

MEMORANDUM

Agenda Item No. 8(N)(12)

TO: Honorable Chairman Jose "Pepe" Diaz
and Members, Board of County Commissioners


DATE: September 1, 2022

FROM: Geri Bonzon-Keenan
County Attorney

SUBJECT: Resolution approving award of a development agreement to Magic Waste Youth Foundation, Inc., a Florida not-for-profit corporation, pursuant to sections 125.379 and 125.38 of the Florida Statutes for the development of a mixed-use workforce housing development on County-owned property located at the Palmetto Metrorail Station, and which provides for entering a lease agreement for each of the two development phases, each with a 90-year term and with projected revenue to the County in the total amount of approximately \$178,000,000.00 in rental income and \$1,000,000.00 in improvements to the Palmetto Metrorail Station for the 90-year term; authorizing the County Mayor to execute the development agreement to perform all actions necessary to effectuate same and to exercise any and all provisions contained therein; waiving the provisions of Resolution No. R-130-06 and Implementing Order 8-4 requiring agreements to be finalized and executed by all non-County parties for the lease agreements and authorizing the County Mayor, following review by the County Attorney's Office, to finalize the negotiations and execute the lease agreements and to negotiate and execute a rental regulatory agreement; and waiving Implementing Order 8-4 requiring review by the various County departments and circulation of the property

Resolution No. R-831-22

The accompanying resolution was prepared by the Transportation and Public Works Department and placed on the agenda at the request of Prime Sponsor Chairman Jose "Pepe" Diaz.



Geri Bonzon-Keenan
County Attorney


GBK/uw

Memorandum



Date: September 1, 2022

To: Honorable Chairman Jose “Pepe” Diaz
and Members, Board of County Commissioners

From: Daniella Levine Cava
Mayor 

Subject: Development Agreement and Ground Leases with Magic Waste Youth Foundation, Inc. for Development of a Workforce, Military and Youth Housing Development at the Palmetto Metrorail Station

Executive Summary

The purpose of this item is to gain approval from the Board of County Commissioners (Board), pursuant to sections 125.379 and 125.38 of the Florida Statutes, to award of a Development Agreement, to the Magic Waste Youth Foundation to develop a mixed-use workforce housing project on County-owned property and which provides for entering a lease agreement for each of the two development phases, each with a 90-year term and with projected revenue to the County in the total amount of approximately \$178,000,000.00 in rental income and \$1,000,000.00 in improvements to the Palmetto Metrorail Station for the 90-year term.

This site has not received market interest in the past due to its location in a heavy industrial area, and therefore a procurement is unlikely to generate a better proposal than the subject proposed development in this agreement. The proposed development is also consistent with Miami-Dade County’s commitment to provide more affordable and workforce housing. The proposed multi-phase transit-oriented develop project will consist of 1,030 units, with up to 258 of the workforce housing units specifically set aside for qualifying military and their families, and with 125 of the workforce housing units given priority to Metrorail and Metrobus operators and their families. Additionally, the proposed project will provide 40 rent-free units for children who aged out of foster care. All of the projects workforce housing residential units must remain workforce housing units for the entire 90-year term of the leases. The developer will also construct, at its sole cost, a 1,290 space parking garage and 50 space surface parking lot which will be conveyed to the County upon completion. Approximately, 400 parking spaces will be designated for the exclusive use of transit patrons with another 300 spaces to be designated shared parking if additional parking is needed for transit patrons. Up to 51% of the retail space will be designated for not-for-profit entities at reduced rental rates.

Recommendation

It is recommended that the Board of County Commissioners (the “Board”) adopt the accompanying resolution:

- (1) approving, pursuant to sections 125.379 and 125.38 of the Florida Statutes, a Development Agreement, in substantially the form attached herein, between Miami-Dade County, as owner and landlord, and the Magic Waste Youth Foundation, Inc. (“Youth Foundation”), as tenant and developer, to develop mixed-use workforce, military and youth housing development on approximately 5.78 acres of County-owned property located adjacent to the Palmetto Metrorail Station at 7701 NW 79th Avenue, Medley, Florida 33166 (the

“Property”) and which provides for entering a lease agreement for each of the two development phases, each with a 90-year term and with projected revenue to the County in the total amount of approximately \$178,000,000.00 in rental income and \$1,000,000.00 in improvements to the Palmetto Metrorail Station for the 90-year term.

