(g) Board shall mean the Board of County Commissioners of Miami-Dade County, Florida.

(h) Building(s) shall mean the buildings or structures (as the context indicates) and other improvements to be erected on, above, or below the Demised Premises or a portion thereof in accordance with Article 4 below.

(i) 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.

(j) Claims shall have the meaning ascribed to such term in Paragraph 7.1.

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

(l) Commencement Date shall have the meaning ascribed to such term in Paragraph 1.2(b).

(m) Commencement Date Confirmation shall have the meaning ascribed to such term in Paragraph 1.2(b).

(n) Commencement of Construction and "commenced construction" when used in connection with construction 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 Property including on site utility, excavation or soil stabilization work, excluding any utility work authorized by Article 1, which in no event shall take place more than thirty (30) days after a Permit for construction of the Project has been issued. In order to meet the definition of "Commencement of Construction" or commenced construction herein, such filing of notice or visible start of work must occur after Tenant has received a Permit for the applicable stage of the Project.

(o) Completion of Construction shall mean the date a Certificate of Occupancy for the Building is issued.

(p) Construction Plans shall consist of final design plans for particular improvements as approved by Miami-Dade County, the drawings and specifications for which are in the format with sufficient detail as required to obtain building permits for such improvements.

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

(r) Day(s) or day(s) shall mean calendar days.

(s) Demised Premises shall have the meaning ascribed to such term in the Recitals.

(t) Department of Cultural Affairs shall have the meaning ascribed to such term in Paragraph 4.16.

(u) Development Agreement shall mean that certain Development Agreement for the Overtown/Historic Lyric Theatre Station of even date herewith by and between Landlord and Tenant, as modified, amended, restated and supplemented from time to time.

(v) Development Concept shall have the meaning ascribed to such term in the Recitals.

(w) DTPW shall have the meaning ascribed to such term in the introductory paragraph of this Lease.

(x) Due Diligence Period shall have the meaning ascribed to such term in Paragraph 1.2(e).

(y) Economic Unavoidable Delay shall mean (i) economic or political conditions or events that result in a significant decline in economic activity that materially impair access to debt or equity markets by developers of development projects in the South Florida real estate market similar to the Project or allow a committed debt or equity participant to terminate its debt or equity commitment, such as a temporary or long term liquidity crisis or major recession, or (ii) duties or other charges imposed as a result of geopolitical actions which result in a material increase in the construction costs for the Project. Tenant acknowledges and agrees that as the date of its execution of this Lease Agreement, current economic conditions do not constitute an Economic Unavoidable Delay under this definition. Tenant shall be entitled to an extension of time because of its inability to meet a time frame or deadline specified in this Lease due to Economic Unavoidable Delay equal to the duration of the Economic Unavoidable Delay, but not to exceed eighteen (18) months in the aggregate, provided that the extension of time due to Economic Unavoidable Delays may be further extended for up to two (2) additional periods of up to six (6) months each, in the reasonable discretion of the DTPW Director or designee (on behalf of the Landlord), upon the written request of the Tenant accompanied by satisfactory evidence that the Economic Unavoidable Delay continues in effect. If a dispute arises between the parties as to whether a condition, event or action constitutes an Economic Unavoidable Delay and/or the duration of the Economic Unavoidable Delay, the parties shall have a period of thirty (30) days from the request of either party to mutually agree on one expert who, at a minimum, must have at least fifteen (15) years of relevant experience in the subject matter that forms the basis of the claim for Economic Unavoidable Delay, to resolve such dispute. If the parties fail to agree, each party shall have an additional thirty (30) days to select an individual meeting the same minimum qualifications set forth above, and the two (2) experts selected shall select a third expert who, together with the two (2) experts selected by the parties, shall resolve the dispute in question. If any party fails to make its respective selection of an expert within the additional 30-day period provided for above, then the remaining party's selection shall select the additional expert and the two (2) experts shall resolve the dispute in question. Once the expert(s) have been selected in accordance with this provision, the expert(s) shall render a decision on the dispute within a period of thirty (30) days. Tenant's right to claim Economic Unavoidable Delay shall cease on the date Tenant has closed on its financing for construction of the Project. Further, if the Commencement of Construction of the Project is delayed due to an Economic Unavoidable Delay, Tenant and Landlord shall work together in good faith to implement potential community outreach or other benefits to the residents of the neighborhood surrounding the Demised Premises to the extent reasonably feasible.

(z) <u>Encumbrances</u> shall have the meaning ascribed to such term in Paragraph 1.5.

(aa) <u>Event(s) of Default</u> shall have the meaning ascribed to such term in Article 19 herein.

(bb) <u>Execution Date</u> shall have the meaning ascribed to such term in Paragraph 1.2(a).

(cc) <u>Fair Market Value</u> 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.

(dd) <u>Final Design Plans</u> shall mean the final Plans and Specifications.

(ee) FTA shall have the meaning ascribed to such term in Paragraph 1.3.

(ff) Gross Revenue shall have the meaning ascribed to such term in Paragraph 3.4.

(gg) Guaranteed Rent shall mean the amount of $5,515,719.00, reduced by any amount thereof used to pay Improvement Costs under the Development Agreement. If all Initial Rent has been used to pay Improvement Costs, thereafter the Guaranteed Rent shall be reduced on a dollar-for-dollar basis by additional amounts used to pay Improvement Costs under the Development Agreement.

(hh) 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.

(ii) Improvement Costs shall have the meaning ascribed to such term in the Development Agreement.

(jj) Improvements shall mean the Buildings, 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 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.

(kk) Initial Rent shall mean the amount of $200,000.00, reduced by any amount thereof used to pay Improvement Costs under the Development Agreement. The Initial Rent shall be reduced on a dollar-for-dollar basis by amounts used to pay Improvement Costs under the Development Agreement until fully applied.

(ll) Landlord shall mean, on the Commencement Date, Miami-Dade County, a political subdivision of the State of Florida, through the Department of Transportation and Public Works. Thereafter, “Landlord” shall mean the fee simple owner of the Property.

(mm) Law and Ordinance or Laws and 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.

(nn) Lease or Lease Agreement shall mean this Lease and all amendments, supplements, or addenda hereof.

(oo) Leasehold Mortgage or 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.

(pp) Leasehold Mortgagee shall mean a lender holding a Leasehold Mortgage.

(qq) Lease Year shall mean (except for the first Lease Year) each separate and consecutive period of twelve (12) full calendar months during the term hereof from January 1 through December 31 until the expiration of the Term of the Lease. The first Lease Year shall be the period from the Commencement Date to the last day of the year in which the Commencement Date occurs.

(rr) Lender shall mean a lender that is a Leasehold Mortgagee and/or Mezzanine Financing Source.

(ss) Major Alterations shall mean structural alterations or alterations to the exterior of the Buildings which exceed $5,000,000 in cost for any one alteration. The threshold amount for Major Alterations of $5,000,000 shall be increased on the fifth (5th) anniversary of the Commencement Date and each fifth (5th) anniversary thereafter by adding $1,000,000 to such amount.

(tt) Material Change shall mean a change to the Plans and Specifications which results in the Project no longer being consistent with the Development Concept which shall be subject to the review and approval of the Landlord prior to commencing construction, which approval will not be unreasonably withheld, conditioned, or delayed.

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

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

(ww) Mortgagee Cure Period shall have the meaning ascribed to such term in Paragraph 17.7.

(xx) Participation Rent shall have the meaning ascribed to such term in Paragraph 3.3 herein.

(yy) 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, HVAC, sidewalk, curbs, gutters, drainage structures, paving and the like.

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

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

(bbb) Procedures Manual shall have the meaning ascribed to such term in Paragraph 4.16.

(ccc) Project shall mean the overall development of the Project contemplated by the response by Tenant to the Request for Proposals No. RFP-00700, dated March 23, 2018, and incorporated into this Agreement by reference ("Proposal"), as such proposed development may be amended and/or revised from time to time.

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

(eee) Property shall have the meaning ascribed to such term in the Recitals.

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

(ggg) Qualified Assignee shall mean any individual, corporation, limited liability company, general or limited partnership, joint venture or other entity that is a registered vendor with the County as contemplated by Paragraph 27.1 of this Lease and is not otherwise prohibited by legislation then in effect from doing business with the County.

(hhh) Rent shall collectively mean Initial Rent, Guaranteed Rent and Participation Rent.

(iii) Request for Proposals shall have the meaning ascribed to such term in Paragraph 23.19.

(jjj) Stabilized Occupancy shall mean the earlier of (i) one (1) year following Completion of Construction, or (ii) the date upon which the Project has achieved an occupancy level of not less than ninety percent (90%).

(kkk) Station shall mean the existing Overtown/Historic Lyric Theatre Metrorail Station portion of the System.

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

(mmm) Sublease shall mean any lease or other instrument pursuant to which all or a portion of the Demised Premises is subleased or sub-subleased, including but not limited to a grant by Tenant to a Sublessee for the right to develop a specific portion of the Project or the use or occupancy of space within the Demised Premises.

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

(ooo) 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.

(ppp) System-Related Improvements shall mean the above and below surface improvements, which are outside of the Demised Premises, to be erected on or near the System as part of the Project in accordance with the Development Agreement.

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

(rrr) Taking Authority shall have the meaning ascribed to such term in Paragraph 18.5.

(sss) Tenant shall mean, on the Commencement Date, Block 45, LLC, a Florida limited liability company. Thereafter, "Tenant" shall mean the owner(s) at the time in question of the Tenant's interest under this Lease, and if Tenant, or any successor to its interest hereunder ceases to have any interest in the leasehold estate hereby created, whether by reason of assignment, transfer or sale of Tenant's interest hereunder, the assignor, transferor or seller shall, subject to the provisions of Paragraph 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, Tenant on the Commencement Date shall remain liable for the representations and warranties of Paragraph 25.2.

(ttt) Term shall have the meaning given to such term in Paragraph 1.2(c).

(uuu) Unavoidable Delays are delays beyond the control of a party required to perform, such as (but not limited to) delays due to strikes; slowdowns; lockouts; acts of God; floods; fires; unusually severe weather conditions (including named storms impacting Miami-Dade County); casualty; any act, neglect or failure to perform of or by the Landlord where performance is required or contemplated by this Lease; war; enemy action; civil disturbance; acts of terrorism; sabotage; restraint by court or public authority; litigation or administrative challenges by third parties to the execution or performance of this Lease or the procedures leading to its execution; inability to obtain labor or materials; delays in settling insurance claims; moratoriums or other delays relating to Laws and Ordinances. The obligated party shall be entitled to an extension of time because of its inability to meet a time frame or deadline specified in this Lease where such inability is caused by an Unavoidable Delay, provided that such party shall, within thirty (30) days after it has become aware of such Unavoidable Delay, give notice to the other party in writing of the causes thereof and the anticipated time extension necessary to perform. Neither party shall be liable for loss or damage or deemed to be in default hereof due to any such Unavoidable Delay(s), provided that the party has notified the other as specified in the preceding sentence and further provided that such Unavoidable Delay did not result from the fault, negligence or failure to act of the party claiming the delay. Failure to notify a party of the existence of Unavoidable Delays within the thirty (30) days of its discovery by a party shall not void the Unavoidable Delays, but the time period between the expiration of the thirty (30) day 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.

(vvv) Unforeseen Conditions shall have the meaning ascribed to such term in Paragraph 1.2(e).

(www) Work shall have the meaning ascribed to such term in Paragraph 16.1.

(xxx) Workforce Units shall mean dwelling units affordable to natural persons or families whose total annual household income is between 60 percent and 140 percent of the Miami-Dade County area median income, adjusted for household size.

ARTICLE 3.

RENT

3.1 Initial Rent.

The Initial Rent shall be paid by Tenant to Landlord within thirty (30) days following Completion of Construction (as defined in the Development Agreement) of all Station-Related Improvements under the Development Agreement, issuance of a final certificate of occupancy for the Station-Related Improvements and payment of all Improvement Costs.

3.2 Guaranteed Rent

Guaranteed Rent shall be paid by Tenant to Landlord within thirty (30) days following Completion of Construction (as defined in the Development Agreement) of all Station-Related Improvements under the Development Agreement, issuance of a final certificate of occupancy for the Station-Related Improvements and payment of all Improvement Costs.

3.3 Participation Rent.

Participation Rent shall be a percentage of Gross Revenue, as defined in Paragraph 3.4 below, generated by the Project.

“Participation Rent” to be paid by Tenant to Landlord shall be equal to three and one-half (3½%) percent of the Gross Revenue per annum accruing following Stabilized Occupancy. The Tenant’s Participation Rent projections per annum are attached to this Lease, as Exhibit C. The Tenant forecasts initial annual Participation Rent to be paid by the Tenant to the Landlord to be Five Hundred Twenty-Two Thousand Nine Hundred Six and No/100 Dollars ($522,906.00). The parties acknowledge and understand that the figures included in Exhibit C, are financial projections only and will likely vary from actual Participation Rent paid to Landlord.

Annually, Tenant shall prepare and submit to Landlord a statement of Gross Revenue for the Project in compliance with Generally Accepted Accounting Principles and the provisions of this Lease. Such statement shall be certified as being accurate by an independent certified public accountant selected by Tenant. Following Stabilized Occupancy, Participation Rent shall accrue and shall be paid annually by Tenant to Landlord within one hundred twenty (120) days after the end of each Lease Year. Participation Rent may be used to pay Improvement Costs pursuant to the terms of the Development Agreement (as and to the extent contemplated therein) until all payment obligations of Landlord under the Development Agreement are satisfied, and then the balance remaining (if any) shall be released to Landlord.

3.4 Gross Revenue.

"Gross Revenue" shall mean all monies generated and received, directly or indirectly, by the Tenant under this Lease for the use or occupancy of any portion of the Project. Gross Revenue shall include, but is not limited to, (a) monies received for the occupancy of space within any portion of the Demised Premises (including any parking spaces), (b) monies realized in lieu of rents pursuant to claims asserted under business interruption insurance or rental insurance proceeds, (c) monies received as a result of granting certain rights to a third party including granting the right to install and/or use equipment in or on any part of the Project and/or Improvements, such as advertising or directional signage and antennae, (d) monies received by the Tenant for the purpose of providing amenities, insurance coverage, security services, maintenance of common areas, equipment and facilities and replacement, betterments and/or additions to Improvements, equipment and facilities located on the Demised Premises but not reimbursements received by Tenant for such services, amenities and fees advanced by Tenant on behalf of its Sublessees or other entity that may be construed to be pass-through expenses; i.e., expenses for goods and services provided to Sublessees. If any portion of the Project is subleased to a Sublessee under a "master sublease" pursuant to which the Sublessee further subleases the premises to one or more sub-Sublessees, then the dollar value of the monies received by such Sublessee under such master sublease shall be included in Gross Revenue hereunder rather than the monies remitted by such Sublessee to Tenant. Nothing contained herein shall be construed to mean that any entity other than the Tenant shall pay Rent to Landlord.

The following are excluded from Gross Revenue:

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

(b) Tenant improvement dollars which Tenant allocates to Sublessees or pursuant to one or more Subleases within the Project; and

(c) Payments made to Tenant by an insurer or by a Sublessee for casualty losses or damages sustained to the Demised Premises;

(d) Any receipt of capital contributions or equity payments, any receipt of loan proceeds whether secured or unsecured, any sales or use tax on rentals, any refunds of sales tax, income tax or other tax refunds, abatements or rebates; and any other monies that are not in the nature of income or revenues from operations in the ordinary course of business; and

(e) Any monies received by Tenant from sales of development rights pursuant to Section 3.8 or sales of condominiums pursuant to Section 3.9, which shall be subject to the terms of those Sections.

3.5 Landlord's Right to Verify and Audit Information Submitted.

Landlord may, during normal business hours and upon ten (10) business days written notice to Tenant, inspect, take extracts from and make copies of Tenant's books and records pertaining to the Demised Premises for the purpose of verifying any statement submitted to Landlord as required by this Lease. Landlord may, at its option and at its sole expense, conduct or cause to be conducted an audit to verify the Gross Revenue received by Tenant from the operation of the Demised Premises for any Lease Year or to verify any payments or rents under this Lease. If Landlord's audit shall disclose that an amount is due to Landlord in excess of the amount of Participation Rent Tenant had previously or should have paid to Landlord for such Lease Year and Tenant does not dispute such conclusion, then such amount, shall be paid by Tenant within ten (10) business days after receipt by Tenant of a written notice from Landlord setting forth the amount due and the calculations used in making the determination (or within ten (10 business days after dispute by Tenant is resolved as set forth below). If the amount due Landlord under the preceding sentence exceeds the amount Tenant had previously or should have paid to Landlord for such Lease Year by five percent (5%) or more, the cost of such audit shall be at Tenant's expense. If Landlord's audit shall disclose that Landlord has been overpaid for such Lease Year, Landlord shall reimburse Tenant for such overpayment within thirty (30) days of such determination. Tenant's books and records regarding the Demised Premises shall be maintained in Miami-Dade County, Florida, or such other location approved by Landlord in writing. Landlord's right to audit shall continue for a period of three (3) years after receipt of any statement or report by Landlord with respect to Participation Rent from Tenant. In the event that Landlord's examination reveals that an error has been made in the Tenant's determination of Rent resulting in an underpayment by Tenant and Tenant disagrees with such conclusion, then Tenant shall have sixty (60) days to obtain a review by a certified public accountant of its choice to determine the payment of Participation Rent that was due to Landlord. In the event Tenant's accountant and Landlord's reviewer are unable to reconcile their reviews of the Tenant's books and records, then both Tenant's accountant and Landlord's reviewer shall mutually agree upon an accountant to review Tenant's books and records as necessary to settle the dispute, the initial cost of which shall be borne equally by both parties, and the determination by the independent accountant regarding whether or not the Tenant owes any sum to the Landlord shall be conclusive.

3.6 Late Payments.

In the event that any payment of Rent due Landlord remains unpaid for a period of five (5) days beyond it due date, a late charge of one and one-half percent (1½ %) per month of the delinquent amount shall be added to such delinquent Rent payment for each month that the payment remains delinquent, beginning on the date of Landlord's notice to the Tenant of such delinquency. Late charges shall only be added to delinquent Rent payments. In no event shall such late charge(s) be added to previous unpaid late charges or exceed the amount permissible by applicable law. Underpayments by the Tenant identified in accordance with Paragraph 3.5 shall not be considered late payments under this Paragraph 3.6 and are not subject to the late charges identified herein unless Tenant fails to pay any amounts due under Paragraph 3.5 as and when required.

3.7 Approved Restriction Adjustments.

Tenant acknowledges that it has performed reasonable due diligence regarding development of the Demised Premises and that, based upon that due diligence, has proposed to develop the Project in substantial accordance with the Development Concept. Landlord and Tenant acknowledge that the Initial Rent, Guaranteed Rent and Participation Rent established in this Lease were based on the understanding that Tenant would be able to develop the Project in substantial accordance with the Development Concept. If, due to Laws and Ordinances enacted subsequent to the award of this Lease, the Tenant is not able to build the Project as described in the Development Concept following commercially reasonable efforts to cure such inability, then, Tenant shall make a proposal to Landlord for modifications to this Lease, which may include, without limitation, proposed modifications to the Development Concept and/or the provisions hereof for payment of Rent. Landlord shall consider such proposal in good faith. If Landlord and Tenant are unable to reach agreement regarding any such proposed modifications to this Lease, then, in addition to any other rights Tenant has hereunder, 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 or sixty (60) days after Landlord and Tenant terminate negotiations for such modification of this Lease, whichever is later, the obligation 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 fifteen (15) days following the Landlord's receipt of notice of termination, at which time Landlord and Tenant shall be released from all further obligations under this Lease, except for those obligations which are specifically stated herein to survive such termination.

3.8 Payment if Right to Develop Demised Premises is Sold, Assigned or Transferred

In the event Tenant sells, assigns or transfers the right under this Lease to develop any portion of the Project, in contrast to an already developed portion, and as a result thereof Tenant retains less than a 25% interest in such portion of the Project, then in such event, Tenant shall pay Landlord 5% of whatever monies Tenant receives for such sale, assignment or transfer, less a proportionate share of the hard costs expended by Tenant for infrastructure actually placed in the ground to the extent such infrastructure actually benefitted such portion. Tenant shall pay Landlord's share of any monies Tenant receives within thirty (30) calendar days of Tenant's receipt of same. The payments to Landlord under this Paragraph shall be in addition to and with no offsets for any other rents or payments to which Landlord is entitled under any other provisions of this Lease.

3.9 Payment Submission of Demised Premises to Condominium Form of Ownership

Tenant shall have the right, from time to time, to submit all or any portion of the Demised Premises to a condominium or other collective form of ownership. In the event any component of the Project is sold by Tenant as a condominium, or through another collective ownership structure, to an entity that is not affiliated with or controlled by the Tenant, the Landlord shall receive three and one-half percent (3½%) of the net proceeds received by the Tenant from any and all such sales. Notwithstanding anything in the Lease to the contrary, if Tenant elects to submit all or any portion of the Demised Premises to condominium or other collective form of ownership, the parties shall negotiate in good faith reasonable modifications to this Lease to implement such condominium or collective ownership regime. No additional payments shall be required under this section by reason of any transfer that results from a foreclosure of a Leasehold Mortgage or security for a Mezzanine Financing or any deed or assignment in lieu thereof or any other enforcement action thereunder or any transfer to a purchaser at foreclosure under any circumstances.

ARTICLE 4.

DEVELOPMENT OF DEMISED PREMISES AND CONSTRUCTION OF BUILDINGS

4.1 Demised Premises Uses.

(a) Tenant and Landlord agree, for themselves and their successors and assigns, to devote the Demised Premises to the uses specified or contemplated in this Lease, or other or additional uses to which the parties have in good faith agreed. Such uses shall assure the level of quality and character of the Demised Premises that is similar to comparable projects of this nature in Miami-Dade County, Florida.

(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 at all times during the Term of this Lease, Tenant will use reasonable efforts to create a development on the Demised Premises which (i) creates a mixed use development with a quality of character and operation consistent with that of similar, comparable projects of this nature planned or under construction in the general vicinity of the Demised Premises and (ii) contributes to a walkable community which supports enhanced ridership and usage of the System.

(c) Tenant shall establish such reasonable rules and regulations governing the use and operation by Sublessees of their premises as Tenant shall deem necessary or desirable in order to assure the level or quality and character of operation of the Demised Premises required herein; and Tenant shall use reasonable efforts to enforce such rules and regulations.

4.2 Development of Property.

The Landlord and Tenant have agreed that the Tenant shall construct the Project on the Property. In furtherance thereof and the purposes of this Lease, Tenant shall (a) pursue design, development and construction of the Project in accordance with the terms and conditions of this Lease, and in a commercially reasonable manner, subject to Unavoidable Delay and Economic Unavoidable Delay, and (b) use commercially reasonable efforts to achieve Completion of Construction within forty-eight (48) months following the date the building Permit is issued for construction of the

Project in accordance with the Final Design Plans, subject to Unavoidable Delay. Upon Tenant's request, the deadline for Completion of Construction (as extended by Unavoidable Delay) may be extended with Landlord's consent, which consent shall not be unreasonably withheld, conditioned or delayed, provided that Tenant is using commercially reasonable efforts to construct the Project and achieve Completion of Construction in accordance with this Lease. Landlord's failure to respond to Tenant's request for an extension hereunder within fifteen (15) days following such request shall be deemed consent.

4.3 Development Rights.

(a) Landlord Joinder. Tenant shall have the right to develop the Demised Premises and to construct the Building(s) required in connection with such development, subject to the terms and conditions of this Lease. In connection with this contemplated development, Landlord will join in such plats, covenants in lieu of unity of title. easements, restrictive covenants, easement vacations, permit applications, or modifications and such other documents, including but not limited to non-disturbance and attornment agreements as provided in this Lease, as may be necessary for Tenant to secure financing, develop and use the Demised Premises in accordance with the Preliminary Plans and/or the Proposal and in a manner otherwise permitted hereunder, provided that such joinder by Landlord shall be at no cost to Landlord other than its costs of review, and also provided that the location, terms, and form of any such easements or other documents shall be reasonably acceptable to Landlord, which acceptance shall not be unreasonably withheld or delayed. Landlord shall cooperate with Tenant, at no expense to Landlord, in granting or providing to Tenant such temporary easements, licenses, street closures and rights for construction and staging over and across property owned or controlled by Landlord and adjacent to, or in reasonable proximity to, the Property for use during the construction of the Project and the System-Related Improvements.

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

4.4 Conformity of Plans.

The Preliminary Plans, the Construction Plans and all work by Tenant with respect to the Demised Premises and to Tenant's construction of Buildings thereon shall be in conformity with this Lease, applicable building codes, and all other applicable federal, state, county and local laws and regulations, including applicable provisions of the Miami-Dade Transit Adjacent Construction Safety Manual or its replacement. Such provisions shall only be applicable in the event that any construction or construction related activities (use of equipment, storage of materials, etc.) are being conducted within 30 feet of the System.

4.5 Design Plans; DTPW Review and Approval Process.

(a) Tenant shall submit design plans to DTPW for review, coordination and approval at the different stages of the Project. For each submittal, Tenant shall submit three (3) full-sized or half-sized sets of prints and an electronic copy with the date clearly noted on each copy.

(b) At 15% of the overall design completion of the Project, which shall occur no later than sixty (60) days from the Execution Date, Tenant shall submit conceptual site layouts and plans, sections, and elevations (collectively known as the "15% Design Plans") to DTPW for review in conformity with applicable building codes, federal, state, county and local laws and regulations.

(c) At 85% design completion of the Project, which shall occur no later than ninety (90) days from the date of DTPW's approval of the 15% Design Plans, Tenant shall submit drawings, conceptual site layouts and plans, sections, elevations and pertinent documentation (collectively known as the "85% Design Plans") to DTPW for review.

(d) At 100% design completion of the Project, which shall occur no later than eight (8) months from DTPW's approval of the 85% Design Plans, Tenant shall submit to DTPW the Final Design Plans for the Project. DTPW shall review these plans to ensure that all previous DTPW comments to which the parties have agreed have been incorporated therein. However, Tenant may request reconsideration of any comments made by DTPW.

(e) Upon receipt of each of the above-mentioned submittals, DTPW shall review same and shall, within thirty (30) days after receipt thereof, advise Tenant in writing of its approval or disapproval, setting forth in detail its reasons for any disapproval. In the event of a disapproval, Tenant shall, within thirty (30) days after the date Tenant receives such disapproval, make those changes necessary to meet DTPW's stated grounds for disapproval or request reconsideration of such comments and DTPW shall respond to such request for reconsideration within twenty (20) days after receipt of such request. Within thirty (30) days of DTPW's response to such request for reconsideration, Tenant shall, if necessary, resubmit such altered plans to DTPW. Any resubmission shall be subject to review and approval by DTPW, in accordance with the procedure hereinabove provided for an original submission, except that DTPW shall have twenty (20) days to respond to resubmissions in lieu of thirty (30) days, until the same shall receive final approval by DTPW. DTPW and Tenant shall in good faith attempt to resolve any disputes concerning the Plans and Specifications in an expeditious manner. If DTPW fails to respond to any submission or request for reconsideration by Tenant hereunder within the time period required herein for such response, Tenant's submittals or requests shall be deemed approved. In addition, if DTPW shall have approved any aspect of the Preliminary Plans (and, thereafter, Plans and Specifications) in any submittal under this provision, and the revised Plans and Specifications has not affected the earlier-approved aspect, DTPW shall not have the right to disapprove that which it approved earlier, absent a finding that the aspect of the Plans and Specifications fails to comply with applicable Laws and Ordinances. Once Plans and Specifications, including the Final Design Plans and any Material Change, are approved or deemed approved by the parties, such plans and the Project depicted therein shall be deemed in compliance with the terms and conditions of this Lease and shall prevail over any contrary or conflicting provision set forth herein.

(f) Upon the approval of the Final Design Plans for the Project, such design, subject to changes permitted by this Lease, shall serve as the basis for the Construction Plans for the Project. DTPW's approval shall be in writing (unless deemed approved hereunder, in which case no writing shall be required) and each party shall have a set of plans signed by all parties as approved or deemed approved. In the event any Material Change occurs after approval of the Final Design Plan, then Tenant must resubmit the changed portion of the construction plans for DTPW's reasonable approval (unless the change is required by the City of Miami or any of its departments or any Miami-Dade County department or any other governmental or quasi-governmental authority having jurisdiction or permitting authority as part of the regulatory or permitting process for the Project (or any portion thereof), in which case DTPW's approval shall not be withheld).

4.6 Construction Plans.

Tenant shall give Landlord final site and elevation plans prior to submittal for the building permits. All Construction Plans must be in conformity with the Final Design Plans approved by DTPW and the procedure described above in this Lease. Tenant shall submit Construction Plans for the Project to the City of Miami (or other government authority have jurisdiction over the issuance of building or other Permits) no later than thirty (30) days after the Final Design Plans for the Project are approved by DTPW.

4.7 Tenant Obligations.

DTPW approval of any concept plans pursuant to this Article 4 shall not relieve Tenant of its obligations under law to file such plans with any department of the County, the City of Miami, or any other governmental authority having jurisdiction over the issuance of building or other Permits and to use commercially reasonable diligence as necessary to obtain issuance of such Permits in an expeditious manner. Landlord agrees to cooperate with Tenant in connection with the obtaining of such approvals and Permits. Tenant acknowledges that any approval given by DTPW, as Landlord pursuant to this Article, shall not constitute an opinion or agreement by DTPW that the plans are structurally sufficient or in compliance with any Laws or Ordinances, codes or other applicable regulations, and no such approval shall impose any liability upon DTPW. Tenant shall use reasonable efforts to include a provision in each Leasehold Mortgage which will vest DTPW with all right, title and interest in the Construction Plans and specifications financed thereby, should an Event of Default occur, and the affected Leasehold Mortgagee does not elect to construct and complete the Buildings.

4.8 Construction Costs.

Landlord shall not be responsible for any costs or expenses of construction of the Buildings and Improvements, except as otherwise provided herein or agreed to by the parties.

4.9 Progress of Project.

Beginning with the Execution Date and terminating upon Completion of Construction, Tenant shall submit monthly written reports to DTPW of the progress of Tenant with respect to development and construction of the Project.

4.10 Property Conditions.

Tenant, by executing this Agreement, represents it has visited the Property, is familiar with local conditions under which the construction and development is to be performed, 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 Buildings. Tenant shall restore the site to a condition substantially similar to its pre-testing condition after all testing, and shall provide the Landlord with a copy of all test results. The Landlord makes no warranty as to soil and subsurface conditions. Subject to Tenant's rights under Paragraph 1.2, Tenant shall not be entitled to any adjustment of rental payments or of any applicable time frame or deadline under this Lease in the event of any abnormal subsurface conditions unless the subsurface conditions are so unusual that they could not have reasonably been anticipated, and in such event, time periods and the commencement of Rent shall be extended by the reasonable time necessary to accommodate redesign and lengthened construction schedules resulting from that event.

4.11 Ownership of Improvements.

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

4.12 Connection of Buildings to Utilities.

Tenant, at its sole cost and expense, shall install or cause to be installed all necessary connections between the Buildings constructed or erected by it on the Demised Premises, and the water, sanitary and storm drain mains and mechanical and electrical conduits and other utilities, whether or not owned by Landlord. Tenant shall pay for the additional cost, if any, of locating and installing new facilities for sewer, water, electrical, and other utilities as needed to service the Demised Premises and for any extension, relocation and/or upgrading of utilities including utilities serving County facilities.

Tenant's obligations hereunder shall be subject to Landlord's express obligation hereunder to disclose in writing (and accompanied by plats, surveys, legal descriptions or sketches of surveys to the extent available and known) the location of all recorded or unrecorded easements or licenses affecting the Demised Premises, which disclosure shall be made no later than the Execution Date.

4.13 Connection Rights.

Landlord hereby grants to Tenant, commencing with the Board's approval of this Lease, and continuing during and throughout the Term, the non-exclusive right, at the Tenant's expense, to construct utility infrastructure and connections and to tie-into existing infrastructure and utility connections serving the Property, all as to be specified in the Construction Plans. However, any connections to existing infrastructure and/or utilities must also receive the prior written approval of the owner of, or governmental entity having authority over, such infrastructure and/or utility.

4.14 Off-Site Improvements.

Any off-site improvements required to be paid or contributed as a result of Tenant's development of the Property shall be paid or contributed by Tenant or third-parties to which Tenant delegates such responsibility. Tenant shall have the right and opportunity to perform its due diligence with respect to off-site improvements required to implement the Project, and Tenant may terminate this Lease, in the event that such off-site improvements result in an increase of more than ten (10%) percent of the total development cost for the Project.

4.15 Damages and/or Service Interruptions.

If, at any time, activities undertaken by or on behalf of the Tenant or authorized by the Tenant, cause any damage to County property or facilities or cause disruption or interruption to normal County operations, the Tenant agrees to pay all costs incurred by the County to repair such damage and to mitigate such impacts to operations, including providing replacement and/or alternative services as a result of such service disruptions or interruptions.

Additionally, the County shall have the right to require the implementation of safety measures if it determines in its reasonable discretion, that, as a result of activities undertaken by or on behalf of the Tenant or authorized by the Tenant, such safety measures are necessary to safeguard County property, facilities, operations, employees, patrons and/or the general public and Tenant shall pay all costs incurred in the implementation of such safety measures.

For example, if cranes are used during construction and the County determines that the operation of the cranes may cause damage to County facilities or endanger employees and/or patrons, it may require the use of "spotters" to coordinate crane activities and Tenant shall pay all costs incurred by the County in providing "spotters".

The County will notify the Tenant of all such costs incurred and provide an accounting of those costs. Tenant shall pay all such costs within thirty (30) days of notification by County. Such payments shall be subject to the provisions of Paragraph 3.6, Late Payments.

4.16 Art in Public Places.

This Project is subject to the Art in Public Places ("APP") provisions in Section 2.11.15 of the Code and Administrative Order 3-11, as managed by the Miami-Dade County Department of Cultural Affairs ("Department of Cultural Affairs") pursuant to Procedure 358 in the Miami-Dade County Procedures Manual ("Procedures Manual"). The Tenant shall budget 1.5% of the Project costs for all development on County land (as outlined in the Procedures Manual) for the implementation of the APP program. The Tenant is required to work collaboratively with the Department of Cultural Affairs on the implementation of the APP program pursuant to the requirements of said program and as further described or referenced under Exhibit D-1 of this Lease Agreement. The Procedures Manual is attached hereto as Exhibit D.