- (2) waiving the provisions of Resolution No. R-130-06 and Implementing Order 8-4 requiring agreements to be finalized and executed by all non-County parties prior to approval for the Lease Agreements.
- (3) authorizing the County Mayor or County Mayor’s designee to execute the Development Agreement in substantially the form attached hereto, for and on behalf of Miami-Dade County, to perform all actions necessary to effectuate same and to exercise any and all provisions contained therein including any renewal and termination provisions. Further authorizing the County Mayor or the County Mayor’s designee to exercise those provisions as set forth in the Delegated Authority section of this memorandum.
- (4) Because this property is not needed for County purposes, waiving Implementing Order 8-4 requiring review by the various County departments and circulation of the Property for the reasons set forth herein.

Scope

The Property is located in Commission District 12, which is represented by Chairman Jose “Pepe” Diaz, however, the impact of the development is countywide.

Delegated Authority

Upon approval of this item, the County Mayor or County Mayor’s designee shall be authorized to execute the Development Agreement, and to exercise all provisions contained therein, including but not limited to the following:

- Finalize negotiations and execute Lease Agreements in generally the form attached to the Development Agreement and in accordance with the minimum terms outlined in this memorandum, the accompanying resolution, and the Development Agreement, provided that the final terms do not put the County in any less favorable position, financially or otherwise, than that outlined in this memorandum, the resolution, the Development Agreement and the attached Lease Agreement, and provided further that all such final terms do not contravene the policy, intent or purpose of the Board as expressed in any of its legislative enactments;
- Exercise all renewal, termination and reversionary provisions in the Development Agreement and Lease Agreements;
- Review and approve construction plans for the Property and the Palmetto Station improvements required to be approved by the County;
- Consent to actions and undertakings by the Youth Foundation and/or Res-Des Palmetto LLC which must be approved by the County such as invasive testing within the Property and approvals for temporary changes to County transit operations to allow for project construction or improvements to the Palmetto Metrorail Station;

- Consent to agreements required for financing the development;
- Make appointments of individuals or entities required to be appointed or designated by the County;
- Approve and consent to modifications to the required development schedule and development plans in the event that conditions in the development site or regulatory requirements must be accommodated or that such modifications are reasonable and are for good cause and execute any instruments needed to effectuate the foregoing;
- Approve and execute a limited right of entry for the Youth Foundation and/or Res-Des Palmetto LLC onto the Property during the term of Development Agreement for purposes of due diligence and testing;
- Execute on behalf of the County, consents, agreements, applications or other documents needed to comply with applicable regulatory procedures and to obtain approvals needed to accomplish the construction of the development such as plat applications, and building permits;
- Consent to and execute modifications to the Lease Agreement(s) that incorporate reasonable and customary protections to lenders providing financing for the development provided that the modifications do not put the County in any less favorable position financially or otherwise, than that outlined in this memorandum, the resolution, the Development Agreement and the attached Lease Agreement, and provided further that all such final terms do not contravene the policy, intent or purpose of the Board as expressed in any of its legislative enactments;
- Consent to and execute modifications to the Lease Agreement(s) that incorporate reasonable and customary changes as a result of unforeseen conditions discovered during the due diligence period or as a result of approved changes to the project master plan subject to certain restrictions and provided that the modifications do not put the County in any less favorable position financially or otherwise, than that outlined in this memorandum, the resolution, the Development Agreement and the attached Lease Agreement, and provided further that all such final terms do not contravene the policy, intent or purpose of the Board as expressed in any of its legislative enactments;
- Approve the types and amounts of insurance coverages required to be maintained by developer at the various stages of project development and operation;
- Consent to and execute documents approving certain transfers of the rights and obligations of the developer under the development agreement or lease agreement(s);
- Execute recognition and non-disturbance agreement(s) and issue estoppel statements;

Negotiate, approve and execute agreements between the developer and the Miami-Dade Department of Public Housing and Community Development (PHCD) regulating rental rates and operating requirements related to workforce housing;

- Correct typographical or non-material errors, omissions or inconsistencies in the Development Agreement, and Lease Agreements.

Notwithstanding the above delegations of authority, the Development Agreement provides that changes to the development plan or development schedule may not adversely affect County

facilities, allow for less than 40 units to be constructed for purposes of being occupied rent-free by youth who have aged-out of the foster care system, allow less than 100 percent of the units constructed to be affordable housing units, or to change the minimum percentages of units to be set aside for active members of the military and military veterans and their families or the minimum percentage of units for which applications for occupancy by qualifying families of Metrobus and Metrorail operators will be given priority. Additionally, other than those changes that are required to accommodate unforeseen conditions found during the due diligence period within the development site or necessitated by regulatory requirements which adversely affect the proposed development, the financial benefits to be received by the County may not be decreased.

Fiscal Impact/Funding Source

Under the terms of the proposed Development Agreement and Lease Agreements there will be a positive fiscal impact to the County as the project will be developed, constructed and operated solely at the developer’s expense and will provide the following to the County:

- For each of the two phases, a development fee of \$50,000.00 per year from award of the Development Agreement through the date of commencement of construction for the applicable phase.
- Initial Rent of \$60,000.00 per year, per phase, during construction.
- Annual Rent of \$350,000.00 per year, per phase, (a total of \$700,000.00 annually) upon completion of construction.
- Annual Rent escalation of 2 percent per year.
- The total amount in development fees and rent to be paid to the County is projected to be approximately \$178 million over the term of the Development Agreement and Lease Agreements.
- The developer will construct at no cost to the County a new 1,290 space shared-use parking garage and a 50-space surface lot at an estimated cost of \$30.2 million.
- The developer will complete \$1 million in improvements to the Palmetto Metrorail Station.
- Credits to rent payments may be used to cover repairs and maintenance performed by developer to the County-owned facilities, including parking facilities; provided, however, that any rent credits that exceed \$250,000.00 in total credits shall require the approval of the Board.

Track Record/Monitor

The Youth Foundation is a local, all-volunteer, not-for profit foundation with a mission of assisting South Florida youth who have “aged out” of the foster care system by assisting these young people with housing, development of work and life skills, education, nutrition, healthcare and other needs.

Pursuant to Resolution No. R-187-12, due diligence was conducted to verify corporate status, its adherence to its mission, and the performance and compliance history of the Youth Foundation. No adverse findings were discovered. The ownership/director interest in Youth Foundation are depicted as attached exhibit “A”.

Javier Bustamante, Chief of Right-of-Way, Utilities and Joint Development, Department of Transportation and Public Works (DTPW) will be responsible for monitoring the development agreement and ground lease agreements.

Background

DTPW is proposing to enter into a development agreement and 90-year lease agreements for each phase with the Youth Foundation, a Florida not-for-profit corporation, on a non-competitive basis providing for the proposed workforce, military and youth housing project as allowed under sections 125.379 and 125.38, Florida Statutes. Section 125.379 permits the Board to sell or lease County-owned property for the purpose of developing such property with permanent affordable housing to be rented or sold to households whose incomes do not exceed 120 percent of area median income. Furthermore, section 125.38 allows the Board to lease County-owned property to a not-for profit organization organized for the purposes of promoting community interest and welfare for community interest and welfare purposes.

Under the terms of the proposed development agreement and lease agreements, the Youth Foundation will have the right and obligation to develop a multi-phase, 1,030-unit residential transit-oriented development project on 5.87 acres of County-owned property adjacent to the Palmetto Metrorail Station. The development, which has an estimated cost of approximately \$232 million, will be constructed at the sole cost of the developer. The project will be developed by the Youth Foundation through a partnership with Res-Des Palmetto LLC, which has extensive experience in developing large, multi-family residential projects.