4.17 System-Related Improvements.

Landlord and DTPW, as Owner, and Tenant, as Developer, are parties to the Development Agreement, which governs the construction of certain System-Related Improvements by Tenant that are intended to promote ridership and usage of the System by the residents and visitors of the Property. All such improvements shall be designed, constructed and paid for in accordance with the terms and conditions of said Development Agreement.

4.18 Designation of Landlord's Representative.

The County Mayor, or designee, 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, to:

(a) Review and approve documents, plans, applications, lease assignments and requests required or allowed by Tenant to be submitted to Landlord pursuant to this Article and this Lease;

(b) Consent to actions, events, and undertakings by Tenant or extensions of time periods 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 any and all documents on behalf of Landlord necessary or convenient to the foregoing approvals, consents, and appointments;

(e) Execute on behalf of Landlord any and all consents, agreements, amendments, leasehold easements, plats, covenants in lieu of unity of title, applications or other documents, needed to comply with applicable regulatory procedures and to secure financing, permits or other approvals to accomplish the construction of any and all improvements in and refurbishments of the Demised Premises, including, without limitation, those documents described in Paragraphs 4.3, 17.3 and 17.6;

(f) Amend this Lease to correct any typographical or non-material errors, to address revisions or supplements hereto of a non-material nature or to carry out the purposes of this Lease, including, without limitation, modifications contemplated by Paragraphs 1.2(b) and (e), and modifications needed to effectuate or implement a condominium or other collective ownership regime pursuant to Paragraph 3.9;

(g) Execute the Commencement Date Confirmation; and

(h) Execute recognition and non-disturbance agreements and issue estoppel statements as provided elsewhere in this Lease.

4.19 Additional Work.

Landlord and Tenant hereby acknowledge, that if both parties hereto agree, that the Landlord may contract for certain work or services to be provided by Tenant, including but not limited to, construction and maintenance items. Such agreements shall be approved by both parties in writing and such work shall be at the cost of the Landlord and, if the parties hereto agree, may be paid in the form of rent credit.

4.20 Community Business Enterprise Program.

Tenant shall maintain or exceed the level of Small Business Enterprise (SBE) participation originally included in the Proposal.

4.21 Responsible Wages.

The Tenant further acknowledges and agrees that it is required to pay to all workers Responsible Wages, in accordance with Section 2-11.16 of the Code, whichever wage rate schedule is applicable. Tenant shall complete the Fair Wage Affidavit and comply with the requirements of Schedule 4.21 "Building Construction Responsible Wages and Benefits Requirements."

ARTICLE 5.

PAYMENT OF TAXES, ASSESSMENTS

5.1 Tenant's Obligations for Impositions.

Tenant shall pay or cause to be paid, prior to their becoming delinquent, all Impositions on the Demised Premises or any part thereof, or any appurtenance thereto, 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 of this Lease (and provided further, that those installments which are to become due and payable after the expiration of the term of this Lease, but relating to a fiscal period fully included in the term of this Lease, shall be paid in full by Tenant); and

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

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

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 Paragraph 5.1 herein, Tenant may postpone or defer payment of such Imposition if:

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

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

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

ARTICLE 6.

SURRENDER

6.1 Surrender of Demised Premises.

Tenant, on the last day of the Term or upon any earlier termination of this Lease, shall surrender and deliver up the Demised Premises to the possession and use of Landlord without delay and, subject to the provisions of Article 16 and Article 18, in good condition and repair, subject to reasonable wear and tear, acts of God, and casualties.

6.2 **Removal of Personal Property or Fixtures**.

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

6.3 **Rights to Personal Property After Termination or Surrender**.

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

6.4 **Survival**.

The provisions of this Article 6 shall survive any termination or expiration of this Lease.

ARTICLE 7.

INSURANCE AND INDEMNIFICATION

7.1 **Tenant Indemnification of Landlord**.

Subject to the terms of Paragraph 7.3 below, Tenant shall indemnify and hold harmless Landlord and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including reasonable attorneys' fees and costs of defense, which Landlord or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature (collectively, "Claims") arising out of, relating to or resulting from the performance of this Lease by Tenant or its employees, agents, officers, partners, members, principals or contractors, excluding any Claims arising out of, relating to or resulting from the negligence or willful misconduct of Landlord or any of its officers, employees, agents, contractors or instrumentalities or any liability of Landlord to third parties existing at or before the Commencement Date. Tenant shall pay all claims, losses and damages in connection with any matters indemnified hereunder, and shall investigate and defend all claims, suits or actions of any kind or nature in the name of Landlord or its officers, employees, agents or instrumentalities, where applicable, with respect to such matters, including appellate proceedings, and shall pay all costs, judgments, and reasonable attorney's fees which may issue thereon. Tenant expressly understands and agrees that any insurance protection required by this Lease or otherwise provided by Tenant shall in no way limit the responsibility to indemnify, keep and save harmless and defend Landlord or its officers, employees, agents and instrumentalities as herein provided. Nothing contained in this Lease shall limit or preclude Tenant's ability to resolve disputes with any contractors, subcontractors, lienors or other third parties through litigation, arbitration or any other dispute resolution mechanisms as Tenant deems appropriate, notwithstanding that Claims may also be made against Landlord in such disputes.

7.2 Landlord Indemnification of Tenant.

Except as provided in and subject to the limitations and monetary thresholds of Section 768.28 of the Florida Statutes (as amended), Landlord shall indemnify and hold harmless Tenant and its employees, agents, officers, partners, members and principals from any and all liability, losses or damages, including reasonable attorneys' fees and costs of defense, which Tenant or its employees, agents, officers, partners, members or principals may incur as a result of Claims arising out of, relating to or resulting from the performance of this Lease by Landlord or its employees, agents, officers, contractors or instrumentalities, excluding any Claims arising out, relating to or resulting from the negligence or willful misconduct of Tenant or its employees, agents, officers, partners, members, principals or contractors. Landlord shall pay all claims, losses and damages in connection with any matters indemnified hereunder, and shall investigate and defend all claims, suits or actions of any kind or nature in the name of Tenant, where applicable, with respect to such matters, including appellate proceedings, and shall pay all costs, judgments, and reasonable attorney's fees which may issue thereon.

7.3 Waiver of Subrogation.

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

7.4 Required Insurance of Tenant.

Tenant shall furnish to the Internal Services Department / Procurement Management Services, 111 NW 1st Street, Suite 1300, Miami, Florida 33128-1989, Certificate(s) of Insurance which indicate that insurance coverage has been obtained which meets the requirements as outlined below:

<u>DESIGN STAGE</u>

A Worker's Compensation Insurance for all employees of Tenant as required by Florida Statute 440.

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

C Automobile Liability Insurance covering all owned, non-owned and hired vehicles used in connection with the work, in an amount not less than $1,000,000 combined single limit per occurrence for bodily injury and property damage.

D Professional Liability Insurance in the name of Tenant or in the name of the licensed design professional for this project in an amount not less than $1,000,000 per claim.

CONSTRUCTION PHASE

Tenant 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 Tenant as required by Florida Statute 440.

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

C Automobile Liability Insurance covering all owned, non-owned and hired vehicles used in connection with the work, 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 Tenant and Miami-Dade County A.T.I.M.A.

OPERATION PHASE

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

A Worker's Compensation Insurance for all employees of Tenant as required by Florida Statute 440.

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

C Automobile Liability Insurance covering all owned, non-owned and hired vehicles used in connection with the work, in an amount not less than $1,000,000 combined single limit per occurrence for bodily injury and property damage.

D 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.

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 "A-" as to management, and no less than "Class VII" as to financial strength by 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 Financial Services.

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

ARTICLE 8.

OPERATION

8.1 Control of Demised Premises.

Landlord hereby agrees that, subject to any express limitations imposed by the terms of this Lease, Tenant shall be free to perform and exercise its rights under this Lease and shall have exclusive control and authority to develop direct, operate, lease and manage the Demised Premises. Tenant is hereby granted the exclusive right to enter into any Sublease, license or similar grant for any part or all of the Improvements. Tenant covenants and agrees to use reasonable efforts to operate the Demised Premises consistent with prudent business practices in order for the Gross Revenue generated by the Demised Premises to be reasonably comparable to that generated in similar facilities in Miami-Dade County which are subject to similar uses and restrictions, adjusted for the location of the Demised Premises relative to such other facilities; provided, however, that nothing contained herein shall limit or restrict Tenant's right to limit access to or close all or any portion of the Demised Premises on a temporary basis (i) when necessary to perform repairs or address events of Unavoidable Delay, (ii) to address appropriate security measures, (iii) in the case of an emergency, or (iv) for other reasonable closures that are necessary in Tenant's reasonable judgment and approved by Landlord.

8.2 Non Interference.

Landlord and Tenant hereby mutually agree not to interfere with the free flow of pedestrian or vehicular traffic to and from the Public Areas and to and from the Property. They further agree that, except for those structures reasonably necessary for security and safety purposes, no fence, or any other structure of any kind (except as may be specifically permitted or maintained under the provisions of this Lease, indicated on approved Construction Plans or otherwise mutually agreed upon in writing) shall be placed, kept, permitted or maintained in such fashion as to materially and adversely interfere with pedestrian or vehicular traffic to and from the Property. The foregoing shall not prohibit Tenant from closing the Buildings and denying access to the public at such times and in such manner as deemed necessary by Tenant during the development or construction of any portion of the Buildings, the repair and maintenance of the Demised Premises or during the operation of the Demised Premises.

8.3 Relocation of Utilities

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

8.4 Rights to Erect Signs; Revenues Therefrom.

(a) Landlord hereby agrees that, to the extent permitted by law, Tenant shall have the exclusive right, during the term of this Lease to place, erect, maintain and operate, or cause, allow and control the placement, erection, maintenance and operation of any signs or advertisements in accordance with subparagraph (b) below, in or on the Demised Premises so long as such signage is not reasonably foreseeable to negatively impact Landlord's reputation. Tenant shall be responsible for obtaining any and all Permits and licenses which may be required from time to time by any governmental authority for such signs and advertisements, and Landlord agrees to execute any consents reasonably necessary or required by any governmental authority as part of Tenant's application for such Permits or licenses.

(b) The following types of signs and advertising shall be allowed, to the extent allowed by law:

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

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

(iii) Signs or advertisements advertising or identifying any product, company, service, or event consistent with or permitted under Laws and Ordinances.

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

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

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

8.5 Workforce and Affordable Units.

In accordance with Exhibit B, a minimum of sixty percent (60%) of the 600 residential dwelling units within the Project will consist of Workforce Units and Affordable Units. Consistent with the guidelines set forth in Section 3009 of the Housing and Economic Recovery Act of 2008, any determination of area median income shall not be less than the area median income determined for the calendar year preceding the calendar year for which such determination is made. The income distribution of the Affordable Units and Workforce Units within the Project may be modified from time-to-time by Tenant.

ARTICLE 9.

REPAIRS AND MAINTENANCE OF THE PREMISES

9.1 Tenant Repairs and Maintenance.

Throughout the term of this Lease, Tenant, at its sole cost and expense, shall keep the Demised Premises in good order and condition, and make all necessary repairs thereto. The term "repairs" shall include all replacements, renewals, alterations, additions and betterments deemed necessary by Tenant. All repairs made by Tenant shall be similar in quality and class to the original work, ordinary wear and tear and loss by fire or other casualty excepted. Tenant shall keep and maintain all portions of the Demised Premises and all Improvements in reasonable order and operating condition, reasonably free of dirt, rubbish, graffiti, and unlawful obstructions. Landlord, at its option, and after thirty (30) days written notice to Tenant, may perform any maintenance or repairs required of Tenant hereunder which have not been performed by Tenant following the notice described above, and may seek reimbursement for the reasonable cost and expenses thereof from Tenant.

ARTICLE 10.

COMPLIANCE WITH LAWS AND ORDINANCES

10.1 Compliance by Tenant.

Throughout the term of this Lease, Tenant, at Tenant's sole cost and expense, shall promptly comply in all respects with all Laws and Ordinances applicable to the Demised Premises or the Improvements, provided such Laws and Ordinances apply to similar properties located in Miami-Dade County as the Demised Premises generally, and are 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.

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

11.1 Right to Raze Buildings.

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

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

(b) the rebuilding, reconstruction or razing shall be subject to this Lease;

(c) the rebuilding, reconstruction or razing will produce, based on reasonable projections and adjusted to account for changes in buying power, an amount of rent to Landlord over the initial ten (10) years after the rebuilding, reconstruction, or razing is at least ten percent (10%) more than the rent received by Landlord during the ten (10) year period prior to the redevelopment of the Demised Premises;

(d) notwithstanding any other provision of this Lease, in the case of any rebuilding, reconstruction or razing not arising out of Tenant's duty to restore under Article 16, Tenant shall pay Landlord for each Lease Year during the period of such rebuilding, alteration, reconstruction or razing, which period shall not exceed two (2) years, the average annual Participation Rent payable to Landlord under this Lease during the five (5) Lease Years immediately preceding commencement of such rebuilding, reconstruction or razing, prorated based on the proportion of the Demised Premises being rebuilt, reconstructed or razed; and

(e) Tenant obtains all approvals, Permits and authorizations required under applicable Laws and Ordinances.

None of the above are intended to apply to (i) any normal and periodic maintenance, operation, replacement and repair of the Buildings, (ii) any alterations, repairs, replacements or restorations made pursuant to Article 16, or (iii) any alterations to the Buildings, which shall be governed by Paragraph 11.2 below.

11.2 Alterations.

Tenant shall not make or allow to be made any Major Alterations without first obtaining the written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed. Landlord shall have the right to review and approve any Major Alteration solely to confirm that such Major Alteration (i) is in general conformity with the Development Concept, (ii) complies with Laws and Ordinances, and (iii) is similar in quality and class of the original work, subject to ordinary wear and tear. Landlord shall grant or deny its consent to any Major Alteration within thirty (30) days of Tenant's request for approval, which request shall include conceptual plans for the proposed Major Alteration. Any denial of consent by Landlord shall be accompanied by a written explanation of the reasons for denial. If Landlord fails to respond to a request for approval of a Major Alteration within said 30-day period, Tenant's request shall be deemed approved. Tenant shall be permitted to perform any other alterations to the Buildings and Improvements which are not Major Alterations, including without limitation alterations to interior and exterior improvements, without Landlord's consent. All alterations (including Major Alterations) shall be performed, at Tenant's sole cost and expense, by licensed and insured contractors, in a good and workmanlike manner and in accordance with all Laws and Ordinances.

ARTICLE 12.

DISCHARGE OF OBLIGATIONS

12.1 Tenant's Duty.

During the term of this Lease, except for Leasehold Mortgages, Mezzanine Financings 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 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 has a reasonable basis for disputing liability therefor or the amount thereof, provided (a) such contest of liability or amount operates as a stay of all sale, entry, foreclosure, or other collection proceedings in regard to such obligations, or disputed payments are escrowed while the parties negotiate the dispute, and (b) such action does not subject Landlord to any expense or liability. In the event Tenant withholds any payment in excess of $50,000.00 in connection with any Improvements to the Demised Premises, it shall give written notice to Landlord of such action and the basis therefor.

12.2 Landlord's Duty.

During the term of this Lease, Landlord will discharge any and all obligations incurred by Landlord which give rise to any liens on the Demised Premises, it being understood and agreed that Landlord shall have the right to withhold any payment so long as it is in good faith disputing liability therefor or the amount thereof, provided such contest of liability or amount operates as a stay of all sale, entry, foreclosure, or other collection proceedings in regard to such obligations, and such action does not subject Tenant to any expense or liability.

ARTICLE 13.

USE OF PREMISES

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

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

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

(c) Except as otherwise specified, Tenant may use the Demised Premises for any lawful purpose or use authorized by this Lease and allowed under the Ordinance establishing the zoning for the Demised Premises (provided Tenant otherwise complies with the terms and conditions hereof). Tenant shall not knowingly suffer any act to be done or any condition to exist in or on the Demised Premises or any part thereof or any article to be brought thereon, which may be dangerous, unless safeguarded as required by law, or which may make void or voidable any insurance then in force with respect thereto.

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 the following:

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

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

(c) their use in construction of Buildings and improvements on the Demised Premises.

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 Paragraph 13.1 and 13.2, shall take immediate 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 Paragraph shall be deemed automatically included in all Leasehold Mortgages and any other conveyances, transfers and assignments under this Lease, and any transferee who accepts such Leasehold Mortgage or any other conveyance, transfer or assignment hereunder shall be deemed by such acceptance to adopt, ratify, confirm and consent to the provisions of Paragraphs 13.1, 13.2 and 13.3 and to Landlord's and Miami-Dade County's rights to obtain the injunctive relief specified therein.

13.4 Designation of Buildings by Name.

Tenant shall have the right and privilege of designating name(s) by which the Buildings or the Project shall be known.

ARTICLE 14.

ENTRY ON PREMISES BY LANDLORD

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.

14.2 Limitations on Inspection.

Landlord, in its exercise of the right of entry granted to it in Paragraph 14.1 herein, shall (a) not unreasonably disturb the occupancy of Tenant or Sublessees nor disturb their business activities; and (b) with respect to any residential Sublessee, shall comply with all laws, rules and regulations governing or applicable to the Landlord of residential premises.

ARTICLE 15.

LIMITATION OF LIABILITY

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.

15.2 Limitation of Liability of Tenant.

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

ARTICLE 16.

DAMAGE AND DESTRUCTION

16.1 Tenant's Duty to Restore.

If, at any time during the Term of this Lease, the Demised Premises, the Buildings and Improvements or any part thereof shall be damaged or destroyed by fire or other casualty covered within the insurance designation of fire and extended coverage as same is customarily written in the State of Florida, Tenant, at its sole cost and expense, if so requested by Landlord or elected by Tenant, and provided that sufficient insurance proceeds related to such casualty are made available to Tenant for use in connection therewith, shall repair, alter, restore, replace or rebuild the same as nearly as reasonably possible to its value, conditions and character which existed immediately prior to such damage or destruction, subject to such changes or alterations as Tenant may elect to make in conformity with the provisions of this Lease and modern construction techniques and methods. Provided Tenant otherwise complies with the terms of this Lease and obtains Landlord's approval, which approval shall not be unreasonably withheld or delayed, it may construct Buildings and Improvements which are larger, smaller or different in design, function or use and which represent a use comparable to prior use or compatible with uses of property in the immediate geographical area, to the extent such construction and improvement are allowed by Article 4 of this Lease and by applicable Laws and Ordinances. Such repairs, alterations, restoration, replacements or rebuilding, including such changes and alterations as aforementioned and including temporary repairs for the protection of other property pending the completion of any thereof, are sometimes referred to in this Article 16 as the "Work." However, in the event sufficient insurance proceeds related to such casualty are not made available to Tenant for use in connection therewith and Tenant elects not to rebuild, Landlord and Tenant shall each have the right to terminate this Lease and the Rent shall be abated as of the date of such casualty. If this Lease is terminated under the immediately preceding sentence, at Landlord's request, Tenant shall raze the Improvements, remove the foundations, fill the site with dirt covered with topsoil and leave it as a level, safe vacant lot with grass, provided that such request is made by Landlord at the time of such termination. Any insurance proceeds available to the Tenant (following restoration or otherwise) shall, subject to the rights of any Lender as provided in Section 16.3, be collected by and paid to the Tenant.

16.2 Interrelationship of Lease Sections.

Except as otherwise provided in this Article 16, the conditions under which any Work is to be performed and the method of proceeding with and performing the same shall be governed by all the provisions of Article 4 and Article 11 herein.

16.3 Loss Payees of Tenant-Maintained Property Insurance.

The following provisions shall apply with respect to all policies of property insurance required to be maintained by Tenant in accordance with this Lease: (a) Landlord shall be named as an additional insured as its interest may appear, and (b) the loss thereunder shall be payable to Tenant, Landlord, and to any Lender under a standard mortgage endorsement, provided that the rights of Landlord shall be subject and subordinate to the rights of any Lender thereunder. Tenant shall have the sole right and authority to adjust and/or settle any insurance claims, and Tenant shall be entitled to use the proceeds of any fire or other casualty insurance for any loss which shall occur during the Term of this Lease for repair or rebuilding, provided that the agreements herein relative to insured losses and use of proceeds shall be subject to the rights of any Lender anything herein to the contrary notwithstanding. Any proceeds remaining after completion of rebuilding or repair under this Article, shall be paid to Tenant, except for any Rent outstanding to the Landlord.

16.4 Abatement of Rent.

Except as otherwise set forth in this Lease, Tenant shall not be entitled to abatement, allowance, reduction or suspension of any rent or other payments due to Landlord under this Lease.

16.5 Termination of Lease for Certain Destruction Occurring During Last Five Years of Lease Term.

Notwithstanding anything to the contrary contained herein, in the event that the Buildings or Improvements or any part thereof shall be damaged or destroyed by fire or other casualty during the last five (5) years of the Term of this Lease, and the estimated cost for repair and restoration exceeds an amount equal to seventeen and one-half percent (17.5%) of the then-current Fair Market Value of the Project as determined by a mutually acceptable appraiser (or if no one appraiser is agreed upon by the parties, by an appraiser, chosen by two appraisers, one of which will be appointed by each party), then Tenant shall have the right to terminate this Lease and its obligations hereunder by giving written notice to Landlord within six (6) months after the occurrence of such damage or destruction. In such event, this Lease shall terminate within fifteen (15) days following Landlord's receipt of such notice of termination, the obligations of Tenant to pay Rent under this Lease shall cease as of the date of termination, Tenant shall not be entitled to the return of any Rent or any other sum, and the proceeds from insurance policies relating to the damaged Property, the Project, and/or any Improvements on the Property shall be paid to Landlord and Lenders as their respective interests may appear, subject to the provisions of Paragraph 16.3. All appraisal costs hereunder shall be split equally between the Landlord and Tenant.

ARTICLE 17.

MORTGAGES, TRANSFERS, TRANSFER OF TENANT'S INTEREST, NEW LEASE AND LEASE IN REVERSION

17.1 Initial Transfer of Leasehold.

It is agreed by the parties that, upon approval of this Lease Agreement by the Board, that this Lease Agreement, in its entirety, shall be assigned to Block 45, LLC, a Florida limited liability company, having an office and place of business at 161 NW 6th Street, Suite 1020, Miami, Florida 33136.

In furtherance of this initial transfer to and assumption, effective as of the Execution Date, (i) Atlantic Pacific Communities, LLC ("APC") hereby grants, conveys, assigns, transfers and delivers to Block 45, LLC, all of APC's right, title and interest as "Tenant" (if any) in, to and under this Lease, and (ii) Block 45, LLC hereby accepts such assignment and assumes all of the provisions, duties, liabilities and obligations of APC under this Lease and agrees to be bound by, observe and perform same as the Tenant under this Lease. Landlord hereby approves and consents to the foregoing assignment by APC and assumption by Block 45, LLC, thereinafter deemed to be the "Tenant" for all purposes under this Lease. Landlord further acknowledges and agrees that, as of the Execution Date, APC will have no further liability or obligations whatsoever (financial or otherwise) under or relating to the Lease or the Property, and hereby is expressly released from all such liabilities and obligations.

17.2 Right to Transfer Leasehold.

During the Term of this Lease, Tenant upon notice to Landlord (but without written consent of the Landlord, except under the circumstances described in subparagraph (b) below), and subject to the requirements of this Lease, shall be permitted from time to time, to assign or otherwise transfer all or any portion of its rights under this Lease to such other organizations, 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 to the following:

(a) Tenant shall not be in default of its obligations under this Lease beyond applicable notice and cure periods at the time of such assignment or transfer;

(b) Tenant shall obtain the written consent of the Landlord, not to be unreasonably withheld, delayed or conditioned, both as to the proposed transfer and the proposed transferee, if Tenant requests a release from all liability under this Lease; and

(c) Any proposed assignee of Tenant's interest in this Lease must be a Qualified Assignee.

Prior to any assignment of this Lease, Tenant shall notify Landlord of such proposed assignment and the name of the assignee or Qualified Assignee, and Landlord shall have a period of thirty (30) days following the date of such notice to confirm or contest whether the proposed assignee meets the requirements of a Qualified Assignee. If Landlord fails to notify Tenant prior to the end of 30-day period contesting the proposed assignee's status as a Qualified Assignee (and the reasons therefor), the proposed assignee shall be deemed a Qualified Assignee for purposes hereof.

Any request to Landlord for release from liability shall be in writing and shall be accompanied by copies of the proposed assignment or transfer documents, together with the latest financial statement (audited, if available) of the proposed transferee and a summary of the proposed transferee's prior experience in managing and operating real estate developments. The transfer documents shall specify the allocation, if any, of the Rent, Participation Rent and any other payments under this Lease to be paid to Landlord by the transferee. Landlord shall not unreasonably withhold or delay such consent to release from liability hereunder where the proposed transferee has been demonstrated to have financial strength at least equal to the original Tenant (or is otherwise financially acceptable to Landlord), a sound business reputation and demonstrated managerial and operational capacity for real estate development and the transfer complies with all applicable local, county, State, and Federal laws and ordinances. In addition, the proposed transfer must be approved by State and Federal governmental agencies where applicable. Landlord reserves the right to condition the release of original Tenant from its liability under this Lease until the transferee has provided performance bonds and insurance as required under Paragraph 1.5 (if Completion of Construction has not then occurred) and Article 7 of this Lease or to require that the assignment is subject to the transferee providing such performance bonds and insurance. Additionally, Landlord reserves the right to condition the release of the original Tenant from its liability under this Lease until Completion of Construction has occurred. Any sale, assignment or transfer of all or any part of Tenant's interest in this 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 subparagraph or elsewhere in this Lease shall abrogate (a) Landlord's right to payment of all rent and other amounts due Landlord which accrued prior to the effective date of such transfer, and (b) 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.

There shall also be delivered to Landlord in connection with any assignment or transfer of all or any part of Tenant's interest in this Lease, a notice which shall designate the name and address of the transferee and the post office address of the place to which all notices required by this Lease shall be sent. Such transferee of Tenant (and all succeeding and successor transferees) shall succeed to all rights and obligations of Tenant under this Lease with respect to the portion of the Demised Premises so transferred, including the right to mortgage, and otherwise assign or transfer; subject, however, to all duties and obligations of Tenant, and subject to the terms of the document of assignment or transfer, in and pertaining to the then remaining Term of this Lease.

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

Except as may otherwise be specifically provided in this Paragraph 17.2, upon Landlord's consent to a transfer by any assignor, such transferor shall be released and discharged from all of its duties and obligations hereunder which pertain to the portion of the Demised Premises transferred for the then unexpired Term of this Lease.

Any act required to be performed by Tenant pursuant to the terms of this Lease may be performed by any transferee or Sublessee of Tenant and the performance of such act shall be deemed to be performed by Tenant and shall be accepted by Landlord as Tenant's act, provided such act is otherwise performed in accordance with the terms of this Lease. References in this Lease to "Tenant" shall be deemed applicable to a Sublessee or assignee, as well as to Tenant named in the introductory paragraph, for purposes of performance of Tenant's obligations under this Lease with respect to the portion of the Demised Premises transferred.

For purposes of this Article, the words "sale," "assignment," or "transfer" shall be deemed to have similar meanings unless the context indicates otherwise. If Tenant is a corporation, limited liability company, unincorporated association, general or limited partnership, or joint venture, the transfer or assignment of (a) any stock of Tenant in the case where Tenant is a corporation, (b) partnership interest in Tenant, in the case where Tenant is a general or limited partnership, (c) members interest in Tenant, in the case where Tenant is a limited liability company, or (d) other ownership interest in Tenant, in the case where the Tenant is another type of entity, which (i) in the aggregate is in excess of fifty percent (50%) of the ownership of such corporation, limited or general partnership, limited liability company or another type of entity (as applicable), and (ii) results in a change of control, shall be deemed an assignment within the meaning and provisions of this Paragraph. As used in the preceding sentence, (x) "in the aggregate" means the sum of all stock or other interests transferred over the entire period of this Lease, and (y) "change of control" means, as applied to any entity, the possession, directly or indirectly, of the power to direct or cause the direction of the management and operations of such entity or the day-to-day management of such entity, whether through the ownership of voting securities or other ownership interests, by contract or otherwise. Transfers among the original holders and/or their family members of such stock, partnership interests, member interests or other interests as of the Commencement Date of this Lease or such later date as the Landlord shall consent to an assignment or transfer pursuant to this Paragraph 17.2, are excluded. Notwithstanding the foregoing, transfers of ownership interests in Tenant made in accordance with the terms of Tenant's organizational documents shall not require Landlord's consent under this Article 17.

This Paragraph shall not apply to any sale, assignment or transfer that results from a foreclosure, a deed or assignment in lieu of foreclosure or the exercise of any other remedies under any Leasehold Mortgage or any Mezzanine Financing, all of which shall be governed by Paragraphs 17.3 through 17.6 hereof (and not this Paragraph 17.2).

17.3 Right to Mortgage Leasehold.

Notwithstanding any provision in Paragraph 17.2 to the contrary, Tenant shall have the right from time to time, and without the prior consent of Landlord, to mortgage its rights under this Lease, and the leasehold estate, in whole or in part, by a Leasehold Mortgage or Mortgages. Such mortgages shall be expressly subject to the terms, covenants and conditions of this Lease, and at all times shall be inferior and subject to the prior right, title and interest of Landlord herein, but subject at all times to the rights granted herein to the Lender. Tenant shall provide Landlord with a copy of all such Leasehold Mortgages. The granting of a Leasehold Mortgage or Mortgages against all or part of the leasehold estate in the Demised Premises shall not operate to make the Leasehold Mortgagee(s) thereunder liable for performance of any of the covenants or obligations of Tenant under this Lease, except in the case of a Leasehold Mortgagee who 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 Leasehold Mortgage may be increased whether by an additional mortgage and agreement consolidating the liens of such Leasehold Mortgages or by amendment of the existing Leasehold Mortgage, and may be permanent or temporary, replaced, extended, increased, refinanced, consolidated or renewed on any portion of the Demised Premises without the consent of Landlord. Such Leasehold Mortgage(s) may contain a provision for an assignment of any rents, revenues, monies or other payments due to Tenant as a landlord (but not from Tenant) and a provision therein that the Leasehold Mortgagee(s) in any action to foreclose the same shall be entitled to the appointment of a receiver. Any transfer (a) resulting from the foreclosure of a Mortgage or any conveyance, assignment or other transfer in lieu of foreclosure of a Mortgage or other appropriate proceedings in the nature thereof, (b) made to the purchaser at foreclosure of a Mortgage or to the grantee of a conveyance, assignment or transfer in lieu of foreclosure of a Mortgage (including a Lender, any nominee of a Lender or a third party buyer), or (c) made by a Lender or its nominee to a third party following the enforcement by a Lender of its Mortgage, shall not require the consent of Landlord (under Article 17 or otherwise) and shall not constitute a breach of any provision of this Lease; provided, however, that any assignee of Tenant's interest in this Lease must be a Qualified Assignee.

17.4 Right to Pledge Equity Interests.

Notwithstanding any provision in Paragraph 17.2 to the contrary, Tenant and the direct and indirect owners of equity interests in Tenant shall have the right from time to time, and without the prior consent of Landlord, to pledge and otherwise encumber any of its respective direct or indirect equity or ownership interests (whether stock, partnership interest, beneficial interest in a trust, membership interest or other interest of an ownership or equity nature) (herein, "equity interests" or "ownership interests") to secure a loan made by a Mezzanine Financing Source. The granting of such pledge or other security shall not operate to make the Mezzanine Financing Source thereunder liable for performance of any of the covenants or obligations of Tenant under this Lease. The amount of any such Mezzanine Financing may be increased, and such Mezzanine Financing may be modified, amended, restated, replaced, extended, increased, refinanced, consolidated or renewed from time to time, all without the consent of Landlord. Any transfer of any direct or indirect ownership interest in Tenant from the foreclosure by any Mezzanine Financing Source of a pledge of ownership interests in Tenant or other appropriate actions or proceedings in the nature thereof, or any transfer made to the purchaser at a foreclosure of such pledge of ownership interests, or any conveyance, assignment or transfer in lieu of such foreclosure (including any transfer to the Mezzanine Financing Source, any nominee of Mezzanine Financing Source or a third party buyer), or any change of control or other transfer of any direct or indirect ownership interest in Tenant to the Mezzanine Financing Source or its nominee resulting from the exercise by the Mezzanine Financing Source of any other rights or remedies under any Mezzanine Financing documents, including without limitation any pledge or other security agreements or any partnership agreement, operating agreement or other organizational documents, shall not require the consent of Landlord (under Article 17 or otherwise) and shall not constitute a breach of any provision or a default under this Lease.

17.5 Notice to Landlord of Lender's Interest.

Written notice of each Leasehold Mortgage shall be delivered to Landlord specifying the name and address of such Leasehold Mortgagee to which notices shall be sent and Landlord shall be furnished a copy of each such recorded mortgage. Landlord shall also receive notice of the name and address of any Mezzanine Financing Source who desires notice and the benefit of the rights of Mezzanine Financing Sources under this Lease. For the benefit of any Lender who shall have become entitled to notice as hereinafter provided in this Article 17, Landlord agrees, subject to all the terms of this Lease, without the consent of such Lender, not to accept a voluntary surrender, modification or termination of this Lease at any time (a) with respect to a Leasehold Mortgage, while such Leasehold Mortgage(s) shall remain a lien on Tenant's leasehold estate, and (b) with respect to Mezzanine Financing, during any period that the Mezzanine Financing Source holds an equity interest (directly or indirectly), or is secured by a pledge of ownership interests, in Tenant. Tenant shall advise and obtain the written consent of any Leasehold Mortgagee(s) prior to any modification of this Lease with respect to the portion of the Demised Premises subject to such Leasehold Mortgage(s) and no sale or transfer of Landlord's fee simple interest in the Demised Premises or any portion thereof to Tenant shall terminate this Lease by merger or otherwise so long as the lien of the Leasehold Mortgage remains undischarged. Landlord agrees to abide by any subsequent written notice from Tenant or any Lender jointly notifying Landlord that such Lender's consent is also required to effectuate any modification, change, waiver, consent, approval or other matter relative to this Lease.

17.6 Notice to Lender(s).

No notice of default under Paragraph 19.1 or notice of failure to cure a default under Paragraph 19.2 shall be deemed to have been given by Landlord to Tenant unless and until a copy has been given to each Lender who shall have notified Landlord pursuant to Paragraph 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 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 Paragraphs 17.7, 19.2 or 19.3. Nothing contained herein shall be construed as imposing any obligation upon any such Lender to so perform or comply on behalf of Tenant.

17.7 Lease Termination and New Lease.

In addition to any rights any Lender may have by virtue of Article 19 herein, if, within ninety (90) days after the mailing of any notice of termination of this Lease or such later date that is thirty (30) days following the expiration of the cure period, if any, afforded Tenant (the later of such events herein being the "Mortgagee Cure Period"), such Lender 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 then due and payable by Tenant hereunder, in addition to 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 Property, then, upon the written request of the applicable Lender made any time prior to the expiration of the Mortgagee Cure Period, Landlord and the party making such request (which, in the case of (a) a Leasehold Mortgage, shall be Leasehold Mortgagee or its nominee, and (b) Mezzanine Financing, shall be Tenant, as owned or controlled by the Mezzanine Financing Source) shall mutually execute prior to the end of such Mortgagee Cure Period a new lease for the remainder of the Term of this Lease and on the same terms and conditions as this Lease, 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 shall have paid to Landlord a sum of money equal to the Rents accruing from the date of such termination to the date of the commencement of the term of such new lease, together with 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 shall be at the rents and other payments due Landlord and upon the terms as are herein contained. The tenant under any such new lease shall have the same right, title and interest in and to and all obligations accruing thereafter under this Lease as Tenant has under this Lease.

If, within the Mortgagee Cure Period, more than one (1) request for a new lease shall have been received by Landlord or more than one Lender desires to exercise any mortgage protection under this Lease, priority shall be given (regardless of the order in which such requests shall be made or received) to the Leasehold Mortgagees making such a request in order of their priority of interest in said portion of the Property. Priority of Mortgages shall be conclusively evidenced by (in order of precedence of application): (i) written agreement (or joint written instructions) by all Lenders; or (ii) a report or certificate of a title insurance company licensed to do business in the State of Florida. For any mortgagee protection that by its nature or under this Lease only one Leasehold Mortgagee can exercise (such as the right to a new lease or sublease), pending the determination of priority, any time period that applies to Leasehold Mortgagee's exercise of such mortgagee protection shall be tolled. All rights and benefits afforded to a Mezzanine Financing Source under this Lease shall also be afforded to any other Mezzanine Financing Sources who are not holding the first lien on the membership interests in Tenant, provided that all of the rights of such Mezzanine Financing Sources shall be subject to and subordinate to the holders of more senior Mezzanine Financing. Priority of Mezzanine Financing shall be conclusively evidenced by (in order of precedence of application): (x) written agreement (or joint written instructions) by all Mezzanine Financing Sources; or (y) an appropriate financing statement search under Article 9 of the Uniform Commercial Code (or any successor thereto) or other reasonable evidence of priority for such financing in the State of Florida. Landlord shall follow the request of any Leasehold Mortgagee prior to Mezzanine Financing Sources, unless the Lenders otherwise direct.

Simultaneously with the making of such new lease, the party obtaining such new lease and all other parties junior in priority of interest in the Property shall execute, acknowledge and deliver such new instruments, including new mortgages, 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 Property which was possessed by the respective parties prior to the termination of this Lease as aforesaid.

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

If any Lender 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.

Upon the execution and delivery of a new lease pursuant to this Paragraph 17.7, in addition to Landlord, by quit-claim deed, conveying to the tenant under the new lease Landlord's interest in the Buildings and Improvements, all Subleases which theretofore may have been assigned to Landlord or have reverted to Landlord upon termination of this Lease or have been entered into by Landlord shall be assigned and transferred, without recourse against Landlord, by Landlord to the tenant under the new lease. Between the date of termination of this Lease and the date of execution and delivery of the new lease, if a Lender shall have requested such new lease as provided for in this Article 17, Landlord will not cancel any Sublease nor accept any cancellation, termination or surrender thereof (unless such termination shall be effective as a matter of law on the termination of this Lease) without the consent of all Lenders, except for default as permitted thereunder.

Nothing contained in this Lease shall require any Leasehold Mortgagee (or its nominee) or any Mezzanine Financing Source (or its nominee), as a condition to its exercise of its right to enter into a new lease, to cure any default of Tenant not reasonably susceptible of being cured by such parties, in order to comply with the provisions of this Paragraph 17.7.

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

The provisions of this Paragraph 17.7 shall survive any termination of this Lease. All Lenders that have notified Landlord under Paragraph 17.5 shall be deemed to be third party beneficiaries of the provisions of this Lease that benefit Lenders, including without limitation this Article 17.

17.8 Rights to Sublease and Non-Disturbance to Sublessees.

Tenant shall have the right to enter a Sublease without any approval or consent of Landlord; however, notwithstanding any other provisions of this Lease, no Sublease shall relieve Tenant of any obligations under the terms of this Lease. Additionally, each Sublease must be for a use compatible with the standards and requirements set forth in Paragraph 4.1 herein. Landlord agrees to grant recognition and non-disturbance agreements for Sublessees which provide, in the event of a termination of this Lease which applies to the portion of the Demised Premises covered by such Sublease, such Sublessee will not be disturbed and will be allowed to continue peacefully in possession under its Sublease on the terms and conditions set forth in such Sublease, provided that the following conditions are met:

(a) the Sublease is on market terms, provided that the foregoing condition shall apply to a Sublease for commercial or retail rental space within the Project to a Sublessee conducting business in such space, but shall not apply to any Sublease in the nature of a "master sublease" pursuant to which the Sublessee further subleases the premises to one or more sub-Sublessees for its use; and

(b) the Sublessee shall not be in default of the terms and conditions of its Sublease beyond applicable notice and cure periods; and

(c) the Sublessee shall agree to attorn to Landlord.

Landlord further agrees that it will grant such assurances to such Sublessees so long as they remain in compliance with the terms of their Subleases, and provided further that any such Subleases do not extend beyond the expiration of the term of this Lease. To effectuate the intent of this Paragraph, Landlord agrees to enter into recognition and non-disturbance agreements in such form as may be reasonably acceptable to Landlord, Tenant and the Sublessee, within thirty (30) days following written request. Any and all Subleases of the Demised Premises may include lender protection provisions consistent with the provisions of this Lease that benefit Lenders and all such provisions shall be recognized by Landlord.

17.9 Estoppel Certificates from Landlord.

Upon request of Tenant or any Lender, Landlord agrees to give such requesting party an estoppel certificate in the form of Schedule 17.8.

17.10 Limited Waiver of Landlord Lien.

In order to enable Tenant and its Sublessees 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.

17.11 No Subordination or Mortgaging of Landlord’s Fee Title.

There shall be no subordination of Landlord’s fee simple interest in the Demised Premises to the lien of any Leasehold Mortgage financing nor shall Landlord be required to join in such mortgage financing. No Leasehold Mortgagee or other Lender may impose any lien upon the Landlord’s fee simple interest in the Land.

17.12 Transfer of Interest by Landlord.

If Miami-Dade County or any successor to its interest hereunder ceases to have any interest in the Demised Premises or if there is any sale or transfer of Landlord’s interest in the Demised Premises, the seller or transferor shall be entirely freed and relieved of all agreements, covenants and obligations of Landlord hereunder to be performed after the date of such sale or transfer, provided that the purchaser, successor or transferee of Landlord’s interest in the Demised Premises assumes in writing all such agreements, covenants and obligations of Landlord. Nothing herein shall be construed to relieve Landlord from any liability or damages arising from actions or omissions occurring or agreements, covenants and obligations required to be performed prior to the date of any such assignment, transfer or sale of Landlord’s interest hereunder. Notwithstanding the foregoing and without limiting the previous sentence, Miami-Dade County shall remain liable for the representations and warranties of Paragraph 25.1.

17.13 Fee Mortgages.

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

17.14 Opportunity Zone Programs.

Landlord further agrees to reasonably cooperate with Tenant in executing any statements, certifications, applications and other documentation that may be required for Tenant to develop and operate the Project, or otherwise facilitate Tenant's ability to qualify as a "Qualified Opportunity Fund" or designate the Project, under the Opportunity Zone program regulations codified in Section 1400Z-2 of the Internal Revenue Code, as may be amended from time to time. In furtherance thereof, the parties agree that (a) an assignment of this Lease to a Qualified Opportunity Fund managed by Tenant or any entity affiliated with Tenant shall not require Landlord's consent under this Article 17, provided that the assignee is a Qualified Assignee, and (b) Landlord shall provide recognition and non-disturbance agreements for any Sublessee that is a Qualified Opportunity Fund or that enhances or provides benefits to the community in which the Project is located.

ARTICLE 18.

EMINENT DOMAIN

18.1 Taking of Entire Premises.

If at any time during the term of this Lease the power of eminent domain shall be exercised by any federal or state sovereign or their proper delegates, by condemnation proceeding (a "Taking"), to acquire the entire Demised Premises, such Taking shall be deemed to have caused this Lease to terminate and expire on the date of such Taking. Tenant's right to recover a portion of the award for a Taking, as hereinafter provided, is limited to the Fair Market Value of the Buildings and other improvements, plus the value of Tenant's interest in the unexpired term of the leasehold estate created pursuant to this Lease, and in no event shall Tenant be entitled to compensation for any fee interest in the Land. Notwithstanding anything herein contained to the contrary, Landlord shall be entitled to receive from the condemning authority not less than the appraised value of the Land, subject to this Lease, and as if vacant and assuming no improvements existed on the Property, at the time of taking. 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 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.

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 Paragraph 18.3 herein, the proceeds of any such Taking (whole or partial) shall be distributed as described in Paragraph 18.1. If the value of the respective interests of Landlord and Tenant shall be determined according to the foregoing provisions of this Article 18 in the proceeding pursuant to which the Demised Premises shall have been taken, the values so determined shall be conclusive upon Landlord and Tenant. If such values shall not have been separately determined in such proceeding, such values shall be fixed by agreement between Landlord and Tenant, or if they are unable to agree, by an apportionment hearing within the condemnation proceeding so that the allocation between the parties is fair and equitable. Lenders shall be entitled to participate in any proceedings in connection with a Taking, and to receive directly from the Taking Authority any sums to which they are found to be entitled.

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

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 proceed at its own cost and expense either to make an adequate restoration, repair or reconstruction or to rebuild a new Building upon the Demised Premises affected by the Taking. In such event, Tenant's share of the award shall be determined in accordance with Paragraph 18.1 herein. Such award to Tenant shall be used by Tenant for its reconstruction, repair or rebuilding. Any excess award after such reconstruction, repair or rebuilding, may be retained by Tenant. If the part of the award so paid to Tenant is insufficient to pay for such restoration, repair or reconstruction, Tenant shall pay the remaining cost thereof, and shall fully pay for all such restoration, repair and reconstruction, and complete the same to the reasonable satisfaction of Landlord free from mechanics' or material men's liens and shall at all times save Landlord free and harmless from any and all such liens. In the event, the partial Taking results in making it impossible or unfeasible to reconstruct, restore, repair or rebuild a new Building, Tenant's share of the award shall be determined in accordance with Paragraph 18.1 herein. In such event, if Tenant elects not to terminate this Lease, then any and all Rent, if applicable, shall be partially abated on an equitable basis to be agreed to by Tenant and Landlord.

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 ("Taking Authority") for its or their temporary use or occupancy not exceeding one year, this Lease shall not terminate by reason thereof, and Tenant shall continue to pay, in the manner and at the times herein specified, the full amounts of the rents, revenues and all other charges payable by Tenant hereunder and, except only to the extent that Tenant may be prevented from so doing pursuant to the terms of the order of the Taking Authority, to perform and observe all of the other terms, covenants, conditions and all obligations hereof upon the part of Tenant to be performed and observed, as though such Taking had not occurred. In the event of any such temporary Taking, Tenant shall be entitled to receive the entire amount of any award made for such temporary Taking (attributable to the period within the Term of this Lease), other than any portion of 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. All such proceeds paid to Tenant pursuant to this Paragraph shall be considered as Gross Revenue as defined in Paragraph 3.4. Tenant covenants that, upon the termination of any such period of temporary Taking, prior to the expiration of the term of this Lease, it will, at its sole cost and expense, restore the Demised Premises, as nearly as may be reasonably possible, to the condition in which the same were immediately prior to such Taking, provided that the Taking Authority compensates Tenant for such restoration.

18.6 Additional Takings.

In case of a second, or any additional partial Taking or Takings from time to time, the provisions hereinabove contained shall apply to each such partial Taking. In the event any federal or state sovereign or their proper delegates with the power of eminent domain appropriates or condemns all or a portion of the Demised Premises, and Landlord is a beneficiary of such Taking, the award shall be divided in accordance with the provisions of this Article 18. In that event, in accordance with the provisions hereof, Tenant shall restore, repair, or reconstruct any portion of the Demised Premises not taken; provided that if the award so paid to Tenant shall be insufficient to fully pay for such restoration, repair or reconstruction, Tenant shall have the option of:

(a) Repairing at its expense, in which event the provisions of Paragraph 18.4 herein shall control, or

(b) Terminating this Lease in which event the provisions of Paragraph 18.3 shall control.

18.7 Inverse Condemnation or Other Damages.

In the event of damage to the value of the Demised Premises by reason of change of grade, access rights, street alignments or any other governmental or quasi-governmental act (not involving Landlord) which constitutes an inverse condemnation of any portion of the Demised Premises creating a right to full compensation 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.

18.8 Intentionally deleted.

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 in order to provide proper evidence of communication of the proceeding or threat or imminence thereof (including evidence of like Takings under Paragraph 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.

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 such Taking, and (iii) it will, as part of its defense against a Taking, avail itself of the defense, if available, that one entity with condemnation powers cannot condemn the property of another entity with similar powers.

ARTICLE 19.

DEFAULT BY TENANT OR LANDLORD

19.1 Events of Default of Tenant.

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

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

(b) Tenant fails to pay on time any rent, revenues or other monies due and payable to Landlord under this Lease when and as the same shall become due and payable or fails to submit audited statements within the time period specified and as required by

Paragraph 3.5 of this Lease. Tenant shall have thirty (30) days to cure such default after written notice thereof from Landlord to Tenant, with copies thereof to each Lender who shall have notified Landlord of its name, address and interest prior to such notice; or

(c) Tenant fails to keep, observe or perform any of the terms contained in this Lease, excepting the obligation to pay rents, revenues or other monies due Landlord, and Tenant has sixty (60) days to cure such default after written notice thereof from Landlord to Tenant setting forth with reasonable specificity the nature of the alleged breach, with copies thereof to each Lender who shall have notified Landlord of its name, address and interest prior to such notice; or in the case of such default 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. Should Landlord fail to notify any Lender in accordance with the terms of this Paragraph, it shall not prevent Landlord from taking any action against Tenant, but the rights of such Lender hereunder shall remain unaffected until it receives notice in accordance with this Paragraph.

19.2 Failure to Cure Default.

(a) If an Event of Default of Tenant shall occur, at any time after the periods set forth in Paragraph 19.1(b) or (c), if said Event of Default has remained uncured within such applicable period, Landlord shall give written notice to Tenant and to any Lender who has notified Landlord in accordance with Paragraph 17.5, stating that this Lease and the term hereby demised shall expire and terminate on the date specified in such notice, which shall be at least (i) thirty (30) days after the giving of such notice, with respect to an Event of Default occurring prior to Commencement of Construction, and (ii) ninety (90) days after the giving of such notice with respect to an Event of Default occurring from and after Commencement of Construction, during which time Tenant and/or any Lender 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 Paragraph 17.7, 19.2 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 Lenders shall not have been exercised as provided within this Lease, then Landlord, at any time after the periods for exercise of rights as set forth under Paragraph 17.7, 19.2 and 19.3 herein, shall have the following rights and remedies which are cumulative:

(i) in addition to any and all other remedies in law or in equity that Landlord may have against Tenant, Landlord shall be entitled to sue Tenant for all damages (as limited by Paragraph 15.2), costs and expenses arising from Tenant's committing an Event of Default hereunder and to recover all such damages, costs and expenses, other than attorneys' fees;

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

(iii) to terminate any and all obligations that Landlord may have under this Lease, in which event Landlord shall be released and relieved from any and all liability under this Lease.

19.3 Lender Right to Cure Tenant Default.

For so long as any Mortgage encumbers the Demised Premises, or, as applicable, a Mezzanine Financing Source holds an equity interest (directly or indirectly), or is secured by a pledge of ownership interests:

(a) Notwithstanding the time allowed for Tenant to cure an Event of Default under Paragraph 19.1, Lender shall have the right, but not the obligation, for an additional period of thirty (30) days following the expiration of Tenant's cure periods under Paragraph 19.1, to cure any monetary or non-monetary Event of Default of Tenant, but if such non-monetary Event of Default cannot be cured within such 30-day period, then Lender shall have up to ninety (90) days to cure, provided that it has commenced such cure within the initial thirty (30) day period and thereafter pursues such cure with reasonable diligence, subject to further extension of such cure periods as provided in clauses (b) and (c) below.

(b) Notwithstanding the provisions of this Lease to the contrary, no Event of Default by Tenant will be deemed to exist as to a Lender (and Landlord shall not be permitted to terminate this Lease due to an Event of Default of Tenant) as long as such Lender, in good faith, either promptly (i) commences to cure such Event of Default and prosecute the same to completion in accordance with Paragraph 19.3(a) above, or (ii) if the nature of any non-monetary Event of Default is such that possession of or title to the Demised Premises is reasonably necessary to cure the Event of Default, or the Event of Default is of the type that cannot commercially reasonably be cured by Lender (e.g., Tenant bankruptcy), (i) in the case of a Leasehold Mortgage, files a complaint for foreclosure and thereafter prosecutes the foreclosure action in good faith and with reasonable diligence, and (ii) in the case of Mezzanine Financing, takes all reasonable steps necessary to foreclose the pledge of ownership interests and prosecutes such action in good faith and with reasonable diligence, subject to any stays, moratoriums or injunctions applicable thereto, and as promptly as practicable after obtaining possession or title, as reasonably necessary, commences promptly to cure such Event of Default and prosecutes the same to completion in good faith and with reasonable diligence; provided, however, that during the period in which any foreclosure proceedings or other actions are pending, all of the other obligations of Tenant under this Lease, to the extent they are susceptible of being performed by Lender (e.g., the payment of Rent), are being duly performed. Upon Lender curing all Events of Default hereunder that are susceptible to cure, any Events of Default that cannot commercially reasonably be cured by such Lender (e.g., defaults that are personal to the prior Tenant, such as the failure to comply with any vendor registration requirements) shall be permanently waived, including any interest, penalties and late fees or charges due to Landlord as a result of such Events of Default.

(c) Any penalties, interest and late payment fees or charges due to Landlord pursuant to this Lease as a result of any Event of Default by Tenant shall not commence to accrue and be due from any Mortgagee or Mezzanine Financing Source who has commenced and is proceeding to cure any such Events of Defaults (other than any defaults not susceptible of being cured by Mortgagee or Mezzanine Financing Source, which shall be subject to the last sentence of clauses (b) above) until the expiration of the applicable cure, grace or other periods provided to the Mortgagee or Mezzanine Financing Source to cure such Events of Defaults in this Article and Article 17.

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 shall quit and peacefully surrender the Demised Premises to Landlord, except as provided under any recognition or non-disturbance agreement provided by Landlord to any Sublessee.

19.5 Rights of Landlord After Termination.

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

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

19.7 Events of Default of Landlord.

The provisions of Paragraph 19.7 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 and such default shall continue for a period of thirty (30) days after written notice thereof from Tenant to Landlord setting forth with reasonable specificity the nature of the alleged breach; or, in the case of any such default or contingency which cannot, with due diligence and in good faith, be cured within thirty (30) days, Landlord fails within said thirty (30) day period to proceed promptly after such notice and with due diligence and in good faith to cure said Event of Default.

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 Paragraph 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 Paragraph 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 this 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.

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

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 as follows:

Tenant:	Block 45, LLC c/o Atlantic Pacific Communities, LLC 161 NW 6th Street, Suite 1020 Miami, Florida 33136 Attn: Kenneth Naylor

With a copy to: Greenberg Traurig, P.A.
333 SE 2nd Avenue
Miami, Florida
Attn: Ryan Bailine and Nancy B. Lash

and to such other address and to the attention of such other party as Tenant may, from time to time, designate by written notice to Landlord. If Tenant at any time during the term hereof changes its office address as herein stated, Tenant will promptly give notice of same in writing to Landlord. The Leasehold Mortgagee or Mezzanine Financing Source 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 Paragraph 17.5 above.

All notices, demands or requests by Tenant or by a Lender to Landlord shall be deemed to have been properly served or given if addressed to Miami Dade Transportation and Public Works, Director, or designee, 701 N.W. 1st Court, 17th Floor, Miami, Florida, 33136 and to Miami-Dade Transportation and Public Works, Assistant Director of Engineering, Planning and Development, 701 N.W. 1st Court, 17th Floor, Miami, Florida, 33136, and to such other addresses and to the attention of such other parties as Landlord may, from time to time, designate by written notice to Tenant. If Landlord at any time during the term hereof changes its office address as herein stated, Landlord will promptly give notice of same in writing to Tenant.

20.2 Method of Transmitting Notice.

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

ARTICLE 21.

QUIET ENJOYMENT

Tenant, upon paying all rents, revenues and other monies 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 of this Lease without interruption, disturbance, hindrance or molestation by Landlord or by anyone claiming by, through or under Landlord.

ARTICLE 22.

CERTIFICATES BY LANDLORD AND TENANT

22.1 Tenant Certificates.

Tenant agrees at any time and from time to time, upon not less than thirty (30) 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 this Lease, if then known; certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that this 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 Paragraph 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.

22.2 Landlord Certificates.

Landlord agrees at any time and from time to time, upon not less than thirty (30) days prior written notice by Tenant, a Lender or Sublessee, to furnish a statement in writing, in substantially the form attached hereto as Schedule 17.8, setting forth the rents, payments and other monies then payable under this Lease, if then known; certifying that this Lease is unmodified and in full force and effect (or if there shall have been modifications that this 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 Paragraph 22.2 of this Lease may be relied upon by any prospective assignee, or transferee of Tenant's interest in this Lease, any prospective Sublessee or any Lender 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

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.

23.2 Captions.

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

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.

23.4 Recording.

A Memorandum of this Lease in the form attached hereto as Schedule 23.4, or at Tenant's behest, a full copy hereof, shall be recorded among the Public Records of Miami-Dade County, Florida, at the sole cost of Tenant.

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 drafters shall be inapplicable to this Lease which has been drafted by counsel for both Landlord and Tenant.

23.6 Consents.

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

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

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

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

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.

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 Leasehold Mortgagees and Sublessees, as appropriate and applicable), except as may be otherwise provided herein.

23.9 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 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 Paragraph.

23.10 Holidays.

It is hereby agreed and declared that whenever the day on which a payment is 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.

23.11 Schedules/Exhibits.

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

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.

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.

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

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.

23.16 Governing Law

This Lease shall be governed by and construed in accordance with the laws of the State of Florida, without regard to any choice of law provisions that would result in the application of other laws.

23.17 Counterparts.

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

23.18 Exculpation.

It is the intent and agreement of the parties hereto that only the parties as entities shall be responsible in any way for their respective obligations hereunder, except as otherwise expressly provided herein. In that regard, no officer, director, partner, trustee, representative, investor, official, representative, employee, agent, or attorney of any of the parties to this Lease shall be personally liable for the performance of any obligation hereunder or for any other claim made hereunder or in any way in connection with this Lease, or any other matters contemplated herein, and any and all such personal liability, either at common law or in equity or by constitution or statute or other Laws and Ordinances are expressly waived and released as a condition of, and as a consideration for, the execution of this Lease.

23.19 Documents Incorporated and Order of Precedence.

Landlord and Tenant acknowledge that Miami-Dade County issued a Request for Proposals for Joint Development at the Site (the "Request for Proposals"), that Tenant submitted the Proposal in response to that Request for Proposals and that the Request for Proposals and the Proposal were the basis for award of this Lease and upon which the Landlord has relied. The Request for Proposals and Tenant's Proposal are incorporated herein by this reference. If there is a conflict between or among the provisions of this Lease, the Request for Proposals and the Proposal, the order of precedence is as follows: (i) the terms of this Lease; (ii) the Proposal, (iii) the Request for Proposals.

ARTICLE 24.

PUBLIC RECORDS AND CONTRACTS FOR SERVICES PERFORMED ON BEHALF OF MIAMI-DADE COUNTY

Tenant shall comply with the public records laws of the State of Florida, including by not limited to, (1) keeping and maintaining all public records that ordinarily and necessarily would be required by the county in order to perform the service; (2) providing the public with access to public records on the same terms and conditions that the county would provide the records and at a cost that does not exceed the cost provided in Chapter 119, F.S., or as otherwise provided by law; (3) ensuring that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; and (4) meeting all requirements for retaining public records and transferring, at no cost, to the County all public records in possession of the Tenant upon termination of the contract and destroying any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements upon such transfer. In addition, all records stored electronically must be provided to the County in a format that is compatible with the information technology systems of the County. Failure to meet any of these provisions or to comply with Florida's public records laws as applicable shall be a material breach of this Lease and shall be enforced in accordance with the terms and conditions of the Lease.

IF THE TENANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE TENANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS LEASE, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (305) 375-5773, ISD-VSS@MIAMIDADE.GOV, 111 NW 1ST STREET, SUITE 1300, MIAMI, FLORIDA 33128.

ARTICLE 25.

REPRESENTATIONS AND WARRANTIES

25.1 Landlord's Representations and Warranties.

Landlord hereby represents and warrants to Tenant that:

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

(b) Landlord 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, but otherwise in as-is condition as of the Effective Date.

(c) Landlord will comply with the covenants set forth in Section 1.6 and endeavor to continue transit service to and from the Station on a daily basis. The parties acknowledge that service disruptions occur occasionally and such disruptions shall not be considered termination of service under this Lease. If the Station is damaged or destroyed and as a result trains cannot stop thereat, the foregoing sentence shall not apply during the period of repair and rebuilding.

(d) Tenant acknowledges that, in accordance with Section 125.411(3) of the Florida State Statutes, 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.

25.2 Tenant's Representations and Warranties.

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

ARTICLE 26.

COMPLIANCE WITH FEDERAL AND STATE REGULATIONS

Tenant shall comply with all of the following statutes, rules and regulations:

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

(b) Requirements found in 49 CFR Parts 27.7 and 27.9(b) and 37 regarding non-discrimination based on disability and complying with the Americans With Disabilities Act with regard to any improvements constructed;

(c) Requirements contained in the Federal Transit Administration Master Agreement relating to conflicts of interests, debarment and suspension;

(d) Prohibition against placing liens on Owner's property. This prohibition shall be included in all Subcontractor contracts; and

(e) All antitrust laws of the United States and the State of Florida.

ARTICLE 27.

COMPLIANCE WITH COUNTY ORDINANCES AND REGULATIONS

27.1 Compliance with Miami-Dade County Code.

Tenant shall comply with all applicable Miami-Dade County ordinances and regulations including the following:

(a) Vendor Registration

The Tenant shall be a registered vendor with the County – Internal Services Department, Strategic Procurement Division, for the duration of this Lease. In becoming a registered vendor with Miami-Dade County, the Tenant confirms its knowledge of and commitment to comply with the following) to the extent the following apply to the Project and/or Tenant (as applicable):

1. **Miami-Dade County Ownership Disclosure Affidavit**
(Section 2-8.1 of the Code of Miami-Dade County)

2. **Miami-Dade County Employment Disclosure Affidavit**
(Section 2.8.1(d)(2) of the Code of Miami-Dade County)

3. **Miami-Dade County Employment Drug-free Workplace Certification**
(Section 2-8.1.2(b) of the Code of Miami-Dade County)

4. **Miami-Dade County Disability and Nondiscrimination Affidavit**
(Section 2-8.1.5 of the Codes of Miami-Dade County)

5. **Miami-Dade County Debarment Disclosure Affidavit**
(Section 10.38 of the Code of Miami-Dade County)

6. **Miami-Dade County Vendor Obligation to County Affidavit**
(Section 2-8.1 of the Code of Miami-Dade County)

7. **Miami-Dade County Code of Business Ethics Affidavit**
(Sections 2-8.1(i), 2-11.1(b)(1) through (6) and (9), and 2-11.1(c) of the Code of Miami-Dade County)

8. **Miami-Dade County Family Leave Affidavit**
(Article V of Chapter 11 of the Code of Miami-Dade County)

9. **Miami-Dade County Living Wage Affidavit**
(Section 2-8.9 of the Code of Miami-Dade County)

10. **Miami-Dade County Domestic Leave and Reporting Affidavit**
(Article VIII, Section 11A-60 - 11A-67 of the Code of Miami-Dade County)

11. **Miami-Dade County E-Verify Affidavit**
(Executive Order 11-116)

12. **Miami-Dade County Pay Parity Affidavit**
(Resolution R-1072-17)

13. **Subcontracting Practices**
(Section 2-8.8 of the Code of Miami-Dade County)

14. **Subcontractor/Supplier Listing**
(Section 2-8.1 of the Code of Miami-Dade County)

15. **Form W-9 and 147c Letter**
(as required by the Internal Revenue Service)

16. **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*

17. **Office of the Inspector General**
(Section 2-1076 of the Code of Miami-Dade County)

18. **Small Business Enterprises**
The County endeavors to obtain the participation of all small business enterprises pursuant to Sections 2-8.1.1.1.1, 2-8.1.1.1.2 and 2-8.2.2 of the Code of Miami-Dade County and Title 49 of the Code of Federal Regulations.

19. **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 and Code of Ethics

Section 2-11.1(d) of the 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 Ethics 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. All autonomous personnel, quasi-judicial personnel, advisory personnel, and employees wishing to do business with the County are hereby advised they must comply with the applicable provisions of Section 2-11.1 of the Code of Miami-Dade County relating to Conflict of Interest and Code of Ethics. In accordance with Section 2-11.1 (y), the Miami-Dade County Commission on Ethics and Public Trust (Ethics Commission) shall be empowered to review, interpret, render advisory opinions and letters of instruction and enforce the Conflict of Interest and Code of Ethics Ordinance.

[THIS SPACE IS INTENTIONALLY LEFT BLANK]

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.

LANDLORD

Signed in the presence of the following witnesses:

Beth Goldsmith
Print Name: Beth Goldsmith

Jocelyn R. Fulton
Print Name: Jocelyn R. Fulton

ATTEST:

By: ______________________
Clerk of the Board

____
Approved as to form and legal sufficiency
Name: Miguel A. Gonzalez
Title: Assistant County Attorney

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

BY ITS BOARD OF COUNTY COMMISSIONERS

By: Dara C. Smith
for Carlos A. Gimenez, County Mayor

COUNTY COMMISSIONERS MIAMI-DADE COUNTY FLORIDA

TENANT

Signed in the presence of the following witnesses:

____
Print Name: Marlene Sanchez

____
Print Name: Jackelyn Laguardia

BLOCK 45, LLC, a Florida limited liability company

By: ______________________________
Name: Kenneth Naylor
Title: Secretary of its Manager, Member

APC

APC joins in this Lease solely for the purpose stated in Section 17.1 hereof.

Signed in the presence of the following witnesses:

____
Print Name:

____
Print Name:

ATLANTIC PACIFIC COMMUNITIES, LLC, a Florida limited liability company

By: ______________________________
Name: ______________________________
Title: ______________________________

Notarizations begin on following page.

TENANT

Signed in the presence of the following witnesses:

____
Print Name:

____
Print Name:

BLOCK 45, LLC, a Florida limited liability company

By: __________________________
Name: ________________________
Title: _________________________

APC

APC joins in this Lease solely for the purpose stated in Section 17.1 hereof.

Signed in the presence of the following witnesses:

Silvia Campos
Print Name: S. L. Campos

Print Name: Jeanne Barger

ATLANTIC PACIFIC COMMUNITIES, LLC, a Florida limited liability company

By: __________________________
Name: Randy Weisburd
Title: President

Notarizations begin on following page.

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

The foregoing instrument was acknowledged before me this 11th day of March, 2019, by Kenneth Naylor, the Secretary of the Manager Member of BLOCK 45, LLC, a Florida limited liability company, on behalf of said company.

Personally Known X OR Produced Identification ______

Type of Identification Produced ______

MARLENE CASAR SANCHEZ
Notary Public - State of Florida
Commission # FF 245364
My Comm. Expires Oct 19, 2019
Bonded through National Notary Assn.

Print or Stamp Name: Marlene Sanchez
Notary Public, State of Florida at Large
Commission No.: FF245364
My Commission Expires: October 19, 2019

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

The foregoing instrument was acknowledged before me this 11th day of March, 2019, by Randy Weisburd, the President of [redacted], a Florida limited liability company, on behalf of said company.
Atlantic Pacific Communities, LLC

Personally Known ✓ OR Produced Identification ______

Type of Identification Produced ______

MARLENE CASAR SANCHEZ
Notary Public - State of Florida
Commission # FF 245364
My Comm. Expires Oct 19, 2019
Bonded through National Notary Assn.

Print or Stamp Name: [illegible]
Notary Public, State of Florida at Large
Commission No.: FF245364
My Commission Expires: 10/19/19

<u>EXHIBIT “A”</u>

Real Property Legal Description

Block 45 North, CITY OF MIAMI, according to the Plat thereof as recorded in Plat Book B, at Page 41, of the Public Records of Miami-Dade County, Florida.

EXHIBIT "B"

Tenant's Proposal of Development Concept

As required by RFP-00700, the Project may consist of any combination of retail, office, hotel, commercial and residential uses, as allowed under the existing zoning, provided that a minimum of 40% of the square footage of the Project is devoted to residential units and 25% of that square footage shall be devoted to workforce or affordable housing. The parties acknowledge that the percentages set forth in the preceding sentence will be based on the total Habitable Space, as defined by Miami 21, within the Project.

In furtherance thereof, the Proposal for the Project by the Tenant consists of the following components: (i) ground floor commercial/retail uses, (ii) approximately 600 residential dwelling units, and (iii) a parking garage containing sufficient parking spaces, including parking spaces to accommodate electric vehicles, subject to approval by the City of Miami and the County, to serve all components of the Project (collectively, the "Major Components"). A minimum of 60% of the 600 residential dwelling units within the Project will consist of workforce or affordable housing units. Subject to approval by the City of Miami, the architectural design of the Project will include Bahamian design features, and an elevated recreation deck, with a swimming pool. All amenities will be accessible to all residents.