Under the terms of proposed development agreement, the developer will have the right and obligation to construct the project; however, a lease agreement for the Property for each phase will not be executed until the developer obtains written approval of the County for its detailed construction and installation plans, all development and building permits necessary to commence construction prior to lease closing have been secured, and the developer is otherwise ready to commence construction. If the County and developer are unable to finalize and agree on the final terms and conditions of the Lease Agreement prior to the scheduled closing date for each of the phases, then either party shall have the right to terminate the development agreement without further liability. The development agreement states that the developer shall close on initial financing and commence construction within 150 days of execution of the lease agreement for each phase and shall close on all financing for vertical construction within 18 months of execution of the lease agreement for each phase or be subject to automatic termination of the lease, subject to unavoidable delays. Moreover, each lease agreement states that construction must be completed within 6 years of execution of the lease agreement or be subject to automatic termination, subject to unavoidable delays.

Under the terms of the proposed agreements, developer has an obligation to provide a minimum of 40 units, rent-free, to youth who have “aged out” of foster care. All of the remaining residential units will be workforce housing units (for families with incomes of 120 percent of the adjusted median income, adjusted for family size) with up to 258 units (or 25 percent of total built) set aside for active members of the military and military veterans and their immediate families. Applications by qualifying Miami-Dade County Metrorail and Metrobus operators and their immediate families will be given priority for occupancy in up to 125 workforce units (or 12 percent of total units built).

In compliance with Miami-Dade County Implementing Order IO 3-60, rents for the workforce units will be set at an amount that is affordable for families with a maximum income of 60 percent, 80 percent, 100 percent and 120 percent area median income levels. These restrictions will be in place for the full 30-year term and two, 30-year renewals terms of both lease agreements and will be administered by PHCD.

Upon completion of construction of each of the two phases, the developer will pay \$350,000 for each of the two phase (\$700,000 combined), which will be subject to an increase of 2 percent per year.

The developer will also construct, at its sole expense, a 1,290-space shared-use parking garage and 50 space surface parking lot. Upon completion of construction by the developer of the parking garage, ownership of those facilities will be conveyed to the County. A total of 400 parking spaces will be designated for the exclusive use of transit patrons, 640 spaces will be designated for the exclusive use of project residents and 300 spaces will be available to both transit patrons and project residents on a shared use basis. If there is a need for additional parking by project residents and all of the parking designated for transit patrons is not needed, the agreements allow for the use of additional parking spaces by project residents on a shared use basis. In such event, the developer will pay the County for the use of the additional parking spaces at the County’s standard monthly rates. Additionally, the County will have the right to conduct parking studies to ensure that sufficient spaces are available to meet the needs of transit patrons. If, at any time, it is determined that additional parking is needed for use by transit patrons, the number of parking spaces available for transit patrons may be increased.

The development will contain 7,700 square feet of retail and office space, ancillary to the work force housing, for the purpose of providing retail products and services to the development residents. A minimum of 51 percent of the retail space will be dedicated for use by not-for-profit retail tenants at below market rates. Office space will also be provided, at no charge, for use by the Youth Foundation for the purpose of providing services related to the mission of the Youth Foundation, including financial-literacy training, job training, job fairs, and tutoring services.

The developer will be required to competitively select the construction contractor for the parking garage and improvements to the Palmetto Metrorail Station in accordance with section 255.20, Florida Statutes and all construction activities within the development site shall be subject to the requirements of the County’s Responsible Wages Ordinances and the Small Business Enterprise, Wage and Workforce Programs.

This item includes a waiver of Implementing Order 8-4 (IO 8-4), including review by the various County departments and circulation of the Property. However, the item otherwise adheres to the relevant substance and procedures of IO 8-4. A determination has been made by administration that the property is not needed for County purposes. Staff conducted due diligence, including a review of the past performance, experience, and capability of the tenant and development partner, which are both Miami-Dade County registered vendors, and concluded that they are responsible entities in accordance with IO 8-4. Staff completed its due diligence process to determine whether there were any restrictions, limitations, encumbrances or other conditions that would preclude the lease of the property that may result in a significant fiscal impact to the County and concluded that there are no such encumbrances, restrictions, or obstacles. Also in accordance with IO 8-4, a compliant application was received from the developer, and the negotiated agreements include the provisions required by IO 8-4, including detailed milestones and deadlines, appropriate insurance requirements approved by the Risk Management Division, proof of payment of property taxes, and quarterly reporting on development progress. The agreements also provide for monitoring of housing affordability restrictions by PHCD. Also, in accordance with IO 8-4, two appraisals and a review appraisal were conducted for the property, and staff has confirmed that the consideration to be paid to the County under the lease meets or exceeds fair market value for the property, since the market rent was determined to be a range