Landlord has requested that Tenant relocate the "back-of-house" areas serving the Project to NW 7th Street, which the parties acknowledge and agree will require certain modifications to the design of the Project included in the Proposal, including without limitation a re-orientation of the Buildings within the Project. Landlord hereby approves such modifications to the orientation of the Buildings. The parties further acknowledge and agree that, given the accelerated construction timeline requested by Landlord for the Project and other unique factors related to the Project, Tenant shall have the right to modify the architectural design of the Buildings set forth in the Proposal, subject to Landlord's approval, which approval shall not be unreasonably denied, delayed or conditioned so long as the proposed modifications are not materially inconsistent with the Major Components.

EXHIBIT "C"

Exhibit C Participation Rent Schedule

E. FINANCIAL INFORMATION

E.30. Attachment C - Pro-Forma Statement

30-Year Pro Forma

Below is the 30-Year Pro Forma addressing the requisite items per Attachment C to the RFP

BLOCK 45 - MIAMI, FLORIDA
CASH FLOW SCHEDULE

Number of Years: 30	TOTAL	DEVELOPMENT Year 0	Year 1
Hard Construction Costs			
Residential	(115,151,346)	(57,575,673)	(57,575,673)
Retail	(6,909,945)	(3,454,973)	(3,454,973)
Total Hard Costs	(122,061,291)	(61,030,646)	(61,030,646)
Soft Construction Costs			
Residential	(33,727,623)	(16,863,812)	(16,863,812)
Retail	(2,023,911)	(1,011,955)	(1,011,955)
Total	(35,751,534)	(17,875,767)	(17,875,767)
Land			
Residential	(14,150,843)	(7,075,422)	(7,075,422)
Retail	(849,157)	(424,578)	(424,578)
Total Contributions	(15,000,000)	(7,500,000)	(7,500,000)
TOTAL DEVELOPMENT COSTS	(172,812,825)	(86,406,413)	(86,406,413)

Number of Years: 30	STABILIZATION Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Year 11	Year 12	Year 13
Revenues:												
Total Gross Potential Rental Income	13,818,384	14,132,061	14,452,869	14,780,939	15,116,466	15,459,610	15,810,543	16,169,443	16,536,489	16,911,867	17,295,767	17,688,381
Total Parking Income	360,000	368,172	376,530	385,077	393,818	402,758	411,900	421,250	430,813	440,592	450,594	460,822
Total Retail Income	822,465	841,135	860,229	879,756	899,726	920,150	941,038	962,399	984,246	1,006,588	1,029,438	1,052,806
Total Other Income	882,000	902,021	922,497	943,438	964,854	986,756	1,009,156	1,032,063	1,055,491	1,079,451	1,103,954	1,129,014
Less: Vacancy Loss	(717,019)	(725,012)	(741,469)	(758,301)	(775,514)	(793,118)	(811,122)	(829,535)	(848,365)	(867,623)	(887,318)	(907,460)
Less: Vacancy Loss Retail	(82,247)	(84,113)	(86,023)	(87,976)	(89,973)	(92,015)	(94,104)	(96,240)	(98,425)	(100,659)	(102,944)	(105,281)
Less: Concessions	-	-	-	-	-	-	-	-	-	-	-	-
Less: Bad Debt	(141,784)	(145,002)	(148,294)	(151,660)	(155,103)	(158,624)	(162,224)	(165,907)	(169,673)	(173,525)	(177,464)	(181,492)
Effective Gross Revenue	$14,941,799	$15,289,262	$15,636,328	$15,991,273	$16,354,275	$16,725,517	$17,105,186	$17,493,474	$17,890,576	$18,296,692	$18,712,027	$19,136,790
Participation Rent (MDC)	(522,906)	(538,593)	(554,751)	(571,394)	(588,536)	(606,192)	(624,377)	(643,109)	(662,402)	(682,274)	(702,742)	(723,825)
Operating Expenses:												
Salaries	(778,072)	(801,414)	(825,457)	(850,220)	(875,727)	(901,999)	(929,059)	(956,930)	(985,638)	(1,015,207)	(1,045,664)	(1,077,034)
Administration	(105,000)	(108,150)	(111,395)	(114,736)	(118,178)	(121,724)	(125,375)	(129,137)	(133,011)	(137,001)	(141,111)	(145,345)
Marketing	(120,000)	(123,600)	(127,308)	(131,127)	(135,061)	(139,113)	(143,286)	(147,585)	(152,012)	(156,573)	(161,270)	(166,108)
Contract Services	(313,582)	(322,989)	(332,679)	(342,659)	(352,939)	(363,527)	(374,433)	(385,666)	(397,236)	(409,153)	(421,427)	(434,070)
Repairs and Main.	(300,000)	(309,000)	(318,270)	(327,818)	(337,653)	(347,782)	(358,216)	(368,962)	(380,031)	(391,432)	(403,175)	(415,270)
Utilities	(360,000)	(370,800)	(381,924)	(393,382)	(405,183)	(417,339)	(429,859)	(442,755)	(456,037)	(469,718)	(483,810)	(498,324)
Management Fee	(597,672)	(611,570)	(625,453)	(639,651)	(654,171)	(669,021)	(684,207)	(699,739)	(715,623)	(731,868)	(748,481)	(765,472)
Insurance	(300,000)	(309,000)	(318,270)	(327,818)	(337,653)	(347,782)	(358,216)	(368,962)	(380,031)	(391,432)	(403,175)	(415,270)
Taxes	(450,000)	(463,500)	(477,405)	(491,727)	(506,479)	(521,673)	(537,324)	(553,443)	(570,047)	(587,148)	(604,762)	(622,905)
Reserves	(150,000)	(154,500)	(159,135)	(163,909)	(168,826)	(173,891)	(179,108)	(184,481)	(190,016)	(195,716)	(201,587)	(207,635)
Total Operating Expenses	($3,474,326)	($3,574,524)	($3,677,295)	($3,783,048)	($3,891,870)	($4,003,851)	($4,119,082)	($4,237,660)	($4,359,682)	($4,485,248)	($4,614,463)	($4,747,433)
NOI Before Debt Service	$10,944,568	$11,176,145	$11,404,282	$11,636,831	$11,873,869	$12,115,475	$12,361,727	$12,612,705	$12,868,492	$13,129,170	$13,394,822	$13,665,532
Yield on Cost	6.70%	6.84%	6.98%	7.12%	7.27%	7.42%	7.57%	7.72%	7.88%	8.04%	8.20%	8.37%
Debt Service	(5,308,178)	(5,308,178)	(6,838,907)	(6,838,907)	(6,838,907)	(6,838,907)	(6,838,907)	(6,838,907)	(6,838,907)	(6,838,907)	(6,838,907)	(6,838,907)
Operating Cash Flow	$5,636,390	$5,867,967	$4,565,375	$4,797,924	$5,034,962	$5,276,568	$5,522,820	$5,773,798	$6,029,585	$6,290,263	$6,555,915	$6,826,625
Equity Dividend Ratio	9.86%	10.26%	7.99%	8.39%	8.81%	9.23%	9.66%	10.10%	10.55%	11.00%	11.47%	11.94%
DSCR	2.06	2.11	1.67	1.70	1.74	1.77	1.81	1.84	1.88	1.92	1.96	2.00

<u>EXHIBIT "D"</u>

Miami-Dade County Procedures Manual for Art in Public Places

ART IN PUBLIC PLACES (APP) PROCEDURES

SUMMARY

The Art in Public Places (APP) program is a requirement for all capital projects of Miami-Dade County and each municipality in Miami-Dade County that develop new government buildings that shelter people in a wholly or partially enclosed manner and serve a public purpose. New government buildings include newly constructed structures built by and/or for the County or a municipality, prefabricated structures procured for public use, and existing buildings that are converted to a new use. The County Code requires that 1½% of the capital cost of new government buildings be dedicated to public art projects through the APP program. This procedure explains:

- how to work with the Department of Cultural Affairs to implement the APP requirement;
- the processes to follow for repairing, restoring and inventorying public art works;
- procedures for municipalities to comply with the APP requirement;
- procedures for private sector capital development on land owned by local government or on private property with the building owned by local government;
- procedures for accessioning and deaccessioning artworks in the Public Art Collection; and
- "Frequently Asked Questions" that are based on policies established by the Department of Cultural Affairs and a series of opinions issued by the Office of the County Attorney to help clarify the requirements of the APP program.

PROCEDURE

General Information for Implementing APP Projects

1. Contact the Department of Cultural Affairs to set up a meeting to confirm the eligibility of the capital project for the APP program and for the Department of Cultural Affairs to review a complete capital budget for the project and to confirm that an accurate calculation of the APP contribution has been made.
2. All capital costs are included in the calculation of the 1½% APP allocation, including but not limited to:
    - architectural and engineering fees;
    - specialty consulting fees;
    - capital project management fees (for County and/or contracted services)
    - construction costs (including all systems and features that make a facility functional);
    - site work;
    - allowance accounts (e.g., permitting, surveying, inspections); and
    - contingency allowance(s).

    The only exclusions are land acquisition and subsequent changes to the construction contract through change orders that do not involve a major change in the project's scope.
3. Departments convey funds to APP from the moment the department receives spending authority for the capital project, upon award of design contract and/or construction contract. APP will work with department to determine the best approach and timing for the conveyance of the funds to the Department of Cultural Affairs.

4. APP funds are used by the Department of Cultural Affairs for commissioning works of art, APP program administrative costs, and repair and restoration expenses.
5. Municipal, state, federal, private and other non-County funds for a capital project are subject to the 1½% public art requirement.
6. APP may use funds generated from a construction project for acquisition of art works for other government facilities throughout the County. Every effort is made to use funds generated by a department's project within that department.
7. Projects done through development agreements (i.e., the County contracts with another party to develop a building that the County will own now or in the future) are subject to the APP requirement.
   - All solicitations for and resulting development agreements must include the following language provided by APP regarding the requirement to transfer public art funds to Art in Public Places:

     Art in Public Places. This Project is subject to the Art in Public Places ("APP") provisions in Section 2.11.15 of the Miami-Dade County Code and Administrative Order 3-11, as managed by the Miami-Dade County Department of Cultural Affairs ("Department of Cultural Affairs") pursuant to Procedure 358 in the Miami-Dade County Procedures Manual ("Procedures Manual"). The Developer shall transmit 1.5% of the Project costs for all development on County land (as outlined in the Procedures Manual) to the Department of Cultural Affairs for the implementation of the APP program. The Developer is required to work collaboratively with the Department of Cultural Affairs on the implementation of the APP program pursuant to the requirements of said program. The referenced documents can be accessed at:

     https://library.municode.com/fl/miami_-_dade_county/codes/code_of_ordinances
     http://www.miamidade.gov/ao/home.asp?Process=alphalist
     http://intra.miamidade.gov/managementandbudget/library/procedures/358.pdf

Tools for Departments to Implement APP

1. A completed APP Capital Project Budget Allocation Worksheet must be submitted by departments to the Department of Cultural Affairs as soon as a capital project budget is developed and prior to design contract and construction award. APP staff will confirm the accuracy of the calculation of the APP requirement for the project (see sample "APP Capital Budget Allocation Worksheet" at http://www.miamidadepublicart.org/#tools; this form also is available from APP staff).
2. The following language must be included by departments under the "General Conditions Section 01042 - Art in Public Places Coordination" of the departments' capital projects contracts with architects, engineers, consultants, outside project management services, construction and development agreements:

   This project is subject to the Miami-Dade County Art in Public Places requirements, pursuant to Section 2-11.15 of the Code of Miami-Dade County, managed by the Miami-Dade County Department of Cultural Affairs as detailed in Procedure 358 in the Miami-Dade County Procedures Manual (see http://www.miamidadepublicart.org/#tools or http://intra.miamidade.gov/managementandbudget/procedures.asp).
3. Examples of prior APP projects, the list of members of the APP Trust and other APP background information can be found at www.miamidadepublicart.org.

<u>The APP Artists Selection Process</u>

1. APP works collaboratively with departments on developing the artists' selection process:
   - To identify opportunities for public art in a project (with departments' project managers, planners and architects);
   - To understand the unique features of the department's capital project (e.g., community impact, timetable requirements, etc.); and
   - To draft the "Call to Artists" (i.e., the APP request for artists' qualifications and/or proposals).
2. An APP Professional Advisory Committee (PAC) is convened to review artists' submissions and to make art commissioning recommendations to the APP Trust. PAC members are arts and design professionals appointed by the APP Trust.
   - Departments attend and participate in the PAC selection process (especially, project managers/architects/engineers and representatives from the specific users of the building).
   - Community representatives can participate at the departments' and APP's discretion.
   - The size and scope of the project help determine the opportunities identified for public art and the number of artists that may be selected to work on a project.
3. The PAC's recommendations of artists are approved and finalized by the Art in Public Places Trust (a 15-member board appointed by the Board of County Commissioners).
4. APP staff manages the work of the selected artists and closely coordinates this work with departments' project managers, architects/engineers/specialty consultants and contractors.

<u>Keys to Successful APP Projects</u>

1. Calculation of APP project funds must be done by using the APP Capital Budget Allocation Worksheet in consultation and concurrence with APP staff and based on actual capital project contract awards including but not limited to A&E, consultants' and contractors' awards.
2. It is essential to contact APP as soon as capital project planning begins so that the timetable for the artists' selection process can be coordinated with the overall project's early design work.
3. Departments' full involvement with APP in identifying opportunities for art works, participating in the selection process and developing the art projects helps ensure that departments' needs can be addressed.
4. Departments must include APP requirements and APP-authorized contractual language in all capital projects agreements and contracts.
5. Representatives from departments must be identified for clear, consistent and regular communication and coordination with APP staff for each stage of the work - planning, A&E selection, design, construction, and commissioning; these representatives must have direct access to decision-making authority for APP issues.
6. Departments must keep APP fully informed of capital project developments and especially of changes in order to avoid additional APP costs (e.g., redesign of art works, artists' delay claims, storage costs for art works, etc.); costs associated with failure to communicate with APP are the responsibility of the department.
7. The APP project manager must be included on the department's project management team, the artist(s) on the A&E team and the artist's fabricator/installer on the contractor's team; this is essential to ensure that departments' capital projects and the development of art works remain interlocked (e.g., planning, design and construction of the building is coordinated closely with the development and installation of the art work).

Repair and Restoration

1. Art in Public Places will dedicate 15% of all new public art allocations to a repair and restoration fund that will be utilized for specialized tasks required to restore and/or repair works of art in its collection (i.e., these funds are allocated from within the 1½% of APP funds generated by the capital project). These funds will be replenished on an ongoing basis with proceeds from new commissions.
2. Regular maintenance requirements of the commissioned artwork and the costs of regular maintenance are discussed and coordinated with the department in advance of the project completion to ensure the long-term care of the work and are the responsibility of the department.
3. Contact APP before undertaking maintenance and/or repair of any art work. Works of art may require specialized treatment for upkeep and qualified professionals for maintenance or repair.
4. When a work of art is designed as an integrated part of a building, it simply may require that the department conduct standard cleaning procedures. For example, an artist-designed terrazzo floor typically requires the same kind of maintenance as a regular terrazzo floor and the department is responsible for doing the day-to-day maintenance. Please call APP if there is any question about the care of a department's integrated art work.
5. Art works fabricated from special materials may require specialized maintenance treatment. For example, a bronze or stone work of art must be cleaned and treated with a specific maintenance product of a certain brand. Please call APP for guidance regarding the maintenance of art works made of special materials.
6. It is the departments' responsibility to train cleaning crews regarding the treatment of public art works to ensure proper care; APP is available to provide guidance for this training.
7. It is the departments' responsibility to inform tenants and lessees of their facilities about the care and requirements of public art works and to include provisions in tenant and lease agreements that make tenants and lessees responsible for the cost of repairing damages to public art works that are the result of negligence by the tenant or lessee.

Repair

1. Never attempt to repair an art work.
2. Contact APP immediately to report any damage to an art work and an APP staff member will be responsible for assessing the damage and determining the repair procedures. Please contact David Martinez-Delgado, Department of Cultural Affairs, for assistance (305-375-1067; david.martinez-delgado@miamidade.gov).

Inventory: Departments' Responsibilities

1. Departments are responsible for conducting an annual inventory of their public art works and for reporting the results to APP.
2. Departments must appoint an APP liaison responsible for the annual inventory and annually inform APP regarding contact information for this individual.
3. Departments cannot move or relocate works of art; APP must be contacted if a department wants to move or relocate a work of art.
5. Site specific and/or integrated works of art (i.e., works of art that are incorporated as an integral part of a building or structure) may not be moved without the review and approval of the Art in Public Places Trust. When possible, the Art in Public Places Trust will seek the advice and/or involvement of the artist in regard to the advisability and feasibility of moving her/his work of art.

<u>Inventory: APP's Responsibilities</u>

1. APP annually will provide departments with a list of the art works and locations of the works in the departments to initiate the annual inventory.
2. APP will provide departments with contact information for its Collections Manager who is responsible for the inventory results.
3. APP will respond to departments' requests to move or relocate art works.

<u>Information for Municipalities to Implement APP Projects</u>

1. Municipal governments are required to implement the APP provision set forth in the County Code.
2. Municipalities have the option of enacting their own art in public places programs and administering their own public art projects or working collaboratively with Miami-Dade Art in Public Places for APP to administer, manage and implement their public art projects.
3. If the municipality chooses to implement its own public art projects, the city is responsible for enacting its own art in public places ordinance which adheres to the minimum standards set forth in Section 2-11.15 of the Code of Miami-Dade County ("Code"). APP is available to provide guidance to municipalities in regard to enacting their own ordinances and establishing their programs. The following highlights requirements and guidance for municipal art in public places programs:
   - 1½% of the total capital cost of new government buildings must be allocated for the commission or purchase of artworks as defined in the Code and these procedures;
   - a competitive, quality-based artist selection process must take place and a selection committee with knowledge and expertise in the visual arts must select the art work;
   - APP funds must be used solely for commissioning works of public art and a professional artist must be contracted with to implement the public art project;
   - a percentage of the APP funds may be set aside for program administrative costs and repair and restoration expenses for the public art project. It is recommended that up to 15% of the total public art allocation be set aside for costs associated with administering the project and up to 15% be set aside for costs associated with the future repair or restoration of the public art project;
   - Miami-Dade County Department of Cultural Affairs and its APP staff are available to work with municipalities to assist them and confirm that they are meeting the APP program's requirements;
   - Municipalities must consult with Section 2-11.15 of the Code in regard to the minimum standards and notice required to enact and administer their own art in public places program;
   - for General Obligation Bond-funded (GOB) projects, APP funds must be spent within the project that generates the APP funds; and
   - if a municipality chooses to implement its own public art projects, but requires the technical assistance of Miami-Dade County APP, a negotiated administrative fee can be determined based upon the complexity and duration of the project.
4. If the municipality does not enact its own art in public places program and/or chooses to work collaboratively with Miami-Dade APP to implement the public art requirements, Miami-Dade APP will oversee and provide services, highlighted as follows:
   - work collaboratively with the municipality and its project team to identify opportunities for public art in the facility;
   - draft and distribute Call to Artists;
   - administer artist selection process;

- coordinate the submission of the recommended artist(s) to the Miami-Dade APP Trust;
- provide contract language for municipality's architect and contractor contracts to ensure APP coordination;
- provide technical assistance to the selected artist(s) and serve as liaison between the artist(s) and commissioning municipality and its project team;
- manage contract negotiations and process payments with artist(s);
- coordinate installation of art work(s) with the municipality's project managers, architects/engineers/specialty consultants and contractor;
- if a municipality chooses to work collaboratively with Miami-Dade APP, not less than 15% of the total public art funds will be allocated to Miami-Dade Department of Cultural Affairs for costs associated with its administration of the public art project - this administrative percentage may change in consultation with the Department of Cultural Affairs based on the complexity and duration of the administrative services required for the public art project;
- should the entirety of the APP management services not be required, a negotiated administrative fee can be determined based upon the level of APP services required and the complexity and duration of the project; and
- if required by the municipality, the selected artist(s)/artwork(s), along with an alternate recommendation, will be presented to and reviewed by the municipality's governing body prior to the final approval of the Miami-Dade APP Trust.

5. Municipalities will own the resulting public art works and will be responsible for the maintenance, repair (as necessary), and inventorying of public art works. Municipalities can consult with Miami-Dade APP for technical assistance with these responsibilities.
6. County facilities located, or intended to be located, within the boundaries of a municipality are governed solely and exclusively by the Miami-Dade County Art in Public Places program.

Information for Private Sector Capital Development on Land Owned or Leased by Local Government or on Private Property with the Building Owned, Leased or Operated by Local Government

1. Capital projects done through agreements with a private entity, including but not limited to leases or development agreements (i.e., the local government contracts with another party to develop a building that the local government will own now or in the future), are subject to the APP requirement if:
   - The project meets the eligibility criteria for the public art requirement (e.g., it is a building that shelters people in a wholly or partially enclosed manner); and
   - The project serves a public purpose whether operated by local government or on its behalf, by a private operator; and/or
   - The project relies on surrounding or adjacent local government buildings to function and is an integral component of the overall infrastructure of a public complex (e.g., a cargo facility at the airport);
   - The project advances a public policy objective (e.g., an office building or residential development that encourages public transit ridership); and/or
   - The project enhances a patron experience at a local government facility (e.g., a restaurant).

   Capital projects that are done through agreements with a private entity, including but not limited to leases or development agreements, may not be eligible for the art in public places requirement if the project meets the following criteria:

- The agreement between the local government and the private entity has a provision that allows the private entity the option to purchase the facility; and/or
- The project has no public purpose and is not part of a complex of surrounding or adjacent local government buildings that function as a public complex and/or does not enhance a patron experience at a local government facility.

2. Capital projects that include complexes in which one or more of the buildings and/or a portion of a building meet the criteria for the APP requirement need to comply with the APP requirement for those eligible buildings and/or eligible portions of the building (e.g., a public parking garage built as a part of a private development complex that otherwise may not be subject to the APP requirement).
3. Determinations as to the applicability of the public art requirement are made by the Director of the Miami-Dade Department of Cultural Affairs, are based on the section 2-11.15 of the County Code, Administrative Order 3-11 and the Miami-Dade Procedures Manual (Procedure No. 358), and may be considered by the Review Committee as set forth in Administrative Order 3-11, prior to consideration of the Board of County Commissioners.
4. Private entities must work collaboratively with Miami-Dade APP to oversee the artist commissioning process to ensure the highest level of artistic quality and adherence to the program's requirements, as outlined in these procedures. APP will oversee and provide services, highlighted as follows:
   - work collaboratively with the private entity and its project team to identify opportunities for public art in the facility;
   - work with the private entity to calculate the APP project funds, using the APP Capital Budget Allocation Worksheet based on actual capital project contract awards including but not limited to A&E, consultants' and contractors' awards;
   - provide the private entity with a payment schedule for the conveyance of the APP project funds to the Department of Cultural Affairs;
   - draft and distribute the Call to Artists;
   - administer the artist selection process;
   - coordinate the submission of the recommended artist(s) for the review and approval of the Miami-Dade APP Trust;
   - provide contract language for private entity's architect and contractor agreements to ensure APP coordination; and
   - provide technical assistance to the selected artist(s) and serve as liaison between the artist(s) and commissioning private entity and its project team.

   Once an artist is commissioned, the private entity may choose to oversee the implementation of approved public art projects or work collaboratively with Miami-Dade APP for it to oversee and provide services for the project's implementation. If APP administers the entire project, the private entity shall remit an amount not less than 15% of the total public art funds to the Miami-Dade Department of Cultural Affairs for costs associated with its administration of the public art project; this administrative percentage may change at the discretion of the Department of Cultural Affairs based on the complexity and duration of the administrative services required for the public art project. Should the entirety of the APP management services not be required, a negotiated administrative fee can be determined based upon the level of APP services required and the complexity and duration of the project. If APP oversees the implementation, APP's services are highlighted as follows:
   - manage contract negotiations and process payments with artist(s);
   - coordinate the installation of art work(s) with the private entity's project managers, architects/engineers/specialty consultants and contractor; and

- oversee the artist's work on design, fabrication, installation and commissioning of the art work(s).

6. The private entity must commit 15% of the total public art allocation for costs associated with the future repair and restoration of the public art project and remit the funds to the Miami-Dade County Department of Cultural Affairs for this purpose, no later than the art work's completion.
7. Miami-Dade County will own the resulting public art work(s) and will be responsible for costs associated with the implementation of repairs (as necessary and as long as repairs are not the result of negligence on the part of the private entity, in which case the cost of repairs is the responsibility of the private entity), and inventorying of the public art work(s).
8. Regular maintenance requirements of the commissioned art work(s) and their costs are the responsibility of the private entity. These needs will be discussed and coordinated with the private entity in advance of the project completion to ensure the long-term care of the work.
9. Works of public art may not be moved without the review and approval of Art in Public Places. Site specific and/or integrated works of art (i.e., works of art that are incorporated as an integral part of a building or structure) may not be moved without the review and approval of the Art in Public Places Trust. When possible, the Art in Public Places Trust will seek the advice and/or involvement of the artist in regard to the advisability and feasibility of moving her/his work of art.

Accession Procedures

1. Accessioning is the formal acceptance of an artwork into the Miami-Dade County Art in Public Places Collection (Collection). Accessioning artwork into the Collection indicates the intent to apply professional standards of care, display, and maintenance over the life of the artwork, or until the artwork is no longer displayable and is deaccessioned from the Collection.
2. Artworks will be entered into the Collection inventory as soon as a commissioning or purchasing contract is executed and these inventory entries will be annotated as "works in progress" with periodic updates included as necessary to describe the status of completion accurately. Artworks will be annotated as fully accessioned in the Collection inventory only upon completion of all facets of the commissioning or purchasing contract or of the required review process for gifts and other artworks. Conditions, restrictions, or limitations cannot be attached to the accessioning that would limit the use of the artwork.
3. The signed contract transferring title for the artwork and clearly defining the rights and responsibilities of all parties will accompany every acquisition.
4. Acquisitions result from:
   - Projects of the Miami-Dade County Art in Public Places Program pursuant to Section 2.11.15 of the Miami-Dade County Code;
   - Gifts with a fair market value greater than $1,000, which will be reviewed and accessioned in accordance with the Miami-Dade County Administrative Order No. 1-3;
   - Gifts with a fair market value less than $1,000 that are reviewed and accepted by the Art in Public Places Trust; or
   - Other artworks, including but not limited to work that are un-accessioned items found in the existing Public Art Collection or in the possession of Miami-Dade County government that are determined to have sufficient artistic merit and recommended for inclusion in the Miami-Dade County Public Art Collection. Factors considered in making this recommendation include: the quality of the work; the artist's intent for the work to be considered a stand-alone art work; the degree to which the design, materials and execution of the work constitutes a finished work of art; the suitability of the work to be placed on public display in furtherance of the mission of the APP program; and the

commitment to exercising accountability and care for works of art created through the APP commissioning process and/or owned by the County. These artworks must be reviewed and accepted by the Art in Public Places Trust.

5. All acquisitions will be entered into the Collection inventory and added to the Internal Services Department (ISD) Capital Inventory Record.
6. Once the Art in Public Places program takes possession of an artwork, it should have the sole right to determine how and when that artwork is shown, safeguarded, or de-accessioned, subject to its professional practices and policies and in accordance with County policy.

Deaccession Procedures

1. The deaccessioning of artwork is the removal of an object from the Miami-Dade County Art in Public Places Collection. This includes the removal of the artwork from its public site, removal from the maintenance cycle, and moving of records, both hard copy and electronic, into a Deaccessioned Collection file and as required by Miami-Dade County Administrative Order No. 8-2, transferred into the archived portion of the ISD Capital Inventory Record. Deaccessioning will be considered only after a careful evaluation of the artwork within the context of the Collection as a whole and will be consistent with Miami-Dade County Administrative Order No. 8-2 – Care, Control and Disposal of County Property. Only the Miami-Dade County Art in Public Places Trust has the authority to deaccession artworks in the Art in Public Places Collection.
2. Once an artwork has been accessioned, it may not be deaccessioned on the basis of content.
3. An artwork may be considered for deaccession under the following conditions only:
   - The artwork cannot be located after reasonable and diligent searches. As required by Miami-Dade County Administrative Order No. 8-2, a police report must be filed for unlocated artwork(s) and an investigation report and recommendation must be submitted to ISD;
   - The artwork has been damaged beyond repair, damaged to the extent that it no longer represents the artist's intent, or damaged to the extent that the expenses of restoration and repair are found to equal or exceed current market value of the artwork. As required by Miami-Dade County Administrative Order No. 8-2, a police report must be filed for damaged or destroyed artwork(s) and an investigation report and recommendation must be submitted to ISD;
   - The artwork is not, or is only rarely, on display due to lack of a suitable site;
   - For site-integrated or site-specific artworks, the site for which the artwork was specifically created is structurally or otherwise altered and can no longer accommodate the artwork, is made publicly inaccessible as a result of new construction, demolition, or security enhancement, or has its surrounding environment altered in a way that significantly and adversely impacts the artwork;
   - For site-integrated or site-specific artworks, the site for which the artwork was specifically created is sold or acquired by an entity other than Miami-Dade County;
   - The artwork was purchased as a semi-permanent acquisition and the County's predetermined period of obligation is terminated;
   - There is a documented history of incident(s) that shows the artwork is a threat to public safety;
   - The artist legally exercises the right of disassociation granted by the Visual Artists Rights Act of 1990, preventing the use of his or her name as the creator of the artwork;

- The artwork requires excessive maintenance and/or the condition or security of the artwork cannot be reasonably guaranteed;
- The artwork has been determined by the Art in Public Places Trust deaccession process to be of inferior quality relative to the quality of other works in the Collection or the County wishes to replace the artwork with a work of more significance by the same artist; and/or
- At the time of accessioning, complete information on the provenance of the artwork was not available, or more information has since become available, indicating that the artwork should not be part of the Miami-Dade County Art in Public Places Collection.

4. Department of Cultural Affairs staff will prepare a written recommendation for deaccession of artworks from the Collection based on one or more of the conditions in Section 3 above for review and evaluation by the Miami-Dade County Art in Public Places Professional Advisory Committee (Professional Advisory Committee), and subsequent review, evaluation and action by the Art in Public Places Trust. The staff reserves the option of hiring a consultant for advice on specific elements of the artwork being considered through the deaccession process.
5. Artists whose work is being considered for deaccession shall be notified by mail using the current address provided by the artist. Artists also shall be notified of the recommendation of the Professional Advisory Committee and of the Art in Public Places Trust meeting scheduled to consider this recommendation.
6. All legal documents relating to the artwork, including but not limited to contracts with the artist and agreements related to a donation of the artwork as applicable, will be consulted as part of the deaccession process. When applicable and feasible, the donor of an artwork under consideration for deaccessioning will be notified.
7. At a Professional Advisory Committee meeting, Miami-Dade County Department of Cultural Affairs staff will present reports on artworks to consider for deaccession that include:
   - Reasons for the suggested deaccession accompanied by such other documentation and information as may be relevant;
   - Acquisition method, cost, and estimated current market value;
   - Documentation of correspondence with the artist;
   - Photo documentation of site conditions (if applicable);
   - In the case of damage, a report that includes the official police and investigation reports and recommendation, and documents the original cost of the artwork, estimated market value, and the estimated cost of repair; and/or
   - In the case of theft or loss, the official police and investigation report and recommendation, including when possible, a report prepared by the agency responsible for the site of the loss.
8. The Professional Advisory Committee will then make a recommendation to the Miami-Dade County Art in Public Places Trust, including actions regarding the disposition of the artwork pursuant to Section 9 below. If the Professional Advisory Committee recommends that an artwork be retained, an explanation stating the Committee’s reasons and recommendations shall be set forth in the minutes of the Committee’s meeting and shall be submitted to the Art in Public Places Trust. The Trust may decide to seek additional information.
9. The decision to deaccession artwork will result from a resolution requiring a majority vote by the Miami-Dade County Art in Public Places Trust. Upon this decision to deaccession artwork, the Trust will consider what action should be taken, with priority given to public benefit from the Collection. Every step will be taken to arrive at a mutual balance between observing the rights of the artist and public benefit. Actions will be consistent with Miami-Dade County Administrative Order No. 8-2 and may include:

- Trade through artist, gallery, museum, or other institutions for one or more other artwork(s) of comparable value by the same artist or to reduce the purchase price of a replacement artwork;
- Long-term or permanent loan offered first to other governmental units and then, to eligible community based organizations, such as museums or educational/non-profit institutions, subject to being afforded equal participation opportunity to review and select the artwork(s);
- Donation first to other governmental units and then, to eligible community based organizations, such as museums or educational/non-profit institutions, subject to being afforded equal participation opportunity to review and select the artwork(s);
- Sale to interested potential bidders with "first offer" right to governmental units located within Miami-Dade County, in compliance with Administrative Order No. 8-2 governing surplus County property. Any pre-existing contractual agreements between the artist and the County regarding resale shall be honored, including but not limited to the original artist's having first right of refusal to purchase his or her artwork at its current market value;
- In special situations, the Miami-Dade County Art in Public Places can negotiate the transfer of an artwork to another entity. For site-integrated or site-specific artworks, when the site for which the artwork was specifically created is sold or acquired by an entity other than Miami-Dade County, the ownership of the artwork can transfer to that entity. Artwork in the Public Art Collection should be in exhibitable condition and continue to reflect the artist's original intent. Should the artwork selected for transfer need to be repaired cleaned, or restored, the negotiated transfer will include conservation provisions and, unless negotiated otherwise, the receiving entity pays for the restoration. The receiving entity should have an art plan that defines their commitment to the artist and the continued care of the artwork; and/or
- For artwork(s) not able to be disposed of by the methods outlined above, destruction or recycling of materials comprising the artwork, in accordance with Chapter 274 of the Florida Statutes, so that no piece is recognizable as part of that artwork.

10. In the event the artist disagrees with the decision of the Miami-Dade County Art in Public Places Trust, the artist may request reconsideration of the deaccession. This request must be filed in writing with the Miami-Dade County Department of Cultural Affairs within 30 days of the Trust's deaccession decision, and it must be based on information that was not considered during the Professional Advisory Committee's and the Art in Public Places Trust's meetings on the deaccession.
11. The Miami-Dade County Department of Cultural Affairs will work cooperatively with the Internal Services Department, Fixed Assets & Division Operations section of the County regarding the implementation of this policy for deaccessioned artworks and will notify ISD about all actions under formal consideration and taken by the Miami-Dade County Art in Public Places Trust affecting artwork(s) in the County's inventory.
12. A report will be sent to the County Mayor, Board of County Commissioners and ISD regarding the Miami-Dade County Art in Public Places Trust's action(s) regarding deaccessioned artworks.
13. The artwork, or its remains, shall be disposed of by the Miami-Dade County Art in Public Places staff, or its agents, upon deaccession action. It is the obligation of the Miami-Dade County Art in Public Places Program to ensure that all disposals with regard to the Collection be formally and publicly conducted and adequately documented in accordance with applicable provisions of the Florida Statutes and the Code of Miami-Dade County utilizing a variety of disposal methodologies.

14. A permanent record of the artwork's inclusion in the Miami-Dade County Art in Public Places Collection, and reasons for its removal, shall be maintained in a Deaccessioned Collection file, and will be kept as a separate section of the Miami-Dade County Art in Public Places Collection records. Miami-Dade County Department of Cultural Affairs staff will notify ISD Fixed Assets & Division Operations section of all deaccessioned artwork(s) so that the artwork(s) can be deleted from the Department's Capital Inventory Record.
15. No artworks shall be sold or traded to a member of a governing body or staff of Miami-Dade County government including the members of the Miami-Dade County Art in Public Places Trust and its Professional Advisory Committee, consistent with Miami-Dade County conflict of interest policies.
16. All proceeds from the sale of any artwork from the Miami-Dade County Art in Public Places Collection shall be deposited in the Art in Public Places Trust Fund. Funds from artwork sales may be used in any manner consistent with the enabling legislation of the Art in Public Places program and County policies regarding public artwork.

Frequently Asked Questions

1. Applicable Projects and Costs.
   - What if we are uncertain about whether the APP requirement applies to a project or components of a project?
   - Call APP staff if you have any questions about the APP requirements. In addition, the FAQs below may provide answers to your questions.
2. Contingency Allowances.
   - Are contingency allowances covered by the APP requirement, even if eventually they are not used or fully used for the project.
   - Yes. The APP allocation is calculated and transferred to APP upon the award of the contract.
3. Calculation of APP Amount.
   - How does a capital project accurately calculate the 1 ½% APP requirement amount?
   - A completed APP Capital Project Budget Allocation Worksheet must be submitted by departments to the Department of Cultural Affairs as soon as a capital project budget is developed and prior to design contract and construction award. APP staff will confirm the accuracy of the calculation of the APP requirement for the project and the final Worksheet must be signed by the department and the Department of Cultural Affairs (see sample "APP Capital Budget Allocation Worksheet" at http://www.miamidadepublicart.org/#tools; this form also is available from APP staff).
4. Project Changes
   - Are the costs associated with significant changes in a project's scope and budget subject to the APP requirement?
   - Yes. Typically, regular additive change orders are subject to the APP requirement as they are paid for from the project contingency allowance which is covered by the APP requirement. More significant scope additions which are accompanied by increases to the project's capital budget are subject to the APP requirement.
5. Inspector General.
   - In calculating the APP allocation, should the Inspector General cost be included in the base for the APP calculation?
   - Yes, the APP calculation is taken against the total contract amount.

6. Capital Outlay Reserve Funds (CORF).
   - Are construction projects funded by the Capital Outlay Reserve Fund covered by the APP requirement?
   - Yes. The APP requirement applies to all County construction projects for new buildings.
7. Funding Sources That Disallow Public Art.
   - Does the APP requirement apply to construction projects that are funded by grants or other sources which disallow public art?
   - If a grant or another funding source specifically prohibits the use of funds for compliance with the APP requirement, the department must use other funds to satisfy the APP requirement.
8. General Obligation Bond (GOB) Projects.
   - Does the APP requirement apply to GOB projects?
   - Yes, the APP requirement applies to all County construction projects for new buildings. In addition, the APP requirement applies to GOB projects for new buildings done by municipal governments.
9. Capital Work Done by the County.
   - Does the APP requirement apply to the cost of architectural and engineering services performed by County personnel and to the cost of in-house construction labor, materials, and/or machinery?
   - Yes. The APP requirement applies to the construction cost of new government buildings regardless of the source of funds for the project.
10. Private Sector-Funded Projects.
    - Does the APP requirement apply to buildings financed and constructed on County property by private sector investors?
    - Yes. The APP requirement applies to the construction cost of new government buildings regardless of the source of funds for the project. Please see the section “Information for Private Sector Capital Development on Land Owned or Leased by Local Government or on Private Property with the Building Owned, Leased or Operated by Local Government.”
    - What happens if the APP funds are not included in the development agreement with the private sector and/or are not collected by the department from the private sector?
    - The department will need to convey the funds for the APP requirement from another revenue source.
11. Conveyance of APP Funds.
    - When are funds conveyed to APP? Whom do we contact for details about conveying funds?
    - Funds are conveyed to APP when the department receives spending authority for the capital project. For example, when an A&E contract is authorized, 1½% of the contract must be conveyed to APP. Please contact Patricia Romeu, Department of Cultural Affairs, for instructions to convey funds (305-375-5920; romeu@miamidade.gov).
12. Cancellation of Capital Projects
    - Do APP costs incurred to date need to be covered by the department if the capital project is cancelled?
    - Yes.
13. Demolition.
    - Does the APP requirement apply to demolition costs?
    - Yes, if demolition is part of a construction project that is covered by the APP requirements.
14. Building Additions.
    - Are additions to an existing structure covered by the APP requirement?

- Yes, additions are considered to be "new government buildings."

15. Building Adaptations.
    - Are existing buildings that are acquired and converted for a new governmental use covered by the APP requirement?
    - Yes, the acquisition cost of the building (excluding the estimated cost of the land) and the capital costs of the conversion of the building for a new governmental use are covered by the APP requirement.
16. Structures
    - Does APP cover structures that are built by or for the County that serve the public (e.g., parks, playgrounds, bridges, pre-fabricated shells, utilities buildings, etc.)?
    - Yes, if the structure is intended to be used directly by the public.
17. Equipment.
    - Are equipment costs subject to the APP requirement?
    - Yes. The APP requirement covers all systems and features that make a facility functional, even if the equipment is acquired through a separate contract.
18. Parking Garages.
    - Does the APP requirement apply to a parking garage?
    - Yes.
19. Roadways, Sidewalks Parking and Site Improvements.
    - Does the APP requirement apply to roadways, sidewalks, parking and site improvements?
    - Yes, if the roadways, sidewalks, parking (e.g., parking lots) and site improvements (e.g., site lighting, signage, etc.) are part of a construction project that is covered by the APP requirement.
20. Selection of Art Must Be by APP.
    - Can a department satisfy the APP requirement by selecting and purchasing an artwork itself?
    - No. Works of art must be selected in compliance with the process required by the APP program and overseen by the APP Trust and staff. Please see the section, "The APP Artists Selection Process" on page 2.
21. Adherence to the Art in Public Places Requirement.
    - Can departments waive the APP requirement?
    - No. Section 2-11.15 of the Miami-Dade County Code sets forth the requirements for the APP program and provides that only the Board of County Commissioners has the authority to waive the APP requirement. Administrative Order 3-11 prescribes a process involving a Review Committee which can be convened to conduct a hearing of a request for a waiver and states that the Review Committee will evaluate such requests as follows: "If the facility does not conform to the definition of 'new governmental building' a waiver will be recommended to the Board of County Commissioners. Only the BCC is authorized to grant waivers. Waivers must be secured prior to the award of the construction contract."
22. Required Art in Public Places Language
    - Can departments change the required APP language that is provided in this Procedure?
    - No, departments must use the following language in all solicitations for APP eligible capital projects:

      This project is subject to the Miami-Dade County Art in Public Places requirements, pursuant to Section 2-11.15 of the Code of Miami-Dade County, managed by the Miami-Dade County Department of Cultural Affairs as detailed in Procedure 358 in the Miami-

Dade County Procedures Manual (see http://www.miamidadepublicart.org/#tools or http://intra.miamidade.gov/managementandbudget/procedures.asp).

23. Unsuitable Locations.
    - Does the APP requirement apply to a new building that may not provide a suitable location for a public artwork and may the APP funds be transferred for expenditure to another site?
    - Yes. The APP requirement covers all new government buildings. There is no requirement in Section 2-11.15 of the Miami-Dade County Code that artworks be located at the site of the project that funded the artwork. APP will work with departments to identify suitable alternative locations.
24. Donations of Artwork.
    - What is the process for departments to accept donations of art work(s)?
    - The process for accepting gifts of art works is covered by Administrative Order No. 1-3. It requires that the APP Trust and its Professional Advisory Committee review and provide the department with a recommendation for all donations of artwork or commemorative and/or memorial structures of artistic merit, valued in excess of $1,000. The donation of art work(s) does not satisfy the APP requirement for an eligible capital project.

CONTACT(S):

Department/Division

Department of Cultural Affairs

REFERENCE DOCUMENT(S):

Section 2-11.15 of the Miami-Dade County Code

Administrative Order 3-11, Art in Public Places Program Implementation and Fund Transfer Procedure

Administrative Order No. 8-2, Care, Control and Disposal of County Property

Administrative Orders No. 1-3, Gifts to the County

Copies of all County Attorney Opinions related to these procedures are maintained by the Department of Cultural Affairs

EXHIBIT “D-1”

Memorandum of Understanding (APP)

MIAMI-DADE COUNTY
Carlos A. Gimenez, Mayor

Cultural Affairs
111 NW 1st Street • Suite 625
Miami, FL 33128-1994
T 305-375-4634 F 305-375-3068
miamidadearts.org

miamidade.gov

February 26, 2019

Ms. Lindsay Lecour
Atlantic Pacific Communities
2950 SW 27 Ave Suite 200
Miami FL 33133

REF: Development of Block 45

Dear Ms. Lecour:

We thank you for the opportunity to discuss the many creative ways in which our program can partner with your team to make your project's compliance with the Miami-Dade Art in Public Places Ordinance a win-win for all. Over the years, we have proven that the most successful and meaningful public art commissions have evolved through close collaborations and ongoing involvement of our commissioned artist with the project's owner, design team, consultants, and prime contractor.

It is our understanding that the timeline for this development is on a fast track schedule and that Atlantic Pacific Communities (APC) wishes to engage the Miami-Dade Art in Public Places program to begin the public art collaboration with the intent to have commissioned artists selected for the start of Design Development Phase for this project. To achieve this goal, we propose to partner with APC as follows:

- Miami-Dade County Art in Public Places Trust and its staff will collaborate with the Client and its designees all throughout the artist selection process and the project implementation phase. The intent of the parties is to find opportunities to incorporate "integrated works of art" to the extent possible and feasible within the overall development project. "Integrated works of art" means functional works of art that are incorporated within architectural features contemplated for the buildings, structures, streetscapes, and other design features for the overall project, which may include landscaping, plazas, arcades, colonnades, walkways, screens, water features, wall treatments and cladding, courtyards, terraces, roof gardens, gates, street furniture, lighting, and floor finishes. The parties will work cooperatively to incorporate such integrated works of art within and around the Block 45 and or Overtown/Historic Lyric Theatre Station as identified by Miami-Dade Transit in that certain Development Agreement between Miami-Dade County and APC.

- The Client's required APP contribution, in the amount of 1.5% of the overall design and construction costs of said development, shall wholly fund the three (3) main budgetary components of the public art program as follows:

    - 70% allocated to the commissioning of the artwork, this percentage will be partly funded in cash and partly in contributions from construction-related scope earmarked for design and implementation of an integrated work of art, as described in Exhibit A of this proposal. The unencumbered cash allocation to the artwork shall remain at the sole control and discretion of the commissioned artist(s) to cover project expenses including, but not limited to, artist's

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Carlos A. Gimenez, Mayor

Cultural Affairs
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Miami, FL 33128-1994
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fees, research work, artwork-specific enhancements, and or custom fabricated elements, among others

- 15% allocated to the future conservation of the artwork of which APC may withhold up to 9% of this amount on a restricted maintenance account with the balance being deposited in cash in the MDC-APP Maintenance fund

- 15% allocated to the APP project management efforts associated with administering the APP program through its completion and acceptance by both APC and applicable Authorities Having Jurisdiction. Of this amount, APC may choose to substitute up to 7% of this allocation with construction-related scope appropriate for artwork integration and or provide project management services and site support to APP for the implementation of commissioned work

- All Professional Artist Service Agreements entered between the County and commissioned artists will identify Atlantic Pacific Communities, its assignees and designees, and the Miami-Dade Transit and Public Works Department as the Project Owners/Clients and establish the working parameters for the relationship between Artists and APP, as the administrators to these County contracts.

- The Client shall deposit via check in the Miami-Dade Art in Public Places Trust Fund the required APP Project Allocation payments as shown under Exhibit A-MDC-APP Budget Allocation Worksheet & Project Disbursement Schedule

- The Client shall be responsible for the day-to-day maintenance of the artwork on Block 45 and for notifying MDC-APP promptly of any observed condition that may require the performance of specialty conservation services that are above and beyond the normal maintenance needs specified by the artist upon completion of the work.

- Upon completion of the project, title to the work shall be vested in the name of Miami-Dade Art in Public Places Collection

To jumpstart our working relationship, we are attaching to this proposal the (2) Exhibits that further describe the specifics of the APP budget breakdown and the preliminary timeline for program implementation:

- Exhibit A: MDC-APP Budget Allocation Worksheet & Project Disbursement Schedule
- Exhibit B: MDC – APP Timeline for the Artists Selection Process (1st phase in the APP process)

Project Budget and Transfer of Funds – The Client shall provide an APP Budget Allocation Worksheet that identifies the total Development Budget (design, construction, and project management project costs as noted on Exhibit A) used in calculating the required 1.5% APP contribution for this project with an approximate value of \$ \$132,276,195.00 resulting in a total APP contribution of \$ \$1,984,143.00. The Client shall provide documentation supporting the figures represented in the calculation worksheet. Shall the APP Project Allocation be calculated based on

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estimated project costs, the allocation will need to be recalculated and adjusted accordingly upon award of contract work.

In an effort to advance the first phase of the public art process, we will need to work with the project's design team to identify public art opportunities that can be incorporated in a Call to Artist. Upon acceptance of this proposal, the Call can be developed in coordination with the project's design team and be ready for circulation upon notification from the Miami-Dade Transit and Public Works Department that information on this project can be publicly shared.

To formally initiate the collaboration on this project between MDC- APP and Atlantic Pacific Communities, we will require a written acceptance of this proposal from an authorized representative and a commitment to fund the initial payment of at least 5% of the APP calculated amount as described under Exhibit A of this MOU.

We look forward to working with your team in the implementation of a successful public art program that meets your high standards for this new mixed-use development project.

Sincerely,

Patricia Romeu, Chief
Miami-Dade Art in Public Places Program

Attachment

Cc: Michael Spring, Senior Advisor to the Mayor, Director of the Department of Cultural Affairs
Amanda Sanfilippo, Curator and Artist Manager, Art in Public Places Program

MDC-APP Project Allocation Worksheet & Disbursement Schedule

Contributing Facility/Project	CASH
Construction Costs	$ 128,164,356
A/E Services & Contingencies	$ 4,111,839
Total Cost of Design & Construction	**$ 132,276,195**
Required % to APP Allocation	1.5%
Required Contribution to APP (Cash + CC):	**$ 1,984,143**

Standard Breakdown of APP Funds	% of Total	APP $$
MDC APP Administrative Costs (15%)	15.0%	$ 297,621
MDC Maintenance Fund (15%)	15.0%	$ 297,621
Artwork Allocation (70%)	70.0%	$ 1,388,900

Proposed Breakdown of APP Funds	% of Total	APP $$		Total Cash Savings
MDC APP Administrative Costs (CASH)	8%	$ 158,731		
MDC Maintenance Fund (CASH)	6%	$ 119,049	9%	$ 178,572.86
Artwork Allocation within Artists' Control (CASH)	30%	$ 416,670		
Artwork Allocation from Construction Credits/Elements	70%	$ 972,230	70%	$ 972,230
Additional Credits Due (equal to 7% APP Admin Savings)	7%	$ 138,890	7%	$ 138,890
APC Maintenance Reserves	9%	$ 178,573		
		$ 1,984,143		

	CASH	CREDITS
Total APP Contribution	**$ 694,450**	**$ 1,289,693**
	35%	***65%***

Disbursement of APP Cash Contribution	% of Cash	Cash	Timeframe
Start of Artist Selection Process	15%	$ 104,167.50	2019 QTR 1
Artist Commission Award	30%	$ 208,335.01	2019 QTR 4
Artist NTP for Fabrication & Install	35%	$ 243,057.51	2020 QTR 3
Artwork Substantial Completion	15%	$ 104,167.50	2021 QTR 3
Artwork Completion	5%	$ 34,722.50	2022
	100%	**$ 694,450.02**	

Development of Block 45 - Preliminary Art in Public Places Program Timeline

Tasks	Timeframe	Dur.	Milestone	Description
ARTISTS SELECTION PHASE		190		Comprises entire timeframe from initial discussion to commissioning of final selected artwoks
Hold Preliminary meetings with Client team to identify opportunities		20		Start direct coordination w/ APP upon approval of County Commission project award
Finalize Scope of Work & Call to Artist		30		Discussion mtgs between parties to finalize project parameters / budget / narrative
Issue Call to Artist		15		Circulate call to artists community (local, national, and or international)
Prepare Selection Material from applicant pool		5		All online apps need to be reviewed, catalogue, and organized prior to mtg
Schedule Professional Advisory Committee Mtg (PAC) *		1		Half - to full day mtg to Shorlist artists who will be invited to prepare design proposals
MDC APP Trust Approval of Artists' Proposal Contracts	2nd Tuesday	1		Trust Authorizes Proposal Agreements & Expenditures / Mtgs held every 2nd Tuesday of the month
Artist Proposal Contract Negotiation & Mtg Orientation Coordination		20		Review proposal agreement w/ shortlisted artists as approved by APP Trust
County Proposal Contract Execution		30		County Attorney's Office / Mayor's Office / Clerk
Schedule Project Orientation Mtg w/ A&E Teams, Owner, and APP		1		Artists are given a project overview, visuals, design documentation / Meet & Greet w/ Client team & APP
Shortlisted Artists to Develop Conceptual/Schematic Proposal*		45		Artists prepare design proposals (**Artwork concept is Determined**)
Schedule Professional Advisory Committee Mtg (PAC) *		1		Full day of artists' presentations to select specific artists' commissions
MDC Trust Approval of PAC Commission Recommendations	2nd Tuesday	1		Trust Authorizes Commission Agreements & Expenditures / Mtgs held every 2nd Tuesday of the month
MDC APP Contract Negotiations w/ Commissioned Artists		30		Negotiate Design/Fab/Inst Agreement w/ Artist (only releasing funds for Design Portion)
County Executes PSAs and Issuance of 1st Pmts on all contracts		10		County Attorney's Office / Mayor's Office / Clerk
ARTWORK IMPLEMENTATION PHASE (Design / Fabrication / Installation)		391		Timeline will be developed according to actual scope of work and complexity of tasks to implement artwork
Artist NTP on Design Phase and completion of 30% design		90		Artist will work closely with the project team to refine and fully develop the commissioned design concept
Artist to complete 100% Design		90		Includes development of construction docs, specifications, and selection of artists' subs
MDC APP Negotiates ADD I w/ Commissioned Artist		30		Establishes Payment Schedule and Timeline for Fabrication & Installation of Artwork
MDC Trust approves ADD I for Fabrication & Installation of work		1		Artwork Fabrication & Installation Agreements
Artist NTP for Fabrication		240		To be determined upon Commissioning of Artwork and understanding of overall development schedule
Artist NTP for Installation		30		To be determined upon Commissioning of Artwork & Projected Completion Date
Substantial Artwork Completion		?		All Integrated works will require close coordination with construction team and schedule

REMARKS
Estimated Duration = calendar days
* Activity requires participation of Project Team and or Client designee

SCHEDULE 4.21

Building Construction Responsible Wages and Benefits Requirements
(Fair Wage Affidavit)

FAIR WAGE AFFIDAVIT

Before me, the undersigned authority appeared ________________________________
(PRINT NAME)
the ____________________________ of _______________________________________,
(PRINT TITLE) (PRINT NAME OF BIDDER OR PROPOSER)

who attests that ____ shall pay workers on
(PRINT NAME OF BIDDER OR PROPOSER)

the project minimum wage rates in accordance with Responsible Wages and Benefits, Section 2-11.16 of the Code of Miami-Dade County and the Labor Provisions of the contract documents.

State of FLORIDA
County of Miami-Dade

Sworn to (or affirmed) and subscribed before me this __________day of _____________, 201___.

______Personally known or _______produced identification.

____________________________________ ________________________________

(Signature of Notary Public - State of Florida) Name of

(Print, Type, or Stamp Commissioned Notary Public)

Type of identification produced:_____________________

SCHEDULE 17.8

Form of Landlord's Estoppel Certificate
LANDLORD'S ESTOPPEL CERTIFICATE

(form – subject to amendments based on Tenant, Tenant's successors and/or assigns, and any prospective Lender or Sublessee requirements)

____
____
____
____

Re: Lease Agreement dated ______________________, 201__ (the "Lease"), by and between Miami-Dade County, acting by and through the Department of Transportation and Public Works (DTPW) (together hereinafter "Landlord"), and Block 45, LLC, a Florida limited liability company, its successors or assigns ("Tenant").

Ladies and Gentlemen:

The undersigned Landlord hereby acknowledges receipt of notice that the above-referenced Lease, which leases to Tenant certain premises described therein (the "Premises"), [is being assigned to you by Tenant] [as security for a loan to be made by you to the Tenant, which loan will be secured by _______________] [in connection with your acquisition of Tenant's interest in the Lease.]

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

1. The Lease (a true, correct and complete copy of which, including all riders, exhibits, modifications and amendments to the Lease (if any), is attached as ***Exhibit A*** hereto) constitutes the entire agreement between Landlord and the Tenant. 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 Property or the Project.

3. The Lease is in full force and effect. Tenant has accepted the Property, presently is in possession of same, and is paying the Rent specified in the Lease on a current basis as of the date hereof. 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, neither Tenant nor Landlord is in default or breach under the Lease, and 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 the date hereof, the Rent is as specified in the Lease except as follows: ____ [insert "none" if not applicable].

6. The Commencement Date of the Lease was _____________ ___, 2_____. The term of the Lease commenced on the Commencement Date and consists of a term of ninety (90) years, ending on __________ ____, 2_______.

7. 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 Property or the Project (except as expressed hereunder or attached hereto).

8. To the best of Landlord's knowledge, the Lease has not been assigned or transferred or sublet to anyone in whole or in part, except as follows: _______________________________ _______________________________________.

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

Except as otherwise expressly defined in this 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 or telecopier signature.

[Signature page follows]

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

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

By:______________________________
[***Insert name of County Mayor or his/her designee***]

ATTEST

By: ___________________________
_________________________, Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

By: ______________________________
Name: ____________________________
Title: _____________________________

SCHEDULE 23.4

Form of Memorandum of Lease Agreement

This instrument prepared by (and after recording return to): Name: Nancy B. Lash, Esq. Address: Greenberg Traurig, P.A. 333 SE 2nd Avenue, Suite 4400 Miami, Florida 33131	(Space reserved for Clerk of Court)

MEMORANDUM OF LEASE AGREEMENT
(Block 45)

THIS MEMORANDUM OF LEASE AGREEMENT is made as of this ____ day of ____________, 20__, by and between MIAMI-DADE COUNTY, a political subdivision of the State of Florida whose address is 701 N.W. 1st Court, Miami, Florida 33136, through the Department of Transportation and Public Works (collectively, the "Landlord"), and BLOCK 45, LLC, a Florida limited liability company (successor-in-interest to ATLANTIC PACIFIC COMMUNITIES, LLC, a Delaware limited liability company) (the "Tenant"), whose address is 161 NW 6th Street, Suite 1020, Miami, Florida 33136.

W I T N E S S E T H:

For and in consideration of Ten and NO/100 Dollars ($10.00) and other valuable consideration paid, Landlord does demise and let unto Tenant, and Tenant does lease and take from Landlord, upon the terms and conditions and subject to the limitations more particularly set forth in that certain Lease Agreement between Landlord and Tenant dated as of _________ __, 20__ (the "Lease"), the land located in Miami-Dade County, Florida and legally described on Exhibit A hereto and by this reference made a part hereof (the "Property"). Fee title to the Property is owned by Landlord. Capitalized terms used in this Memorandum without definition have the meanings given to them in the Lease.

Landlord, in consideration of the rents and covenants set forth in the Lease, hereby demises and leases to Tenant, and Tenant hereby takes and hires from Landlord, the Property,

TO HAVE AND TO HOLD the Property for the term commencing on the Commencement Date and ending ninety (90) years thereafter (the "Term"), subject to earlier termination as provided in the Lease.

The Lease contains provisions the recognize the Improvements constructed on the Property from time to time may be financed through one or more Leasehold and Subleasehold Mortgages and/or other financing mechanisms. Reference should be made to the Lease for Lender, Leasehold Mortgagee, Subleasehold Mortgagee and Mezzanine Financing protections.

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

[Signatures on the following page]

EXECUTED as of the day and year first above written.

Approved as to form and legal sufficiency

By:___________________________
Assistant County Attorney

ATTEST:

HARVEY RUVIN, CLERK

By:___________________________

LANDLORD:

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

BY ITS BOARD OF COUNTY COMMISSIONERS

By: _________________________________
Name: _______________________________
Title: ________________________________

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

The foregoing instrument was acknowledged before me this _____ day of _________________, 201__ by _____________, as ______________, on behalf of MIAMI-DADE COUNTY, a political subdivision of the State of Florida. S/He personally appeared before me, and [ ] is/are personally known to me or [ ] produced ___________________ as identification.

[NOTARIAL SEAL]

Notary:___________________________
Print Name:________________________
My Commission expires:_____________

[Signatures continue on the following page]

Signed in the presence of:

TENANT:

BLOCK 45, LLC, a Florida limited liability company

By:______________________________
Name:____________________________
Title:____________________________

____
Print Name:____________________

____
Print Name:____________________

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

The foregoing instrument was acknowledged before me this _____ day of __________________, 201__ by ___________, as ______________ of BLOCK 45, LLC, a Florida limited liability company, on behalf of said entity. S/He personally appeared before me, and [x] is/are personally known to me or [ ] produced ___________________ as identification.

[NOTARIAL SEAL]

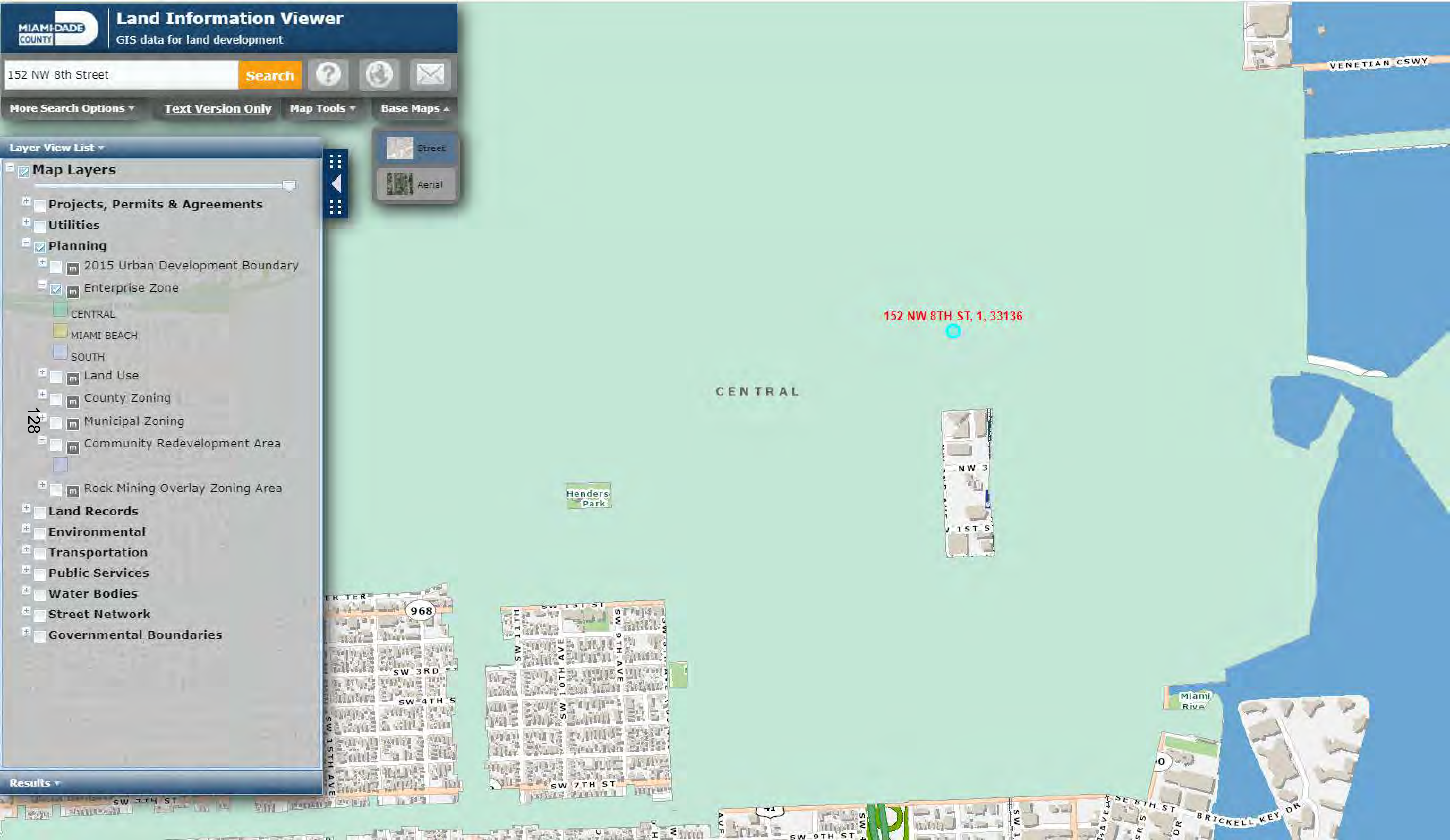
Notary:___________________________
Print Name:_______________________
My Commission expires:_____________

<u>EXHIBIT A</u>

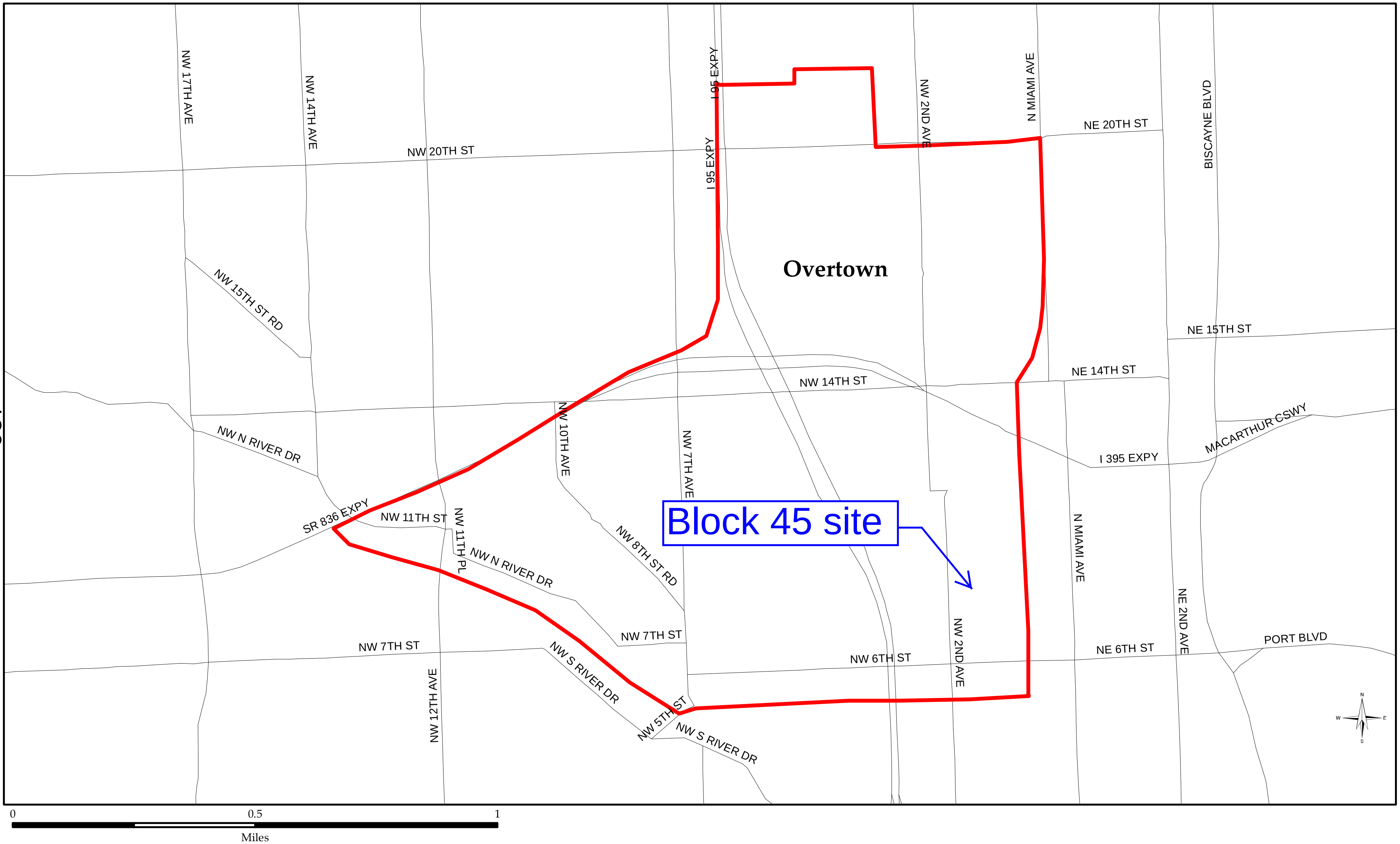
<u>LEGAL DESCRIPTION OF THE PROPERTY</u>

Block 45 North, CITY OF MIAMI, according to the Plat thereof as recorded in Plat Book B, at Page 41, of the Public Records of Miami-Dade County, Florida.

Exhibit B


Land Information Viewer
GIS data for land development
152 NW 8th Street
Search
More Search Options
Text Version Only
Map Tools
Base Maps
Street
Aerial
Layer View List
Map Layers
Projects, Permits & Agreements
Utilities
Planning
2015 Urban Development Boundary
Enterprise Zone
CENTRAL
MIAMI BEACH
SOUTH
Land Use
County Zoning
Municipal Zoning
Community Redevelopment Area
Rock Mining Overlay Zoning Area
Land Records
Environmental
Transportation
Public Services
Water Bodies
Street Network
Governmental Boundaries
Results
152 NW 8TH ST, 1, 33136
CENTRAL
VENETIAN CSWY
BRICKELL KEY DR
SW 9TH AVE
SW 10TH AVE
SW 7TH ST
SW 3RD
SW 4TH
SW 15TH AVE
968

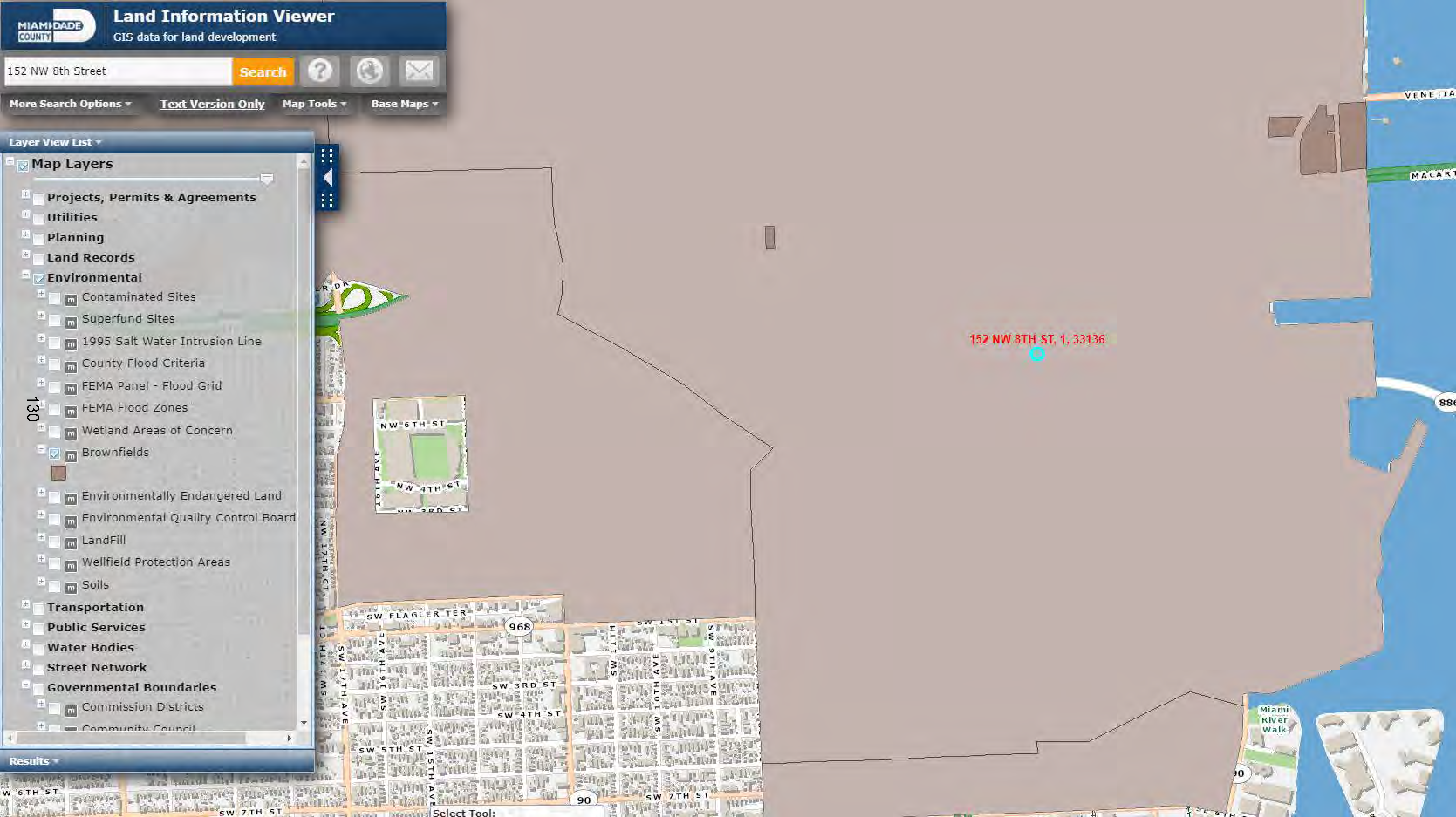
OVERTOWN
TARGETED URBAN AREA



Targeted Urban Area

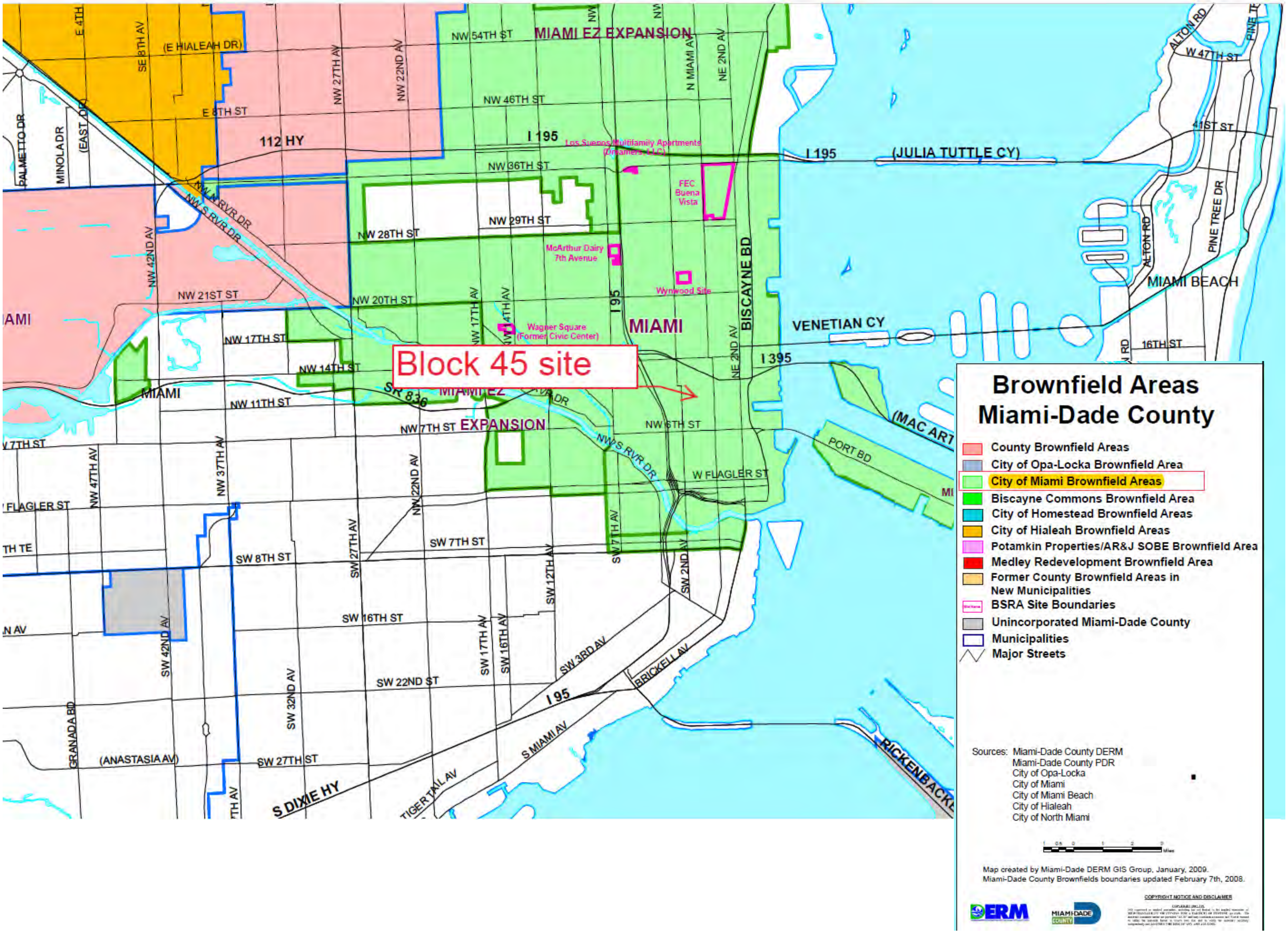
April 2013

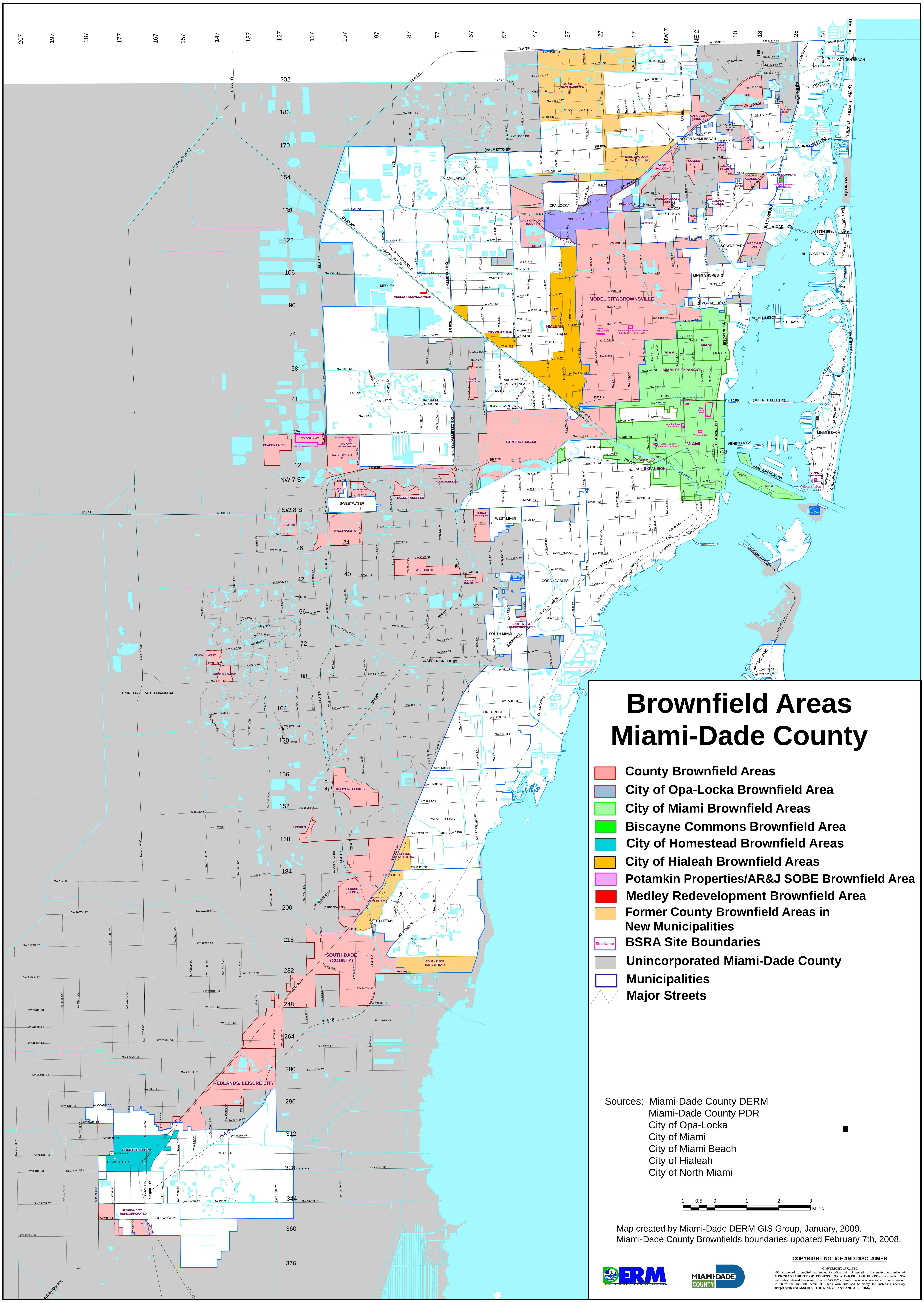
Miami-Dade County, Florida
Department of Regulatory & Economic Resources
Planning Research Section
Delivering Excellence Every Day



MIAMI-DADE COUNTY
Land Information Viewer
GIS data for land development
152 NW 8th Street
Search
More Search Options
Text Version Only
Map Tools
Base Maps
Layer View List
Map Layers
Projects, Permits & Agreements
Utilities
Planning
Land Records
Environmental
Contaminated Sites
Superfund Sites
1995 Salt Water Intrusion Line
County Flood Criteria
FEMA Panel - Flood Grid
FEMA Flood Zones
Wetland Areas of Concern
Brownfields
Environmentally Endangered Land
Environmental Quality Control Board
LandFill
Wellfield Protection Areas
Soils
Transportation
Public Services
Water Bodies
Street Network
Governmental Boundaries
Commission Districts
Results
152 NW 8TH ST, 1, 33136
NW 6TH ST
NW 4TH ST
SW FLAGLER TER
968
SW 3RD ST
SW 4TH ST
SW 5TH ST
SW 7TH ST
SW 9TH AVE
SW 10TH AVE
SW 11TH
SW 15TH AVE
SW 16TH AVE
SW 17TH AVE
NW 17TH CT
90
Miami River Walk
VENETIA
MACART
Select Tool:

Brownsfield Areas





Brownfield Areas
Miami-Dade County
County Brownfield Areas
City of Opa-Locka Brownfield Area
City of Miami Brownfield Areas
Biscayne Commons Brownfield Area
City of Homestead Brownfield Areas
City of Hialeah Brownfield Areas
Potamkin Properties/AR&J SOBE Brownfield Area
Medley Redevelopment Brownfield Area
Former County Brownfield Areas in New Municipalities
Site Name
BSRA Site Boundaries
Unincorporated Miami-Dade County
Municipalities
Major Streets
Sources: Miami-Dade County DERM
Miami-Dade County PDR
City of Opa-Locka
City of Miami
City of Miami Beach
City of Hialeah
City of North Miami
1 0.5 0 1 2 3
Miles
Map created by Miami-Dade DERM GIS Group, January, 2009.
Miami-Dade County Brownfields boundaries updated February 7th, 2008.
DERM
DEPARTMENT OF ENVIRONMENTAL RESOURCES MANAGEMENT
MIAMI-DADE COUNTY
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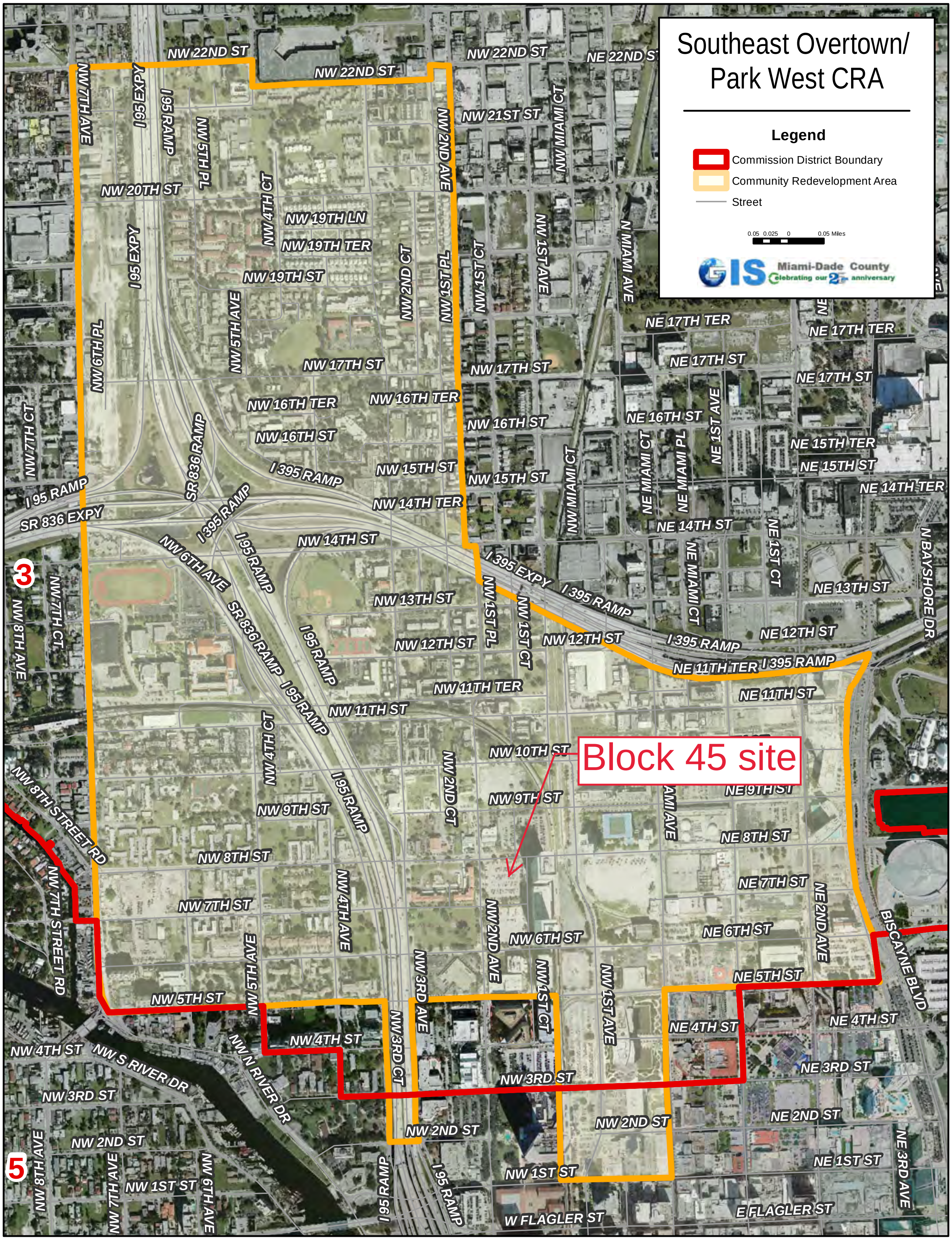
NO expressed or implied warranties, including but not limited to the implied warranties of MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE are made. The materials contained herein are provided "AS IS" and may contain inaccuracies and User is warned to utilize the materials herein at User's own risk and to verify the material's accuracy independently and ASSUMES THE RISK OF ANY AND ALL LOSS.
MIAMI GARDENS
OPA-LOCKA
MIAMI LAKES
HIALEAH
MEDLEY
MODEL CITY/BROWNSVILLE
DORAL
MIAMI
CENTRAL MIAMI
SWEETWATER
WEST MIAMI
CORAL GABLES
SOUTH MIAMI
PINECREST
PALMETTO BAY
CUTLER BAY
SOUTH DADE (COUNTY)
REDLANDS/ LEISURE CITY
HOMESTEAD
FLORIDA CITY
MIAMI BEACH
NORTH MIAMI
AVENTURA
BEACON LAKES
RICHMOND HEIGHTS
UNINCORPORATED MIAMI-DADE



This map was prepared by the Miami Dade County Information Technology Department Geographic Information Systems (GIS) Division For the Office of Management and Budget
March, 2012

Exhibit C

ATLANTIC PACIFIC COMMUNITIES

Project Description

Block 45 will be an iconic landmark adjacent to Downtown Miami's Overtown Transit Village within the historic Overtown neighborhood, which will provide state-of-the-art residences and amenities to Miami's workforce. The development will have an animated, pedestrian friendly ground floor with approximately 25,000 sf of neighborhood retail, such as a restaurant, coffee shop, deli, personal services, and a health center. The development will be anchored by a modern high-rise residential tower containing 616 dwelling units and a 637-space parking garage serving the residents, retail users and staff.

To comply with the Miami 21 Zoning Ordinance, a liner building or "veneer of residential units", will wrap the development on its northern, western and eastern façades. This liner will provide each of these frontages with "residential scale and texture" surrounding the podium, which in turn provides an elegant base and recreational deck for the design. Along the building's south elevation, the garage façade will be veneered with an architectural element that will symbolically represent large Bahamian Shutters; these will cover the parking façade.

Block 45 has been designed to be a beacon in the resurging and burgeoning community that is Overtown. The historic neighborhood was once heralded as a destination for world-renowned jazz performers and considered a thriving epicenter of music, art, and commerce, and this development will contribute to the rebirth of the Overtown Business District by complementing and becoming part of an evolving neighborhood fabric that includes enduring landmarks, such as the Historic Lyric Theater and Greater Bethel AME church, and new attractions such as the MiamiCentral mixed-use development.

The proposed Block 45 building will energize the community by providing retail, commercial and food & beverage uses along three street frontages. Residential lobby entrances have also been strategically located on the prominent street frontages.

Development managers at Atlantic|Pacific (A|P) Communities and our in-house general contractor, A|P Community Builders, work hand-in-hand with A|P Community Management staff to ensure successful planning and operation of the properties from the pre-development design stage through conversion and stabilization.

A|P Companies is a fourth-generation real estate company headquartered in Miami with over $2B in owned and operated real estate. A|P has purchased, developed, leased, and managed residential and commercial properties throughout the United States and currently manages more than 41,200 multifamily units (over 18,000 are owned by A|P) across 161 properties, and more than 500,000 square feet of commercial/retail space.

Exhibit D

ATLANTIC PACIFIC COMMUNITIES

Economic Development

Block 45 will provide not only short-term but also long-term economic benefits to Miami-Dade County by creating 616 new affordable and workforce apartment homes and amenities, 25,000 square feet of retail, a multi-level parking garage, and infrastructure with new businesses and new permanent jobs across the street from the Overtown Metro-rail Station and one block away from Miami Central (All Aboard Florida Station) in downtown Miami.

Regional Input-Output Modeling System ("RIMS II") is a regional economic model created by the US Bureau of Economic Analysis and used by investors, planners, and elected officials to objectively assess the potential economic impacts of various projects. Based on RIMS II, Block 45 would generate 980 sustained jobs, including indirect jobs created by the influx of capital into the County's local economy and over $144 million in Economic Output, defined as demand for additional services created in the impact area as a result of the project, including over $37 million in additional wages and salaries earned within the impact area.

The Block 45 development will be located at 152 NW 8th Street in the Overtown neighborhood of the City of Miami, in the County's Liberty City Targeted Urban Area and Central Empowerment Zone, and in a Brownsfield and a Qualified Opportunity Zone (Folio No. 01-0104-50-1010). With numerous public transit options within walking distance, such as the Brightline Station, the City of Miami Trolley, 7 Miami-Dade Transit bus routes, the Metro-rail and Metromover, it is expected that residents, patrons, and guests will walk, bike, or use public transit to and from the development. The site's strategic location, connectivity to major economic and transportation gateways and visibility from I-95 will attract businesses, shoppers and permanent residents and employment.

TOD developments stimulate economic growth and improve the quality of life in urban communities. Block 45 residents and visitors will benefit because of the increased accessibility to transit services serving several municipalities in South Florida. More commuters using public transportation creates incentives for businesses and residential developers to invest in the area, which in turn brings more jobs.

The development site is currently an asphalt parking lot, with the influx of new residents and consumers, Block 45 will support the growth of small business establishments which are the engine of economic growth. Block 45 will provide 25,000 square feet of retail space and a parking garage with 637 parking spaces for residents and visitors. In addition, there will be 32 secure long-term bicycle parking/bicycle racks/lockers; and a Citibike station for bike rentals. Commercial businesses at Block 45 will complement the neighborhood's existing mom and pop stores, national retailers such as Einstein's and Target, and local businesses such as Publix, the Brightline restaurants and community organizations by offering a variety of retail space.

On Block 45 A|P Communities sought out local partnerships with Roosevelt Bradley (Elite Equity Development, Inc.), Pastor Willie Cook (BAME Community Development Corporation), Ario Lundy (Palmetto Homes of Miami, Inc) and Irving Mcknight, as well as with Greater Miami Service Corps, as a means of ensuring that low-income residents in the neighborhood are informed, and provided with job training and placement opportunities throughout the Block 45 development.

In addition to our partners above, A|P Communities, and its in-house general contractor, A|P Community Builders, and management company, A|P Community Management will be making substantial efforts to ensure that employment and contracting opportunities are provided to neighborhood residents and qualified Small-, Disadvantaged-, Women- and Minority-owned (S/D/W/MBE) businesses through print and radio advertising and posting notices in local media outlets.

The new high-rise development and new enhanced (wide) sidewalks around the site, bus stops, route schedules and maps, signage, common area lighting and landscaping will be inviting to pedestrians and will be safe and easy to navigate around the area. The new multi-level parking garage, with access to the public, will add new parking spaces in the area.

In conclusion, the development of the County-owned site into a high-impact, visible, signature development, will provide not only short-term but also long-term economic benefits to Miami-Dade County by creating new housing, retail, a convenient parking garage, infrastructure, new businesses and new permanent jobs. The area will be transformed into a lively community anchored by residents and retail which will stimulate local economic growth and increase transit ridership.

Exhibit E

ATLANTIC PACIFIC COMMUNITIES

BLOCK 45 - PUBLIC INFRASTRUCTURE EXPENSES	
Description	**Amount**
Street Improvements	$ 90,258
Sidewalk / Streetscape Improvements	$ 321,857
Water & Sewer	$ 272,937
Electrical Upgrades	$ 150,000
Landscaping	$ 361,180
Public Parking & Garage	$ 2,750,600
Streetscape Connection to Overtown Metrorail Station	$ 1,866,011
Improvements to Overtown Metrorail Station	$ 3,021,349
TOTAL	**$ 8,743,934**

SOURCES

Miami-Dade County GOB-Economic Development Fund		$5,000,000
Atlantic Pacific Equity		3,743,934
	TOTAL	$8,743,934

Block 45
Sources and Uses
(not including the Public Infrastructure)

Sources	
EQUITY	$ 60,433,654
LOAN	$129,847,594
COUNTY CONTRIBUTION	$ 9,484,281
Total Sources	**$199,765,529**
Uses	
LAND	$ 15,000,000
HARD COSTS- RESIDENTAIL	$138,070,577
SOFT COSTS- RESIDENTIAL	$ 36,040,580
HARD COSTS- COMMERCIAL	$ 2,868,790
SOFT COSTS- COMMERCIAL	$ 885,583
DEVELOPMENT INTEREST- LOAN	$ 6,900,000
Total Uses	**$199,765,529**

Exhibit F

ATLANTIC PACIFIC COMMUNITIES

BLOCK 45
FTE JOBS CREATED

Salaries-Real Estate Management

Staff	Number of Staff	Salary $
Manager	1	$120,000
Assistant Manager	1	$65,000
Leasing Consultant	3	$105,000
Head of Maintenance	1	$80,000
Maintenance/Painter/Housekeeping	5	$175,000
Concierge	1	$40,000
Subtotal	**12**	**$585,000**
	23.% Benefits	$134,550
	$458 Health Benefits	$65,952
	8.5% Bonus	$49,725
	$70 Commission	$43,120
	Total	**$878,347**

Over a 15 year period the total amount of the above salaries is approximately $15 million.

We estimate an additional 8 permanent jobs will be created by the restaurants to be located on the ground floor of Block 45 for a total of 20 full time permanent jobs.

Exhibit G

ATLANTIC PACIFIC COMMUNITIES

Capital Investment Overview

A. **Describe the capital investment in real and personal property**

The $200M Block 45 development will consist of the new construction of a 36-story building with:

- 616 residential units;
- 25,000 square feet of retail space;
- Amenity/pool deck;
- 637 parking spaces serving residents, retail users/staff and the general public;
- Improvements to the pedestrian realm connecting Block 45, the Overtown Metrorail Station and Virgin MiamiCentral; and
- Improvements to the Overtown Metrorail Station

The financing for the project relies on three sources of capital as outlined below. The permanent loan assumes a TIF Agreement with the Southeast Overtown/Park West Community Redevelopment Agency:

Resource	Source	Amount
Construction / Permanent Loan	PNC Bank	$130.0M
Equity	Atlantic | Pacific	$60.5M
Workforce Housing Contribution	Portion of MDC Land Proceeds	$9.5M
	TOTAL	**$200.0M**

B. **List the anticipated amount (thousands of dollars) and type of major capital investment to be made by the applicant in connection with this project:**

Description	2020	2021	2022	2023	2024
Ground Lease Payment to Miami Dade County		$15,000			
Hard Cost Construction (excluding public infrastructure			$71,000	$56,000	$15,000
Furniture, Fixtures & Equipment					$1,400
Soft Cost (Architect, Survey, Legal fees, etc.)	$3,000	$11,000	$11,000	$5,500	$4,100
Other (Financing costs)			$2,300	$2,300	$2,300
Total Capital Investment	$3,000	$26,000	$84,300	$63,800	$22,800

C. **What is the estimated square footage of the new or expanded facility?**

Approximately 851,000 gross square feet

D. **What is the deadline to make the location decision (date)?**

The lease with Miami Dade County commenced on January 22, 2020

E. **What is the anticipated date that construction will begin?** Q4 2021

F. **What is the anticipated construction completion date?** Q1 2024

G. **What is the anticipated date that operations will commence?** Q1 2024

H. **Submit documentation demonstrating financial capacity and financial commitments using other non-County sources to complete the project.**

Included are the financial commitments from PNC Bank for the construction and permanent first mortgage and from Atlantic Pacific Companies for the equity.

For information on Atlantic Pacific Communities' financial capacity please refer to Exhibit H.

Exhibit H

ATLANTIC PACIFIC COMMUNITIES

Public Infrastructure Investment

5.A Describe the type of public infrastructure investment needed.

Block 45 is a mixed-use Transit Oriented Development on County-owned land. Aside from bringing much needed affordable and workforce housing and community retail to Overtown, the development will significantly enhance the public realm, including street improvements, streetscape enhancements, utility improvements, new parking garage, pedestrian walkways, site lighting and security cameras, handicap accessibility, landscaping and irrigation, and significant improvements and enhancements to the connection between the site and the Overtown Metrorail Station as well as improvement and upgrades to the Station itself.

B. What is the total anticipated cost of public infrastructure needed for this project? $8,743,934

C. EDF grants will be disbursed only after the public infrastructure investments are complete and negotiated performance benchmarks are met. Describe the business's capacity to finance the public infrastructure costs.

The Block 45 public infrastructure costs will be financed with the $5 million in GOB funds requested in this application and the balance will be financed by Atlantic | Pacific. A | P and its Principals have the financial capacity and resources to undertake large scale development efforts, and are able to meet significant net worth and liquidity requirements due to their very strong financial standing. A | P has a proven track record with over $2 billion in real estate assets, over 18,000 multifamily units owned, and over 41,200 units and 161 properties under management in 7 states. A | P and its Principals are well positioned to guarantee the financial obligations associated with the development of the Block 45 site and have the capacity to provide all standard debt and equity guarantees.

We have provided the most recent audited financial statement for A | P Communities and reference letters and will furnish additional, confidential financial information upon request. *Please consider this information as private and confidential.*

Wells Fargo Community Lending and Investment
301 South College Street
Charlotte, NC 28288
Mail Code: D1053-170
704.383.9524

CONFIDENTIAL

WELLS FARGO

Wells Fargo Community
Lending and Investment

March 21, 2018

Miami-Dade County
Internal Services Department
Procurement Management Services Division
Transportation and Public Works
111 NW 1st Street, Suite 1300
Miami, FL 33128

To whom it may concern:

Since 2003, Well Fargo has provided in excess of $500 Million in capital to A|P through multiple commercial real estate executions that include: traditional commercial real estate lending, low income tax credit financing, long term GSE financing as well as traditional equity and tax credit equity. In addition to commercial real estate, A|P and its principals have been clients of Wells Fargo Wealth Management and Wells Fargo Insurance. The relationship between A|P and Wells Fargo continues to be strong and Wells Fargo considers A|P to be a strategic long term client for the Bank. Atlantic Pacific Companies exemplifies everything Wells Fargo seeks in a partner: great character, integrity, loyalty, very strong credit, superb execution, and superior product.

Sincerely,

Neal Deaton

Neal C. Deaton
Senior Vice President
Regional LIHTC Equity Manager
Wells Fargo Community Lending & Investment
301 South College Street, 17th Floor
Charlotte, NC 28288 l MAC D1053-170
Office: 704-383-9524 l Mobile: 704-458-1633
neal.deaton@wellsfargo.com

THE PRIVATE BANK

100 S. Ashley Drive - 9th Floor
Suite 940
Z0307-101
Tampa, FL 33602

CONFIDENTIAL

March 20, 2018

Mr. Howard Cohen
Atlantic Pacific Companies
1025 Kane Concourse, Ste. 215
Bay Harbor Islands, FL 33154

To whom it may concern:

We have a good lending and banking relationship with Cohen Family. Lending has been in excess of eight figures which have included both commercial and development project.

We conform and acknowledge that all transactions during our relationship have performed to our entire satisfaction with no event of default. We would most certainly entertain further lending opportunities with Atlantic Pacific Companies.

Sincerely,

Paul J. Ayotte
Sr. Vice President
The Private Bank
Wells Fargo N.A.

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BLUE ARCH CAPITAL

2875 NE 191st Street, Suite PH-2A
Aventura, FL 33180
(305) 933-5800
www.bluearchcapital.com

March 21, 2018

Miami-Dade County Internal Services Department
Procurement Management Services Division
Transportation and Public Works
111 NW 1st Street, Suite 1300
Miami, FL 33128

RE: Request for Proposals (RFP) No. 00700 for Development of Block 45 at 152 NW 8th Street, Miami, Florida

Members of the Selection Committee:

Atlantic Pacific asked us to provide a letter of reference for the Block 45 Selection Committee's consideration, and we do so without reservation.

Our company, Blue Arch Advisors, has been fortunate to partner with Atlantic Pacific on multiple major real estate funds totaling over $335,300,000 in equity and over $1,000,000,000 in total asset value. These funds are comprised of major institutional investors that rely on Atlantic Pacific's long track record and exemplary reputation.

Based on our experience, we can say that Atlantic Pacific's real estate acumen is excellent and their character is extraordinary. We appreciate our partnerships with Atlantic|Pacific, and sincerely we believe that Block 45 will be in capable hands if you choose Atlantic|Pacific as your partner.

If you would like more details on our experiences with Atlantic|Pacific, feel free to contact us.

Sincerely,

Gil Hermon
Managing Partner

Oren Hon
Managing Partner

CONFIDENTIAL

City National Bank
Bci FINANCIAL GROUP

March 21, 2018

Miami-Dade County Internal Services Department
Procurement Management Services Division
Transportation and Public Works
111 NW 1st Street, Suite 1300
Miami, FL 33128

RE: Request for Proposals (RFP) No. 00700 for Development of Block 45 at
152 NW 8th Street, Miami, Florida

Members of the Selection Committee:

Atlantic Pacific has asked me to provide a letter of reference for the Block 45 Selection Committee's consideration and we are more than happy to accommodate their request.

City National Bank has enjoyed a banking relationship with Atlantic|Pacific Companies and its principals for well over 40 years. The principals have been large balance depositors at the highest level of our organization as well as borrowers and guarantors of several loans. This relationship has always been considered outstanding at all levels.

I have personally handled Atlantic Pacific's banking relationship with our bank for the past 25 years, should you require additional details, please do not hesitate to contact me at 305-535-6185, it would be my pleasure to assist you.

Sincerely,

Laura Marinello
First Vice President
Private Client Group

PO Box 025620
Miami, FL 33102-5620
citynational.com
Member FDIC I Equal Housing Lender

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ATLANTIC PACIFIC COMMUNITIES, LLC

FINANCIAL STATEMENTS AND
INDEPENDENT AUDITOR'S REPORT

DECEMBER 31, 2019

TIDWELL group

Atlantic Pacific Communities, LLC

TABLE OF CONTENTS

TIDWELL group

INDEPENDENT AUDITOR'S REPORT

To the Members
Atlantic Pacific Communities, LLC

We have audited the accompanying financial statements of Atlantic Pacific Communities, LLC, (a Delaware limited liability company), which comprise the balance sheet as of December 31, 2019, and the related statements of operations, members' equity and cash flows for the year then ended, and the related notes to the financial statements.

Management's Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

Auditor's Responsibility

Our responsibility is to express an opinion on these financial statements based on our audit. We conducted our audit in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Opinion

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Atlantic Pacific Communities, LLC, as of December 31, 2019, and the results of its operations and its cash flows for the year then ended, in accordance with the accounting principles generally accepted in the United States of America.

Emphasis of Matter

As discussed in Note 2 to the financial statements, in 2019, Atlantic Pacific Communities, LLC adopted Financial Accounting Standards Board Accounting Standards Update No. 2016-18, *Statement of Cash Flows (Topic 230): Restricted Cash:* and No. 2014-09, *Revenue from Contracts with Customers (Topic 606).* Our opinion is not modified with respect to this matter.

Adjustment of Prior Period Financial Statements

As disclosed in Note 8 to the financial statements, Atlantic Pacific Communities, LLC restated its 2018 account balances during the current year to correct account misstatements, in accordance with accounting principles generally accepted in the United States of America.

Tidwell Group, LLC

Atlanta, Georgia
August 14, 2020

Atlantic Pacific Communities, LLC

BALANCE SHEET

December 31, 2019

ASSETS

Cash	$	1,517,557
Reserves		20,908
Accounts receivable		54,724
Deposits		276,376
Prepaid expenses		1,618
Developer fee receivable		10,491,099
Interest receivable - developer fee		53,147
Projects under pursuit		1,407,780
Projects under development		6,568,938
Total assets	$	20,392,147

LIABILITIES AND MEMBERS' EQUITY

Liabilities		
Accounts payable - operations	$	368,091
Other accrued liabilities		72,865
Due to affiliates		4,037,741
Note payable		93,696
Affiliate note payable		6,217,887
Total liabilities		10,790,280
Members' equity		9,601,867
Total liabilities and members' equity	$	20,392,147

See notes to financial statements.

Atlantic Pacific Communities, LLC

STATEMENT OF OPERATIONS

Year ended December 31, 2019

Revenue	
Developer fees	$ 12,508,421
Other operating income	527,676
Total revenue	13,036,097
Operating expenses	
Salaries and employee benefits	3,624,410
Acquisition costs	231,826
Repairs and maintenance	18,694
Utilities	11,204
Professional and legal fees	934,530
General and administrative	917,072
Total operating expenses	5,737,736
Net operating income	7,298,361
Other income (expense)	
Interest income - developer fee	(5,451)
Interest expense	(92,652)
Other financial income (expense)	(3,736)
Miscellaneous other income (expense)	(51,218)
Depreciation	(3,218)
Total other income (expense)	(156,275)
Net income	$ 7,142,086

See notes to financial statements.

Atlantic Pacific Communities, LLC

STATEMENT OF MEMBERS' EQUITY (DEFICIT)

Year ended December 31, 2019

	Howard D. Cohen Revocable Trust	Kenneth J. Cohen Revocable Trust	Stanley D. Cohen Revocable Living Trust	Randy K. Weisburd	Total Members' Equity (Deficit)
Balance, December 31, 2018 as previously reported	$ 3,177,376	$ 1,320,931	$ 1,320,931	$ 1,320,930	$ 7,140,168
Prior period adjustment	(2,082,771)	(865,872)	(865,872)	(865,872)	(4,680,387)
Balance, December 31, 2018, as restated	1,094,605	455,059	455,059	455,058	2,459,781
Net income	3,178,228	1,321,286	1,321,286	1,321,286	7,142,086
Balance, December 31, 2019	$ 4,272,833	$ 1,776,345	$ 1,776,345	$ 1,776,344	$ 9,601,867
Members' percentage of Company losses	44.50%	18.50%	18.50%	18.50%	100.00%

See notes to financial statements.

Atlantic Pacific Communities, LLC

STATEMENT OF CASH FLOWS

Year ended December 31, 2019

Cash flows from operating activities	
Net income	$ 7,142,086
Adjustments to reconcile net income to net cash used in operating activities	
Depreciation	3,218
Changes in:	
Accounts receivable	(50,550)
Prepaid expenses	7,437
Deposits	(508)
Developer fee receivable	(7,245,875)
Interest receivable - developer fee	(19,683)
Projects under development	(3,093,521)
Projects under pursuit	(667,277)
Accounts payable - operations	293,548
Other accrued liabilities	15,802
Due to affiliates	75,382
Net cash used in operating activities	(3,539,941)
Cash flows from financing activities	
Payments on affiliate note payable	(3,600,000)
Proceeds from affiliate note payable	8,907,000
Payments on note payable	(606,304)
Proceeds from note payable	100,000
Net cash provided by financing activities	4,800,696
Net increase in cash and restricted cash	1,260,755
Cash and restricted cash, beginning	277,710
Cash and restricted cash, ending	$ 1,538,465
Supplemental disclosure of cash flow information	
Cash paid for interest	$ 92,652

See notes to financial statements.

NOTE 1 - ORGANIZATION AND NATURE OF OPERATIONS

Atlantic Pacific Communities, LLC (the Company), was formed as a limited liability company under the laws of the State of Delaware on September 11, 2013. The purpose of the Company is (through itself or directly or indirectly through one or more Subsidiaries) property development, asset management and other property related services on behalf of itself or other parties in respect of public housing developments located throughout the United States and owned by affiliates of the Company.

The members are Howard D. Cohen Revocable Trust, Kenneth J. Cohen Revocable Trust, Stanley D. Cohen Revocable Living Trust and Randy Weisburd.

Profits and losses are allocated in accordance with the operating agreement of the Company, dated September 11, 2013.

A summary of the Company's membership interest and allocation of profits and losses is as follows as of December 31, 2019:

	Member Percentage	Allocation of Profits and
Howard D. Cohen Revocable Trust	44.5%	44.5%
Kenneth J. Cohen Revocable Trust	18.5%	18.5%
Stanley D. Cohen Revocable Living Trust	18.5%	18.5%
Randy K. Weisburd	18.5%	18.5%

NOTE 2 - SIGNIFICANT ACCOUNTING POLICIES

Basis of Accounting

The Company prepares its financial statements on the accrual basis of accounting consistent with accounting principles generally accepted in the United States of America (GAAP).

Adoption of New Accounting Principles

During November 2016, FASB issued ASU 2016-18 (ASU), *Restricted Cash*, as an update to ASC 230, Statement of Cash Flows. The ASU addresses diversity in practice that exists in and clarifies the guidance on the classification and presentation of restricted cash on the statement of cash flows and requires additional disclosures about restricted cash balances. The new guidance requires that restricted cash be included in cash and cash equivalents on the statement of cash flows for all periods presented. For any entity not defined as a Public Business Entity adoption is required for fiscal years commencing after December 15, 2018 and is required to be applied retrospectively for all periods presented. The Company adopted the ASU effective January 1, 2019.

During May 2014, FASB issued ASU 2014-09 and other related ASUs subsequent amendments, Revenue from Contracts with Customers, as an update to ASC 606, Revenue. The Company adopted the ASUs effective January 1, 2019. The ASU establishes principles for reporting useful information to users of financial statements about the nature, timing, and uncertainty of revenue and cash flows arising from the Company's contracts with customers. The core principle is that the Company recognizes revenue to depict the transfer of promised goods or services to customers in an amount that reflects the consideration to which the Company expects to be entitled in exchange for those goods or services. The implementation of the change in revenue recognition for the ASC 606 was not significant to the financial statements.

Cash and Restricted Cash

As described in "Adoption of New Accounting Principle," effective January 1, 2019, the Company adopted the ASU which requires the restricted cash be included in cash and cash equivalents on the statement of cash flows. Cash and restricted cash as of December 31, 2019 consisted of the following:

Cash	$ 1,517,557
Restricted cash	20,908
Total cash and restricted cash shown on the statement of cash flows	$ 1,538,465

Accounts Receivable and Bad Debts

In the normal course of business, the Company extends unsecured credit to its projects under development and projects under pursuit. These receivables are mainly due from real estate partnerships and consist of architect fees, payroll reimbursement, management fees, company management fees, and other reimbursements. Balances are due based on the terms of the invoice. Receivables are charged to bad debt expense when they are determined to be uncollectible based upon a periodic review of accounts by management. GAAP requires that the allowance method be used to recognize bad debts; however, the effect of using the direct write-off method is not materially different from the results that would have been obtained under the allowance method.

Development Fees Receivable

Development fees receivable are amounts that the Company is owed as compensation for the time and risk involved in developing a project. The total fee is typically based on the size of the project, the total development costs and the risk associated with the project and agreed to by the Company and the investor member in the development agreement. Receivables are collected throughout the development of a project based on parameters established in the operating agreement or development agreement. After a project is completed, any remaining uncollected development fee receivable is payable out of the surplus cash available on an annual basis from each individual project. The Company provides an allowance for doubtful accounts, when appropriate, which is based upon a review of outstanding receivables, historical collection information, and current market conditions, on a per customer basis. Interest is charged on select balances based on operating and development agreements. Interest accrues on a yearly basis and is included in interest receivable on the balance sheet. Development fees receivable are written-off only after all collection attempts have failed, and are based on the individual credit evaluation and specific circumstances of the customer. As of December 31, 2019, there was no allowance recorded.

Operating Deficit Loans Receivable

Operating deficit loans receivable are amounts that the Company is required, per the operating agreement, to loan the various real estate entities that the Company holds investments in to cover operating deficits. The balances are payable out of the surplus cash available on an annual basis from each individual project. Interest is charged on select balances based on the operating agreement. Interest accrues on a yearly basis and is included in interest receivable on the balance sheet. The Company provides an allowance for doubtful accounts, when appropriate, which is based upon a review of outstanding receivables, historical collection information, and current market conditions, on a per customer basis. Receivables are written off only after all collection attempts have failed and are based on the individual credit evaluation and specific circumstances of the customer. Recoveries of receivables previously written off are recorded when received. As of December 31, 2019, the Company has not been required to fund operating deficits for any real estate entities the Company holds investments in.

Property and Equipment

Property and equipment consist of computer equipment and is being depreciated using the straight-line method over the estimated useful life, which is a five-year period.

Property and equipment are stated at cost. Major expenditures for property and equipment are capitalized. Maintenance, repairs and minor renewals are expensed as incurred. When assets are retired or otherwise disposed of, their costs and related accumulated depreciation are removed from the accounts and resulting gains or losses are included in income. For the year ended December 31, 2019, depreciation expense was $3,218.

Revenue Recognition - Development Fees

Development fee revenue is compensation for the time and risk involved in developing a project. The Company recognizes specific portions of the development fee as certain benchmarks are satisfied in accordance with the terms specified in the respective developer agreements and all fees are considered earned upon the receipt of the final certificate of occupancy for the last building of the project. In addition, any amount of development fee that remains unpaid after construction completion of the project shall constitute a loan bearing an interest rate equal to the long-term applicable federal rate for the month in which the project achieves construction completion. The fees are paid to the Company in accordance with the terms specified in the development agreement, which are subject to cash flow availability and other specified events.

Pre-development Costs

Costs incurred by the Company in considering the viability of potential real estate acquisitions or developments are classified as projects under pursuit or projects under development on the balance sheet. In the event the acquisition or development is successful, the Company is reimbursed for these costs by the purchasing party and these costs are then capitalized by such party. In the event a project is no longer deemed to be probable, the costs previously capitalized are expensed as acquisition costs.

Advertising Costs

The Company's policy is to expense advertising costs when incurred. During the year ended December 31, 2019, advertising costs of $17,785 were incurred and are included in general and administrative expenses on the accompanying statement of operations.

Income Taxes

The Company has elected to be treated as a pass-through entity for income tax purposes and, as such, is not subject to income taxes. Rather, all items of taxable income, deductions and tax credits are passed through to and are reported by its owners on their respective income tax returns. The Company's federal tax status as a pass-through entity is based on its legal status as a limited liability company. Accordingly, the Company is not required to take any tax positions in order to qualify as a pass-through entity. The Company is required to file and does file tax returns with the Internal Revenue Service and other taxing authorities. Accordingly, these financial statements do not reflect a provision for income taxes and the Company has no other tax positions which must be considered for disclosure. Generally, income tax returns filed by the Company are subject to examination by the Internal Revenue Service for a period of three years. While no income tax returns are currently being examined by the Internal Revenue Service, tax years since 2016 remain open.

Estimates

The preparation of financial statements in accordance with GAAP requires management to make estimates and assumptions that affect the amounts reported in the financial statements and accompanying notes. Actual results could differ from those estimates.

NOTE 3 - DEPOSITS

Payroll Deposits

The Company maintains payroll deposits to meet any short-term unplanned financial payroll needs. As of December 31, 2019, the balance of the deposits account was $200,000 and is included in deposits on the accompanying balance sheet.

Security Deposits

The Company was required to pay security deposits in connection with the lease arrangements entered into as assurance of performance of all relevant terms of the agreements. As of December 31, 2019, the Company has paid deposits in the amount of $75,365 which are included in deposits on the accompanying balance sheet.

NOTE 4 - NOTE PAYABLE

Housing Authority of the City of Fort Lauderdale

The Company received funds from the Housing Authority of the City of Fort Lauderdale (HACFL) to fund predevelopment costs on several projects. The advance is noninterest bearing and due upon demand. As of December 31, 2019, the outstanding balance of the note payable is $93,696.

NOTE 5 - RELATED PARTY TRANSACTIONS

Accounts Receivable

The Company advances funds to real estate partnerships to fund predevelopment operations as discussed in Note 2. The advances are non-interest bearing and due on demand. As of December 31, 2019, the Company was owed $54,724.

Related Party Revenue and Receivables

The Company earned development fees from related parties, as discussed in Note 2. The total development fees earned for the year ending December 31, 2019 were $12,508,421 and as of December 31, 2019, the related receivables outstanding were $10,491,099.

Projects Under Pursuit

The principal source of revenue for the Company is fees earned from the development of low income housing projects sponsored by Federal, State and Local Governments. The Company incurs costs in identifying potential opportunities and paying for predevelopment expenses prior to closing with lenders and investors. These costs are normally reimbursed to the

Company when a deal closes. If the Company determines that a project is no longer feasible, the costs are expensed as acquisition costs. As of December 31, 2019, the Company had invested $1,407,780 on projects under pursuit it believed to be feasible for future development. For the year ended, December 31, 2019, the Company expensed acquisition costs of $230,001 on projects under pursuit it believed were not feasible.

Projects Under Development

Projects under development consist of projects that have been approved and construction has commenced. As of December 31, 2019, costs incurred for projects under development amounted to $6,568,938.

Due to Affiliates

Due to affiliates consists of funds advanced by affiliates or expenses paid for by affiliates that are later reimbursed by the Company. As of December 31, 2019, the balance of funds due to affiliates amounted to $201,204 and is included in due to affiliates on the accompanying balance sheet.

Due to affiliates also consists of developer fees received by the Company from affiliated entities of the members. As of December 31, 2019, the balance of funds received and owed was $3,836,537 and is included in due to affiliates on the accompanying balance sheet.

Line of Credit Borrowing

In the normal course of business, the Company has and expects to have borrowings with certain members. Borrowings are substantially on the same terms, including interest rates and terms, the members have received from their financial institutions. The members lend funds for investment purposes and to fund operations as needed. The member advances are due on demand and carry an interest rate of .90 percent over the 30 day LIBOR rate. The principal balance as of December 31, 2019 was $6,217,887. Interest expense of $92,652 was incurred and paid for the year ended December 31, 2019.

NOTE 6 - LEASE ARRANGEMENTS

The Company conducts its operations from a facility that is leased under a five-year noncancelable operating lease, which expired in June of 2018, with certain amounts being allocated to other parties for use of the facility. During 2018, the Company entered into a new lease with DTS 3MC Office, LLC for a term of 7 ½ years. For the first lease year, the base rent shall be paid at the rate of $29.25 per rentable square foot, and continuing on the first day of each lease year the base rent per rentable square foot is equal to the base rent per rentable square foot for the immediately prior year, plus 2.75 percent. Upon the expiration of the lease, the Company has the option to renew the lease for an additional five years. For the year ended December 31, 2019, lease expense of $174,143 was incurred and paid and is included in general and administrative expense on the accompanying statement of operations.

During 2018, the Company entered into a new 3-year operating lease with Kendall I Plaza, Ltd., expiring in May, 2021. The base rent, in the amount of $4,200, is due on the first day of each month and shall increase by 4% over the immediately preceding monthly rent on May 1st, annually, as defined in the lease agreement. Upon the expiration of the lease, the Company will have the option to renew the lease for an additional four years. For the year ended December 31, 2019, lease expense of $54,703 was incurred and paid and is included in general and administrative on the accompanying statement of operations.

The following is a schedule of future minimum rental payments required under the above operating leases as of December 31, 2019:

Year ending December 31,	Amount
2020	$ 239,650
2021	209,131
2022	196,207
2023	201,605
2024	207,156

NOTE 7 - CONCENTRATION OF CREDIT RISK

The Company maintains its cash in bank deposit accounts which, at times, may exceed federally insured limits; however, the Company has not experienced any losses in such accounts. The Company believes it is not exposed to any significant credit risk on cash and cash equivalents at December 31, 2019.

NOTE 8 - RESTATEMENT

During 2019, management discovered misstatements which it has corrected and accounted for as a prior period adjustment. The Company incorrectly recognized developer fee revenue from affiliated entities of the members. The table below reflects the net effect of the prior period adjustment on the prior year balance sheet and statement of operations:

	As originally reported as of December 31, 2018	Prior period adjustement	As restated as of December 31, 2018
Developer fee receivable	$ 4,532,874	$ (1,287,650)	$ 3,245,224
Due to affiliates	569,622	3,392,737	3,962,359
Members' equity	7,140,168	(4,680,387)	2,459,781
Developer fees	9,210,997	(3,378,510)	5,832,487

NOTE 9 - SUBSEQUENT EVENTS

Events that occur after the balance sheet date but before the financial statements were available to be issued must be evaluated for recognition or disclosure. The effects of subsequent events that provide evidence about conditions that existed at the balance sheet date are recognized in the accompanying financial statements. Subsequent events, which provide evidence about conditions that existed after the balance sheet date, require disclosure in the accompanying notes. Management evaluated the activity of the Company through August 14, 2020 (the date the financial statements were available to be issued) and concluded that no subsequent event has occurred that would require recognition in the financial statements or disclosure in the notes to the financial statements.

Uncertainty Related to COVID-19

In December 2019, an outbreak of a novel strain of coronavirus (COVID-19) emerged globally and has spread across the US. On March 11, 2020, the World Health Organization characterized COVID-19 as a pandemic. In addition, multiple jurisdictions in the U.S. have declared a state of emergency. It is anticipated that these impacts will continue for some time, leading to an overall decline in economic activity, which could result in a loss of revenue and other material adverse effects to Atlantic Pacific Communities, LLC. The future effects of these issues are unknown.

In April of 2020, the Company applied for and received funds from the US Government Paycheck Protection Program. These funds are in the form of a forgivable loan if certain conditions are met. These funds will be utilized to meet payroll and other regulatory restricted operating costs to help offset any operating losses due to the pandemic.

Exhibit I

Economic Impact & Corporate Responsibility

A. **Provide a brief synopsis of any special economic impacts/benefits the project is expected to stimulate in the community, the County, and the rest of South Florida.**

The mixed-use Block 45 development is an urban TOD located just north of downtown Miami in the Overtown neighborhood of the City of Miami featuring high-density residential and commercial development and employment cluster with the following benefits:

- Increased land value
- New prime retail spaces for businesses to attract customers
- Increased higher-density development and up-zoning
- Increased foot traffic and visibility to customers for businesses
- Increased transit ridership at the Overtown Metro-rail station
- New community infrastructure

Top priorities for the SEOPW CRA are to incentivize affordable housing, job creation, small business opportunities, and diverse development teams that are reflective of the historical significance of Overtown. To further the CRA's goals and objectives in concert with the County's goals, we assembled a team and development approach that is consistent with the both the County's and the CRA's priorities for Block 45.

A primary goal for Block 45 is to restore upward mobility for Overtown residents. By providing a majority of the units as workforce and affordable housing at a variety of income levels, we will provide a community serving the needs of the hard-working men and women of Overtown and the surrounding metropolis. Thousands of expensive luxury units have been and will continue to be delivered into this marketplace, forcing much of our workforce out of this community. We will maximize the number of workforce housing units creating a true mixed-income community. We envision this property providing housing options to teachers of nearby schools, nurses, police and first responders that have been priced out of the community. Bringing back and retaining these hard-working members of our community will create the basis for a live-work-play environment for all people.

In addition, businesses have demonstrated interest in establishing locations in the ground floor retail space and contributing toward our mission of creating local jobs. These businesses will leverage their relationships to provide additional retail and commercial tenants that will further the goal of creating a livable, mixed-use, transit-oriented development in Overtown.

Our vision supports the Overtown community, and will benefit Miami-Dade County, future residents, neighbors and visitors to Block 45.

Economic Impact & Corporate Responsibility

B. **Will business operations being supported with an Economic Development Fund grant establish a plan for maximizing the employment of persons with family incomes less than 80% of the County's median household income, or persons living in Census Block Groups where 50% of residents live in households with income less than 80% of the median?** Yes.

Miami-Dade County's median income is $59,100 and the household median income for the census tract in which Block 45 is located (Census Tract 34.00) is $24,000.[1]

Income Limits Effective April 1, 2020 Area Median Income (AMI) for Miami-Dade County: **$59,100**	
Family Size	**80% AMI**
1	$51,200
2	$58,500
3	$65,800
4	$73,100
5	$78,950
6	$84,800

Source: U.S. Department of Housing and Urban Development for FY2019

The development of the Block 45 Site will have substantial economic impact and will invigorate the Overtown community with new construction and permanent jobs, new retail offerings, new affordable and workforce rental apartment homes with superior amenities, open green space, transit amenities, and new permanent residents. It is therefore crucial that area residents and businesses are made aware of the social, economic and job opportunities presented by this exciting and game-changing development. To assist with this endeavor, A|P has chosen to work with the following community leaders and organizations to maximize the employment of persons with household incomes less than 80% AMI, as well as local area businesses, and Minority/Women/Disadvantaged Business Enterprises ("M/W/DBE").

Roosevelt Bradley, Elite Equity Development, an equity partner with A|P, will be integral to the success of the team's revitalization of Block 45 and the Overtown community. Bradley has been an influential voice in addressing the needs of the working class, underserved, and economically disadvantaged communities for improved access to affordable and efficient transportation and housing. His proven track record of strategic leadership, innovation and accountability, combined with his experience and knowledge of the community are unparalleled. Over the past 30 years Bradley has provided consulting services and strategic guidance and assistance with the implementation of outreach programs to hire local area businesses and residents, small and M/W/DBE firms and will continue to do so on Block 45.

BAME, A|P has chosen to partner once more with **BAME** Community Development Corporation ("BAME"), a local non-profit, and an affiliate of the Greater Bethel A.M.E. Church in Overtown.

[1] American Community Survey, 2018: ACS 5-Year Estimates Subject Tables

A|P and BAME are partners on the Audrey M. Edmonson Transit Village, a 176-unit, mixed-use TOD that serves as a significant hub for economic development and cultural enrichment in the Liberty City neighborhood of the City of Miami. BAME will continue their work with A|P in Overtown, BAME's backyard, with the development of Block 45.

Along with Roosevelt Bradley and BAME, **Irving "Irby" McKnight**, member and Board Chair of the Overtown Community Oversight Board, will augment outreach efforts in the neighborhood to expand and promote diverse employment opportunities, and engage and inspire the community. A 50+ year resident of Overtown, McKnight, has always been deeply involved in his community, from grassroots campaigning to being a member and Steward at the Greater Bethel AME Church. Irving McKnight fought for and got a bank, a shopping center and a youth center located in Overtown.

The parties above will work with and/or coordinate with –

- Greater Miami Services Corp
- Neighbors and Neighbors Association
- CareerSource South Florida
- Southeast Overtown/Park West CRA
- City of Miami Overtown NET
- Faith based organizations
- A|P Communities
- A|P Community Builders
- A|P Community Management

The provision of benefits to communities surrounding our developments is a key staple of A|P Communities. We plan to contribute the below resources and programs to advance educational and social services, and provide greater opportunities for economic self-sufficiency for community residents.

A|P Communities has engaged in numerous programs across our various projects that provide job training, employment, and contracting opportunities. A|P with A|P Community Builders will create construction and permanent jobs (through A|P Management) for area residents on the Block 45 site. To maximize local subcontractor and labor participation, A|P goes to great lengths to generate awareness among small businesses, subcontractors and area residents of available job opportunities prior to bidding, this will include:

- Advertise contracting opportunities by posting notices which provide general information about the work to be contracted and where to obtain additional information, in the common areas or other prominent area housing developments and in other public places;
- advertise employment opportunities by posting notices which provide general information about the work, available positions and where to obtain additional information, in local media outlets to promote interest within the vicinity of the development;
- contact business assistance agencies, minority contractors' associations, labor surplus firms and community organizations to inform them of contracting opportunities and request their assistance in identifying potentially qualified certified D/W/S/MBEs;
- provide written notice to all known D/W/S/MBE business concerns of the contracting opportunities, in sufficient time to allow these firms to respond to the bid invitations or request for bids or proposal;

- follow up with certified D/W/S/MBE firms that have expressed interest in the contracting opportunities by contacting them to provide additional information on the contracting opportunities;
- coordinate pre-bid meetings at which D/W/S/MBE firms can be informed of upcoming contracting and subcontracting opportunities;
- advise D/W/S/MBE where they may seek assistance to overcome limitations such as inability to obtain bonding, lines of credit, financing, or insurance;
- arrange solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways to facilitate the participation of D/W/S/MBEs;
- where appropriate, breaking out contract work items into economically feasible units to facilitate participation by D/W/S/MBEs;
- institute numerical goals (number of awards and dollar amount of contracts) for award of contracts to D/W/S/MBEs and area residents;
- host at least two local job fairs for construction and permanent jobs; and
- coordinate and work with the above-mentioned community partners.

To facilitate additional small and minority owned business participation, A|P will often carve reduced assignments from larger projects to be awarded to smaller subcontractors as needed, and will pay these subs on a biweekly or even weekly schedule due to their needs, versus a standard monthly payment. In this model, the infused capital to these businesses has an exponential impact on their sustainability, as it gives them resources to continue to grow and hire more individuals from the community. This positive cycle leads to greater economic revitalization.

Working with CareerSource South Florida Ex-Offender Service Center, A|P will provide ex-offenders with **job training and employment opportunities throughout the construction phase**. A|P will also work with Greater Miami Services Corps to provide youth between the ages of 18-23 with work experience, internships, and possible permanent job placement services to facilitate their transition to independence and self-sufficiency. Many of the youth participating in this program are young people who emancipated from foster care, are former offenders, have dropped out of school, are basic skills deficient or who are single parents. We previously worked with this program on Island Living Apartments in Overtown, Northside Transit Village adjacent to the Northside Metro-rail Station, and Audrey M. Edmonson Transit Village in Liberty City.

Neighbors and Neighbors Association ("NANA") is the economic development organization responsible for administering Miami-Dade County's "Mom and Pop Small Business Grant Program." Founded in 1995 with a goal of providing resources and technical assistance to small businesses and supporting economic development initiatives such as local job-training and placement programs, NANA is also responsible for administering Mayor Carlos A. Gimenez's signature Employ Miami-Dade program. Courses in basic construction, including OSHA 10 and NCCER certifications, are offered to local residents of all ages. Graduates of the program will have the opportunity to take the state test to become certified, as applicable, in areas such as Culinary (food safety and handling certificate), Security (D license), General Construction (OSHA, Licensed Forklift Driver), or Hospitality (certificate of completion). A $25 per day stipend will be given while in the program and transportation assistance, through CareerSource South Florida.

Once the development nears completion, participants will be identified for placement in permanent, property management and security jobs created on-site.

GENERAL OBLIGATION BOND (GOB)
BUILDING BETTER COMMUNITIES
MIAMI-DADE COUNTY
GRANT AGREEMENT

Economic Development–Block 45
GOB Project Number 124

This Grant Agreement ("Agreement" or "Grant Agreement") by and between Miami-Dade County, a political subdivision of the State of Florida ("County" or "Miami-Dade County"), through its governing body, the Board of County Commissioners ("Board") and Block 45, LLC, a Florida limited liability company ("Grantee") is entered into this___ day of ________________, 2020("Effective Date").

WITNESSETH:

WHEREAS, on July 20, 2004, the Board adopted a series of resolutions that authorized the issuance of $2.926 billion in general obligation bonds ("GOB") for capital projects and on November 2, 2004, a majority of those voting approved the bond program ("BBC GOB Program"); and

WHEREAS, Resolution No. R-914-04 was one of those resolutions and it approved the issuance of general obligation bonds in the aggregate principal amount of $352,162,000 "to construct and improve walkways, bikeways, bridges and access to the Seaport, and other municipal and neighborhood infrastructure improvements to enhance quality of life" in accordance with the projects listed on Appendix A to the Resolution ("Appendix A"); and

WHEREAS, one of the projects listed on Appendix A was Project 124 entitled "Economic Development" with a project description of "provide infrastructure improvements to spur economic development and attract new businesses to the community in order to create jobs" ("Project 124"); and

WHEREAS, the Board approved an allocation of $5,000,000.00 ("Grant") to the Grantee from Project 124 for certain public infrastructure improvements described in Section 4 of this Agreement ("GOB Project") in connection with the development of a mixed-use Transit Oriented Development with approximately 24,000 sq. ft. of retail and a modern high-rise residential tower located at 152 NW 8 Street, Miami, FL 33136 ("Development") because the Development will attract one or more new businesses or cause the expansion of existing businesses to the County which will result in the creation of 12 New Jobs (as defined in this Agreement) as described in Exhibit A to this Agreement ("Exhibit A"); and

WHEREAS, the County and the Grantee wish to enter into this Grant Agreement to set forth the terms pursuant to which the County will disburse the Grant to the Grantee,

NOW THEREFORE, pursuant to resolution of the Board which specifically authorizes the County Mayor or County Mayor's designee to execute this Grant Agreement and any other related agreements and certificates and in consideration of the mutual promises and covenants contained in this Grant Agreement and the mutual benefits to be derived from this Agreement, the County and the Grantee agree as follows:

<u>Section 1.</u> Parties; Effective Date; and Term. The parties to this Agreement are the Grantee and the County. The Board has delegated the responsibility of administering this Grant Agreement to the County Mayor or the County Mayor's designee, who shall be referred to as the "County Mayor." The County Mayor has assigned the responsibility for monitoring this Agreement to the Department of Regulatory and Economic Resources ("RER").

This Agreement shall take effect as of the date written above upon its execution by the County and the Grantee. Subject to Section 2 and Section 16 below, this Agreement shall have a term commencing on the Effective Date and expiring twenty-five (25) years from the Job Certification Date (as such term is defined in Section 3 herein). Notwithstanding the foregoing, to the extent that the GOB Project is on land owned by Miami-Dade County, this Agreement shall expire concurrently with the expiration of the Security (as such term is defined in Section 6 of this Agreement).

<u>Section 2.</u> Job Creation. Exhibit A sets forth the projected economic impact that the Development shall have on the community, including the number of new jobs to be created and the new business or expanded businesses that will result from the completion of the Development. The Grantee has agreed to create or cause to be created 12 New Jobs with annual average salaries of $48,750 or higher as described in Exhibit A ("Certified Jobs"). The Grantee agrees to maintain or caused to be maintained the number of Certified Jobs for four (4) years from the Job Certification Date (as such term is defined in Section 3 below). The County shall determine, as set forth in this Agreement, the number of Certified Jobs created and maintained on the Job Certification Date and on the anniversary date of each year following the Job Certification Date ("Anniversary Date"). The County and the Grantee agree that "New Jobs" are defined as permanent full-time equivalent positions (36hrs/week) from: (i) new businesses located in the Development, (ii) existing businesses relocating to Miami-Dade County as a result of the Development, and/or (iii) business expansions of businesses already located in Miami-Dade County, and excludes construction jobs and jobs existing as of the commencement date of the construction of the Development, unless such jobs are permanent jobs created in connection with, and in anticipation of, the operation and management of the Development after the Development is completed, provided, however, such new permanent full time jobs shall be net of any permanent jobs eliminated as a result of the Development.

The determination of the number of New Jobs created and maintained shall be certified in the form of an annual report based upon the RT-6 filings with the State of Florida attached as Exhibit E to this agreement, to evidence the number of Certified Jobs during the previous year and the average salary paid, prepared and certified by: (1) the Grantee's Certified Public Accountant (CPA) (2) the Grantee's Tenant(s)' CPA or (3) an agent of the Grantee's Tenant who has been duly authorized to sign on behalf of the Tenant company, by a corporate manager or officer. In conjunction with such annual report, the Grantee shall submit an affidavit or other written affirmation attesting that the new jobs certifications in said report are true and correct to the best of the Grantee's knowledge and belief.

The Grantee agrees to comply with Section 2-1701 of the Code of Miami-Dade County, Florida ("County Code"), known as the Community Workforce Program, with a goal of having a minimum of 10% of the persons performing the construction trades and labor work for the Development be residents of Designated Target Areas (as such term is defined in Section 2-1701 of the County Code) and will aspire to have no less than seventy percent (70%) of the Certified Jobs offered first to residents of Miami-Dade County as set forth in the hiring plan prepared by the Grantee and attached as Exhibit B to this Agreement.

Section 3. **Conditions Precedent**. The County shall have no obligation to fund the Grant pursuant to Section 5, and this Agreement shall be terminated and the parties shall no longer have any obligation to each other pursuant to this Agreement if any one or more of the following conditions are not met:

(a) Construction of the Development, including the GOB Project, is commenced by the date set forth in the Construction Schedule attached as Exhibit C ("Construction Schedule") or any other date approved by the County Mayor after written request from the Grantee;

(b) Construction of the Development, including the GOB Project, is completed by March 2024; pursuant to the Construction Schedule or any other date approved by the County Mayor after written request from the Grantee;

(c) On or before the date that is three (3) years from the date of the Certificate of Occupancy ("CO") for the Development, including the GOB Project, the County is in receipt of written evidence from the Grantee and acceptable to the County Mayor that all of the Certified Jobs have been created and maintained for three hundred and sixty-five (365) consecutive days after CO ("Job Certification Date");

(d) At least seven (7) days before the date that the grant is set to be disbursed, the County is in receipt of the Security (as such term is defined in Section 6 below) from the Grantee; and

(e) The Grantee agrees to submit written evidence to the County within sixty (60) days of the date of this Agreement (or such additional period as is approved by the Board of County Commissioners) that it has secured financing acceptable to the County sufficient to complete the Development.

If any one or more of (a)-(e) above are not met, the County shall send written notice to the Grantee of the termination of this Agreement within fifteen (15) days following the date on which any one of the conditions are not met. Failure by the County to send notice timely shall not affect the termination of this Agreement which shall be effective thirty (30) days following the date on which any one of the conditions in (a)-(e) above are not met.

Section 4. **Development.** The Grantee shall construct a mixed-use Transit Oriented Development adjacent to the Downtown Miami's Overtown Transit Village which will provide an animated pedestrian friendly ground floor with approximately 24,000 sq. ft. of retail, such as a restaurant, coffee shop, deli, personal services and a health center. The development will be anchored by a modern high-rise residential tower containing 616 dwelling units and a 637-space parking garage.

The GOB Project will consist of street improvements, streetscape enhancements, utility improvements, new parking garage, pedestrian walkways, site lighting and security cameras, handicap accessibility, landscaping and irrigation, and significant improvements and enhancements to the connection between the site and the Overtown Metrorail Station ("Eligible Capital Costs"). Grantee expressly represents and agrees that the GOB Project serves a public purpose, is public infrastructure as required by the ballot question and Appendix A and that the Grant will be used to fund capital costs as required by the Constitution and the Laws of the State of Florida ("State").

The budget for the Development, which includes the projected GOB Project costs and funding sources, is attached as Exhibit D. If the Grantee wishes to revise the GOB Project or amend the GOB Budget for the purpose of completing the GOB Project and such revisions do not materially alter the original GOB Project or reduce the cost of the GOB Project in the budget by fifteen percent (15%) or less, the Grantee shall request in writing that the County Mayor review and approve such revisions. The County Mayor shall have thirty (30) days from the date the request was received to make a final determination. If the Grantee disagrees with the County Mayor's decision to reject the revision, the County Mayor shall present the revision to the Board if requested by the Grantee. Any material change in the GOB Project or change to the costs in the budget of more than fifteen percent (15%) shall require Board approval and shall result in a corresponding reduction in the amount of the Grant.

Section 5. **Payment of Grant.** The County has no obligation to pay the Grant to the Grantee except in accordance with the terms and conditions set forth in this Agreement and in particular, this Section 5. The County shall reimburse the Grantee for Eligible Capital Costs incurred in connection with the GOB Project solely from legally available GOB bond and/or note proceeds. Eligible Capital Costs shall not include any costs incurred by the Grantee prior to September 4, 2019. The County shall not reimburse the Grantee for any Soft Costs that exceed seventeen percent (17%) of the Grant. Soft Costs are defined in the Administrative Rules of the County pertaining to the BBC GOB Program ("Administrative Rules"). The County assumes no obligation to provide financial support of any type to the Grantee for the GOB Project in excess of the Grant amount. Cost overruns are the responsibility of the Grantee.

The County shall only be obligated to reimburse the Grantee provided the Grantee is not in breach of this Agreement, the conditions precedent set forth in Section 3 herein have been met, including that the Certified Jobs have been created and maintained for

365 days and the Security (as such term is defined in Section 6 below) is delivered to the County. The County's reimbursement obligation is subject to and contingent upon the availability of funding solely from BBC GOB Program funds. The Grantee shall be solely responsible for submitting all documentation required by this Agreement and the Administrative Rules to the Department of RER for reimbursement of all Eligible Capital Costs. Provided this Agreement has not been terminated pursuant to Section 3 or Section 16 of this Agreement and all the conditions set forth in this Section 5 are met by the Grantee, the Grant shall be remitted by the County to the Grantee as a onetime reimbursement on a date that is no earlier than three hundred and sixty-five (365) days from the date the Development, inclusive of the GOB Project, is put into service. An administrative fee no more than one percent (1%) of the awarded Grant shall be deducted as defined in the Administrative Rules of the County pertaining to the BBC GOB Program ("Administrative Rules").

Section 6. **Clawback**. Prior to the disbursement of the Grant pursuant to Section 5, the Grantee shall provide an irrevocable letter of credit (or other similar collateral acceptable to the County) to the County, in a form acceptable to the County, in the amount of $4,000,000.00 ("Security") and the Security shall remain in place and available to be drawn upon by the County until such date as all of the obligations set forth in Section 2 of this Agreement have been satisfied. Failure by the Grantee to provide the Security by such date shall terminate this Agreement pursuant to Section 3 of this Agreement. On the Job Certification Date, the Grantee shall certify that the Certified Jobs are in place and have been in place for three hundred and sixty-five (365) consecutive days as a condition to the County funding the Grant. On each subsequent Anniversary Date for four (4) additional years, the Grantee shall certify to the County the number of Certified Jobs that are in place. The Grantee's obligation to maintain the Certified Jobs will terminate on the fourth Anniversary Date.

Section 7. **Reports.** The Grantee shall also submit a written report to the County Mayor on or prior to September 30th of each year subsequent to the Effective Date and on each September 30th thereafter through the termination date of this Agreement, demonstrating that the Grantee is fulfilling, or has fulfilled, its purpose, is in compliance with this Agreement and is in compliance with all applicable municipal, County, State and federal requirements. The County Mayor may also request that a compilation statement or independent financial audit and/or accounting for the expenditure of the Grant funds be prepared by an independent certified public accountant selected by, and at the expense of, the Grantee.

If the Grantee fails to submit the required reports to the County on the dates as required above, the County Mayor may terminate this Agreement in accordance with Section 16. The County Mayor shall approve or reject all reports received from the Grantee within forty-five (45) days of receipt. Grantee shall have thirty (30) days to re-submit any reports that are rejected by the County Mayor.

Section 8. **Program Monitoring; and Evaluation.** The County Mayor may monitor and conduct an evaluation of the Grantee's operations related to the GOB Project and the Development, which may include visits by County representatives to: observe the

GOB Project or Grantee's operations; discuss the Grantee's programs with the Grantee's personnel; and/or evaluate the public impact of the GOB Project. Upon request, the Grantee shall provide the County Mayor with notice of all meetings of its Board of Directors or governing board, general activities and GOB Project-related events. In the event the County Mayor concludes, as a result of such monitoring and/or evaluation, that the Grantee is not in compliance with the terms of this Agreement or the Administrative Rules or for other reasons which significantly impact the Grantee's ability to fulfill the conditions of this Grant award, the County Mayor shall provide to the Grantee, within thirty (30) days of the date of said monitoring/evaluation, written notice of the County Mayor's concerns. If Grantee refuses or is unable to address the areas of concern within thirty (30) days of receipt of such written notice from the County Mayor, the County Mayor, at his or her discretion, may take other actions which may include reduction or rescission of the Grant award, or withholding the Grant until such time as the Grantee can demonstrate that such issues have been corrected. If the Grantee refuses or is unable to address the areas of concern, the County Mayor shall seek reimbursement of the Grant funds from the Grantee. The County Mayor may also institute a moratorium on applications from the Grantee for other County grant programs for a period of up to one (1) year or until the deficient areas have been addressed to the satisfaction of the County Mayor, whichever occurs first.

Section 9. **Accounting; Access to Records; and Audits.** The Grantee shall maintain accurate and complete books and records for all receipts and expenditures of the Grant proceeds in conformance with reasonable general accounting standards. These books and records, as well as all documents pertaining to payments received and made in conjunction with the Grant, such as vouchers, bills, invoices, receipts and canceled checks, shall be retained in a secure place and in an orderly fashion in a location within Miami-Dade County by the Grantee for at least three (3) years after the later of: the payment of the Grant by the County to the Grantee; the completion of a County requested or mandated audit or compliance review; or the conclusion of a legal action involving the Grant, the Grantee and/or GOB Project or activities related to the Grant.

The County Mayor may examine all of the books, records and documents pertaining to the Grant at the Grantee's offices or other Grantee approved site under the direct control and supervision of the Grantee during regular business hours and upon reasonable notice. Furthermore, the County Mayor may, upon reasonable notice and at the County's expense, audit or have audited all financial records of the Grantee, related to the Grant and the GOB Project.

Pursuant to Section 2-1076 of the Miami-Dade County Code, the County shall have the right to engage the services of an independent private sector inspector general ("IPSIG") to monitor and investigate compliance with the terms of this Agreement. The MIAMI-DADE COUNTY OFFICE OF THE INSPECTOR GENERAL (OIG) shall have the authority and power to review past, present and proposed County programs, accounts, records, contracts and transactions, and contracts such as this Agreement for improvements some cost of which is funded with County funds.

As such, the OIG may, on a random basis, perform audits on this Agreement throughout the duration of said Agreement (hereinafter "random audits"). This random audit is separate and distinct from any other audit by the County.

The OIG shall have the power to retain and coordinate the services of an IPSIG who may be engaged to perform said random audits, as well as audit, investigate, monitor, oversee, inspect, and review the operations, activities and performance and procurement process including, but not limited to, project design, establishment of bid specifications, bid submittals, activities of the Grantee and contractor and their respective officers, agents and employees, lobbyists, subcontractors, materialmen, staff and elected officials in order to ensure compliance with contract specifications and detect corruption and fraud. The OIG shall have the power to subpoena witnesses, administer oaths and require the production of records. Upon ten (10) days written notice to the Grantee (and any affected contractor and materialman) from OIG, the Grantee (and any affected contractor and materialman) shall make all requested records and documents available to the OIG for inspection and copying.

The OIG shall have the power to report and/or recommend to the Board whether a particular project, program, contract or transaction is or was necessary and, if deemed necessary, whether the method used for implementing the project or program is or was efficient both financially and operationally. Monitoring of an existing project or program may include reporting whether the project is on time, within budget and in conformity with plans, specifications, and applicable law. The OIG shall have the power to analyze the need for, and reasonableness of, proposed change orders.

The OIG is authorized to investigate any alleged violation by a contractor of its Code of Business Ethics, pursuant Miami-Dade County Code Section 2-8.1.

The provisions in this section shall apply to the Grantee, its contractors and their respective officers, agents and employees. The Grantee shall incorporate the provisions in this section in all contracts and all other agreements executed by its contractors in connection with the performance of this Agreement. Any rights that the County has under this Section shall not be the basis for any liability to accrue to the County from the Grantee, its contractors or third parties for such monitoring or investigation or for the failure to have conducted such monitoring or investigation and the County shall have no obligation to exercise any of its rights for the benefit of the Grantee.

Section 10. **Publicity; Advertisements; and Naming Rights.** It is understood and agreed that the GOB Project which is part of the overall Development is funded by the County through the Grant paid to the Grantee. Further, by acceptance of the Grant funds, the Grantee agrees that GOB Project shall recognize and adequately reference the County as a funding source by including the following credit line in all promotional marketing materials related to the GOB Project including, but not limited to, all posted signs, pamphlets, wall plaques, cornerstones, dedications, notices, flyers, brochures, news releases, media packages, promotions, stationery, web sites, news and press releases, public service announcements, broadcast media, programs, and publications: “THIS GOB PROJECT IS SUPPORTED BY THE BUILDING BETTER COMMUNITIES

BOND PROGRAM AND THE MAYOR AND BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY." The use of the official County logo is permissible for the publicity purposes stated above. The Grantee shall submit samples of mock-up of such publicity or materials to the County for review and approval. The Grantee shall ensure that all media representatives, when inquiring about the GOB Project(s) funded by the Agreement, are informed that the County is its funding source for the GOB Project.

In the event that any naming rights or advertisement space is offered on the GOB Project, the County's name, logo, and slogan shall appear on the GOB Project not less than once and equal to half the number of times the most frequent sponsor or advertiser is named, whichever is greater. Lettering used for Miami-Dade County will be no less than 75% of the size of the largest lettering used for any sponsor or advertiser unless waived by the Board.

Section 11. **Representations and Covenants of the Grantee.** The Grantee, by acceptance and execution of this Agreement, represents and covenants that:

(a) The Grantee is a limited liability company in good standing under the laws of the State.

(b) This Agreement has been duly authorized by the governing body of the Grantee, and it has granted its President or designee, the required power and authority to execute and deliver this Agreement.

(c) The Grantee covenants that the Development and the GOB Project will result in New Jobs and businesses as set forth in Exhibit A and that the GOB Project, serves a public purpose.

(d) The Grantee owns or has legal control over the land on which the GOB Project will be built or ownership is vested in Miami-Dade County.

(e) The Grantee covenants to (i) maintain the GOB Project or cause it to be maintained for a minimum of twenty-five (25) years from the date the GOB Project receives a Certificate of Occupancy, (ii) keep the GOB Project open safely and properly maintained for all Miami-Dade County residents; and (iii) allow all Miami-Dade County residents equal access and use of the GOB Project at no less favorable terms than those extended to all other County residents and tenants and business patrons of the overall Development. This provision shall survive the expiration of this Agreement.

(f) The Grantee agrees to accept and comply with the Administrative Rules with respect to the Grant and the GOB Project. The Grantee shall be solely responsible for submitting all documentation required by the Administrative Rules with respect to the Grant and the GOB Project to the County Mayor or County Mayor's designee.

(g) The Grantee agrees to certify to the County the date on which construction is commenced and the date on which the Development receives a Certificate of Occupancy ("CO"). Such certification shall be provided to the County no later than thirty

(30) days from the construction commencement date and the date of the CO, respectively.

(h) Grantee agrees to the application of Section 2-11.16 of the County code, and to pay wages and rates in accordance with the requirements thereof, with respect to the GOB Project.

(i) The Grantee agrees that is solely responsible for any cost overruns on the Development, including the GOB Project and that the County is not responsible for the funding of the Development, including the GOB Project, other than from the Grant pursuant to Section 5 of this Agreement.

Section 12. **Representation of the County.** The County, by acceptance and execution of this Agreement, represents and covenants that:

(a) The County is a political subdivision of the State duly created and validly existing under the Constitution and the laws of the State.

(b) The County has full legal right, power and authority to enter into and deliver this Agreement.

(c) The Agreement has been duly approved by the Board, as the governing body of the County, and it has granted the County Mayor or the County Mayor's designee, the requisite power and authority to execute and deliver this Agreement.

(d) The GOB Project and the creation of New Jobs upon the completion of the Development serve a public purpose and are in the best interest of the citizens of the County.

Section 13. **Relationship of the Parties; Liability; and Indemnification.** It is expressly understood and intended that the Grantee, as the recipient of the Grant funds, is not an agent, joint venturer, collaborator or partner of the County, the Board, the County Mayor and RER administering the Grant. For purposes of this Agreement, the parties agree that the Grantee, its officers, agents and employees are independent contractors and solely responsible for the Development, including the GOB Project.

The Grantee agrees to be responsible for all work performed and all expenses incurred in connection with the Development, including the GOB Project. The Grantee may subcontract as necessary to complete the Development, including entering into subcontracts with vendors for services and commodities, provided that the Grantee include in its agreements with each subcontractor that the County shall not be liable to the subcontractor for any expenses or liabilities incurred under the subcontract and that the Grantee shall be solely liable to the subcontractor for all expenses and liabilities incurred under the subcontract.

The Grantee 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 construction and operation of the Development, including the GOB Project, and the performance of this Agreement by the Grantee or its employees, agents, servants, partners, principals, subconsultants or subcontractors. Grantee shall pay all claims and losses in connection with each 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 attorneys' fees which may issue thereon. Grantee expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by the Grantee 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 in this Section and this Agreement.

Section 14. **Assignment.** The Grantee is not permitted to assign this Agreement in full or in part. Any purported assignment will render this Agreement null and void and result in the immediate rescission of the full amount of the Grant and its reimbursement by the Grantee of its full value to the County.

Section 15. **Compliance with Laws.** With regard to the GOB Project, it shall be a contractual obligation of the Grantee under this Agreement and the Grantee agrees to abide by and be governed by all Applicable Laws necessary for the development and completion of the GOB Project. "Applicable Law" means any applicable law (including, without limitation, any environmental law), enactment, statute, code, ordinance, administrative order, charter, tariff, resolution, order, rule, regulation, guideline, judgment, decree, writ, injunction, franchise, permit, certificate, license, authorization, or other direction or requirement of any governmental authority, political subdivision, or any division or department thereof, now existing or hereinafter enacted, adopted, promulgated, entered, or issued. Notwithstanding the foregoing, "Applicable Laws" and "applicable laws" shall expressly include, without limitation, all applicable zoning, land use, DRI and Florida Building Code requirements and regulations, all applicable impact fee requirements, all requirements of Florida Statutes, specifically including, but not limited to, Section 255.05 related to payment and performance bonds, Section 255.20 related to contractor selection and Section 287.055 related to competitive selection of architects and engineers, all requirements of Chapters 119 and 286 of the Florida Statutes, all disclosure requirements imposed by Section 2-8.1 of the Miami-Dade County Code, all requirements of Miami-Dade County Ordinance No. 90-133 (amending Section 2-8.1), County Resolution No. R-754-93 (Insurance Affidavit), County Ordinance No. 92-15 (Drug-Free Workplace), and County Ordinance No. 91-142 (Family Leave Affidavit), execution of public entity crimes disclosure statement, Miami-Dade County disability non-discrimination affidavit, and Miami-Dade County criminal record affidavit, all applicable requirements of Miami-Dade County Ordinance No. 90-90 as amended by Ordinance No. 90-133 (Fair Wage Ordinance), Section 2-11.15 of the Code (Art in Public Places), the requirements of Section 2-1701 of the Code and all other applicable requirements contained in this Agreement.

The Grantee shall comply with Miami-Dade County Resolution No. R-385-98 which creates a policy prohibiting contracts with firms violating the Americans with Disabilities Act of 1990 and other laws prohibiting discrimination on the basis of disability and shall execute a Miami-Dade County Disability Non-Discrimination Affidavit confirming such compliance.

The Grantee covenants and agrees with the County to comply with Miami-Dade County Ordinance No. 72-82 (Conflict of Interest), Resolution No. R-1049-93 (Affirmative Action Plan Furtherance and Compliance), and Resolution No. R-185-00 (Domestic Leave Ordinance).

All records of the Grantee and its contractors pertaining to the Project shall be maintained in Miami-Dade County and, upon reasonable notice shall be made available to representatives of the County. In addition, the Office of The Inspector General of Miami-Dade County shall have access thereto for any of the purposes provided in Section 2-1076 of the Code of Miami-Dade County.

The Grantee shall cause each contract to include a provision that the contractor shall comply with all requirements of Section 2-1076 as provided in this Section 15, and that contractor will maintain all files, records, accounts of expenditures for contractor's portion of the work and that such records shall be maintained within Miami-Dade County's geographical area and the County shall have access to such records as provided in this Agreement.

Section 16. Default and Opportunity to Cure; Remedies; Termination; and Other Grants.

(a) Each of the following shall constitute a default by the Grantee:

(1) Grant funds are used by the Grantee at any time for costs that are ineligible for reimbursement pursuant to this Agreement, Appendix A and the laws of the State;

(2) The Grantee fails to maintain the Certified Jobs during and by any of the first four (4) Anniversary Dates as required by this Agreement such that more than ten percent (10%) of the Certified Jobs are no longer filled by any such Anniversary Date.

(3) The Grantee breaches any of the other covenants or provisions in this Agreement other than as referred to in Section 16(a)(1) and the Grantee fails to cure its default within forty-five (45) days after written notice of the default is given to the Grantee by the County; provided, however, that if not reasonably possible to cure such default within the forty-five (45) day period, such cure period shall be extended for up to one hundred eighty (180) days following the date of the original notice, provided, after such original written notice, the Grantee immediately commences and continues to diligently seek a cure.

(b) County Default. The County shall be in default if it breaches any of the covenants or provisions in this Agreement and the County fails to cure its default within forty-five (45) days after written notice of the default is given to the County by the Grantee; provided, however, that if not reasonably possible to cure such default within the forty-five (45) day period, such cure period shall be extended for up to one hundred eighty (180) days following the date of the original notice, provided, after such original written notice, the County immediately commences and continues to diligently seek a cure.

(c) Remedies:

(1) Upon the occurrence of a default as provided in Section 16(a)(1), in addition to all other remedies conferred by this Agreement, the Grantee shall reimburse the County, in whole or in part as the County shall determine, all Grant funds provided by the County pursuant to this Agreement for all expenses deemed ineligible for reimbursement by the County. Payment by the Grantee shall be by certified check made payable to the Miami-Dade County Board of County Commissioners or drawn from the Security.

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(2) Upon the occurrence of a default as provided in Section 16(a)(2), in addition to all of the other remedies conferred by this Agreement, the County may draw a percentage of the Security equal to the percentage of the number of Certified Jobs that are not filled[1] on such Anniversary Date.

(3) Either party may institute litigation to recover damages for any default or to obtain any other remedy at law or in equity (including specific performance, permanent, preliminary or temporary injunctive relief, and any other kind of equitable remedy).

(4) Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative and the exercise by any party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default.

(5) Any failure of a party to exercise any right or remedy as provided in this Agreement shall not be deemed a waiver by that party of any claim for damages it may have by reason of the default.

(6) The parties are not precluded from seeking any other remedies not enumerated in this Section 16(c) that may be available under the law.

(d) Termination:

(1) Notwithstanding anything herein to the contrary, either party shall have the right to terminate this Agreement, by giving written notice of termination to the other party, in the event that the other party is in material breach of this Agreement.

[1] i.e. $100 (total amount of the collateral) times 20% (20 Certified Jobs out of a 100 are not filled) = $20.

(2) Termination of this Agreement by any Party is not effective until five (5) business days following receipt of the written notice of termination.

(3) Upon termination of this Agreement pursuant to Section 16(d)(1) above, no party shall have any further liability or obligation to the other party except as expressly set forth in this Agreement; provided that no party shall be relieved of any liability for breach of this Agreement for events or obligations arising prior to such termination.

(e) Other Grants. In the event the Grantee is required to repay the Grant to the County pursuant to Section 16(c)(1), the Grantee is not eligible to apply to the County for another grant for a period of one (1) year, commencing on the date the Grantee repays the Grant to the County.

Section 17. **Waiver.** There shall be no waiver of any right related to this Agreement unless in writing and signed by the party waiving such right. No delay or failure to exercise a right under this Agreement shall impair such right or shall be construed to be a waiver of such right. Any waiver shall be limited to the particular right so waived and shall not be deemed a waiver of the same right at a later time or of any other right under this Agreement. Waiver by any party of any breach of any provision of this Agreement shall not be considered as or constitute a continuing waiver or a waiver of any other breach of the same or any other provision of this Agreement.

Section 18. **Written Notices.** Any notice, consent or other communication required to be given under this Agreement shall be in writing, and shall be considered given when delivered in person or sent by facsimile or electronic mail (provided that any notice sent by facsimile or electronic mail shall simultaneously be sent personal delivery, overnight courier or certified mail as provided herein), one (1) business day after being sent by reputable overnight carrier or three (3) business days after being mailed by certified mail, return receipt requested, to the parties at the addresses set forth below (or at such other address as a party may specify by notice given pursuant to this Section to the other party):

The County:
County Mayor
Miami-Dade County
111 NW 1 Street, Suite 2910
Miami, Florida 33128

Grantee:
Block 45, LLC
Lindsay Lecour, Senior Vice President
161 NW 6 Street, Suite 1020
Miami, FL 33136

With a copy to:
Director, Office of Management and Budget
111 NW 1 Street, Suite 2210
Miami, Florida 33128

With a copy to:
The County Attorney,
111 NW 1 Street, Suite 2800
Miami, Florida 33128

Section 19. **Captions.** Captions as used in this Agreement are for convenience of reference only and do not constitute a part of this Agreement and shall not affect the meaning or interpretation of any provisions in this Agreement.

Section 20. **Contract Represents Total Agreement.** This Agreement, and its attachments, incorporate and include all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained in this Agreement. The parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained in this Agreement, and that this Agreement contains the entire agreement between the parties as to all matters contained in this Agreement. Accordingly, it is agreed that no deviation from the terms of this Agreement shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that any oral representations or modifications concerning this Agreement shall be of no force or effect, and that this Agreement may be modified, altered or amended only by a written amendment duly executed by both parties or their authorized representatives. In the event of a conflict between this Agreement and any of its attachments or exhibits, this Agreement shall prevail.

Section 21. **Litigation Costs; Laws; and Venue.** In the event that the Grantee or the County institutes any action or suit to enforce the provisions of this Agreement, the prevailing party in such litigation shall be entitled to reasonable costs and attorney's fees at the trial, appellate and post-judgment levels. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. The County and the Grantee agree to submit to service of process and jurisdiction of the State of Florida for any controversy or claim arising out of or relating to this Agreement or a breach of this Agreement. Venue for any court action between the parties for any such controversy arising from or related to this Agreement shall be in the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, or in the United States District Court for the Southern District of Florida, in Miami-Dade County, Florida.

Section 22. **Invalidity of Provisions; and Severability.** Wherever possible, each provision of the Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement, provided that the material purposes of this Agreement can be determined and effectuated.

<u>Section 23.</u> **Insurance.** The Grantee must maintain and shall furnish upon request to the County Mayor, certificates of insurance indicating that insurance has been obtained which meets the requirements as determined by the County's Risk Management.

The Grantee shall furnish to the Department of Regulatory and Economic Resources, Planning Research and Economic Analysis 111 N.W. 1st Street – Suite 1220 Miami, Florida 33128-1900, Certificate(s) of Insurance which indicate that insurance coverage for the GOB Project, other than work which has been completed, has been obtained which meets the requirements as outlined below:

(a) Worker's Compensation Insurance for all employees of the Grantee and the Contractor as required by Florida Statute 440.

(b) Commercial General Liability Insurance on a comprehensive basis, including Explosion, Collapse and Underground Liability coverage in an amount not less than $1,000,000.00 combined single limit per occurrence for bodily injury and property damage. **Miami-Dade County must be shown as an additional insured with respect to this coverage.**

(c) Automobile Liability Insurance covering all owned, non-owned and hired vehicles used in connection with the work, in an amount not less than $1,000,000.00 combined single limit per occurrence for bodily injury and property damage.

(d) Professional Liability Insurance (if applicable) in the name of the licensed design professional employed by the contractor in an amount of not less than $1,000,000.00.

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 "A-" as to management, and no less than "Class VII" as to financial strength by 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 Financial Services and are members of the Florida Guaranty Fund.

Compliance with the foregoing requirements shall not relieve the Grantee of its liability and obligation under this section or under any other section of this Agreement.

REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date written above:

ATTEST: HARVEY RUVIN, CLERK	MIAMI-DADE COUNTY, FLORIDA
By: ______________________ Deputy Clerk	By:______________________ Name: Title:

Approved by County Attorney as
to form and legal sufficiency.

By:______________________

GRANTEE: Block 45, LLC
A Florida Limited Liability Company

DocuSigned by:
By: Randy Weisburd
CEB6707C59524E6...
Name: Randy Weisburd
Title: President of Manager

Signed in the presence of:

Witness: ____________________ Witness: DocuSigned by: Liz Wong 6196D3B50BB448B...

Print Name: Marlene Sanchez Print Name: Liz Wong

STATE OF Florida
COUNTY OF Miami Dade

I HEREBY CERTIFY, that on this 1st day October of, 20 20, before me, Marlene Sanchez an officer duly authorized to administer oaths and take acknowledgments, appeared [ ] in person or [X] via online notarization, who is personally known to me, or proven, by producing the following identification: ________________, to be the President of Manager of Block 45, llc, an existing Corporation under the laws of the State of Florida, and whose name the forgoing instrument is executed and said officer severally acknowledged before me that he executed said instrument acting under the authority duly vested by said corporation and its Corporate Seal is affixed thereto.

WITNESS my hand and official Seal at Miami, in the County and State aforesaid, on this, the 1st day of October, 20 20.

MARLENE CASAR SANCHEZ
Notary Public - State of Florida
Commission # GG 921883
My Comm. Expires Oct 19, 2023
Bonded through National Notary Assn.

NOTARY SEAL / STAMP

____________________ (SEAL)
Notary Public

Marlen Sanchez
Print Name

Notary Public, State of Florida

My Commission expires: 10.19.2023

GRANTEE: Block 45, LLC
A Florida Limited Liability Company

DocuSigned by:
Howard D Cohen
46AC20B38B744F0...
By:______________________________
Name: Howard D. Cohen
Title: Chief Executive Officer of Manager

Signed in the presence of:

Witness:______________________________ Witness: DocuSigned by: Liz Wong 6196D3B50BB448B...

Print Name: Marlene Sanchez Print Name: Liz Wong

STATE OF Florida
COUNTY OF Miami Dade

I HEREBY CERTIFY, that on this 1st day October of, 20 20, before me, Marlene Sanchez an officer duly authorized to administer oaths and take acknowledgments, appeared [ ] in person or [x] via online notarization, who is personally known to me, or proven, by producing the following identification: _______________, to be the CEO of Manager of Block 45, LLC, an existing Corporation under the laws of the State of Florida, and whose name the forgoing instrument is executed and said officer severally acknowledged before me that he executed said instrument acting under the authority duly vested by said corporation and its Corporate Seal is affixed thereto.

WITNESS my hand and official Seal at Miami, in the County and State aforesaid, on this, the 1st day of October, 20 20

______________________________ (SEAL)
Notary Public
Marlene Sanchez
Print Name

MARLENE CASAR SANCHEZ
Notary Public - State of Florida
Commission # GG 921883
My Comm. Expires Oct 19, 2023
Bonded through National Notary Assn.

NOTARY SEAL / STAMP

Notary Public, State of Florida

My Commission expires: 10.19.2023

Exhibit A

Economic Impact Analysis

[independent report that includes the new businesses and/or expanded businesses to be located in the area as well as the number of New Jobs to be created, description of the New Jobs and the salary for each one].

Exhibit B

Hiring Plan

Exhibit C

Construction Schedule

Exhibit D

Project Costs

[Shall include a breakdown of the Costs of the Project, including the GOB Project and the financing sources]

EXHIBIT E

[To Be Placed On Company Letterhead]

Job Certificate

Company Name: ____

Mailing Address: ____

____

Primary Contact Name: ____

Primary Contact Title: ____

Phone: __________________________ Email: ____________________

Date Job Maintenance Period Began: ______________________________

Date Job Maintenance Period Ends: ______________________________

Reporting Period of this Certificate: ______________________________

This Certificate must be completed to document both the number of Direct Jobs and the number of Indirect Jobs located at the GOB Project during the Reporting Period as required in the Building Better Communities Miami-Dade County Grant Agreement (the "Grant Agreement"). This page of the Job Certificate must be completed. Exhibit "E-1" to this Job Certificate must be based upon a report run from the Company's HR system and be based upon RT-6 filings with the State of Florida. The County's rights to audit the Company's records supporting the information provided in this Job Certificate are set forth Section 9 of the Grant Agreement.

I hereby certify that the information in this Job Certificate and any accompanying documents is true and correct to the best of my knowledge, information and belief based upon Company records and based upon the RT-6 filings with the State of Florida. (Please include a signature from a Vice President or higher ranking officer or, in the case of an LLC, a manager or managing member.)

Signature: ____

Print Name: ____

Title: ____

Exhibit "E-1"
to Job Certificate

Direct Jobs

The Grant Agreement contains a requirement that ________New Jobs must be maintained during this Reporting Period . The Reporting Period will be satisfied once at least_______ hours (the "Hours Target") are worked during this Reporting Period.

Total hours worked during this Reporting Period ________________________________

Indirect Jobs

The Grant Agreement contains a requirement that, out of the New Jobs maintained at the GOB Project,_____Indirect Jobs must be maintained during this Reporting Period (the "Indirect Jobs Requirement"). The Indirect Jobs Requirement will be satisfied once____ _____ hours (the "Hours Target") are worked during this Reporting Period and the average wage requirement for these jobs is satisfied.

Under Section 2 of the Grant Agreement, the average wage requirement ("Average Wage Requirement") for Indirect Jobs is calculated based upon the Hours Target. If more than the Hours Target are worked during this Reporting Period, Grantee may select which specific hours in excess of the Hours Target will be excluded when calculating compliance with the Average Wage Requirement for Certified Jobs.

Total hours worked during this Reporting Period ________________________________
(Lesser of (1)________, or (2) _____ ___total hours worked during this Reporting Period)

Average hourly wages paid without qualifying health benefits $_______________

Average hourly wages paid with qualifying health benefits $_______________