between \$700,000 and \$775,000 on construction completion of both phases in year 7. Based upon the appraisals conducted upon construction completion in year 7, the developer will pay a total of \$721,423 for both phases in annual rent to the County which will be subject to an increase of 2 percent per year. This determination was also confirmed by the Federal Transit Administration (FTA) to meet fair market value and the agency is highly supportive of the project characterizing it as a model for transit-oriented development with affordable and workforce housing components. Finally, a zoning analysis of the Property was performed, and the development is consistent with the purpose and parameters of the Rapid Transit Zone (RTZ). The property is currently being rezoned to RTZ, consistent with all other Metrorail stations.

The property on which the project is to be constructed was acquired with federal and state funding and requires approval by the FTA and the Florida Department of Transportation (FDOT). The FTA and FDOT have reviewed the proposed project and agreements and have issued written approvals for the project.

This site has not received market interest in the past due to its location in a heavy industrial area, and therefore a procurement is unlikely to generate a better proposal than the subject proposed development in this agreement. The proposed development is also consistent with Miami-Dade County’s commitment to provide more affordable and workforce housing.



Jimmy Morales
Chief Operations Officer

EXHIBIT A



[Department of State](#) / [Division of Corporations](#) / [Search Records](#) / [Search by Entity Name](#) /

Detail by Entity Name

Florida Not For Profit Corporation
MAGICWASTE YOUTH FOUNDATION, INC.

Filing Information

Document Number N16000012172
FE/EIN Number 81-4841755
Date Filed 12/23/2016
Effective Date 01/01/2017
State FL
Status ACTIVE
Last Event AMENDMENT
Event Date Filed 11/05/2019
Event Effective Date NONE

Principal Address

8600 NW 17TH STREET - STE. 130
DORAL, FL 33126

Changed: 08/14/2017

Mailing Address

8600 NW 17TH STREET - STE. 130
DORAL, FL 33126

Changed: 08/14/2017

Registered Agent Name & Address

BUSTAMANTE, RODOLFO V
8600 NW 17TH STREET - STE. 130
DORAL, FL 33126

Address Changed: 08/14/2017

Officer/Director Detail

Name & Address

Title D, Director

CEBALLOS, JACQUELINE
8600 NW 17 Street, SUITE 130
DORAL, FL 33126

Title P

BUSTAMANTE, RODOLFO V
8600 NW 17TH STREET - STE. 130
DORAL, FL 33126

Title T

NAZARIO, WILMA
8600 NW 17TH STREET - STE. 130
DORAL, FL 33126

Title Secretary

Trujillo, Rebeca Curros
8600 NW 17TH STREET - STE. 130
DORAL, FL 33126

Title Director

Goode , Susanna
8600 NW 17TH STREET - STE. 130
DORAL, FL 33126

Title Director

Maulini, Adalberto
8600 NW 17TH STREET - STE. 130
DORAL, FL 33126

Title Director

Roach, Nelson
8600 NW 17TH STREET - STE. 130
DORAL, FL 33126

Title Director

TREJOS, CLAUDIA
8600 NW 17TH STREET - SUITE 130
DORAL, FL 33126

Title VP

Robleto, Jr., Francisco
8600 NW 17TH STREET - STE. 130
DORAL, FL 33126

Title Director

Aleman, Bayardo

8600 NW 17TH STREET - STE. 130
DORAL, FL 33126

Title Director

Hermida , Lissete
8600 NW 17TH STREET - STE. 130
DORAL, FL 33126

Annual Reports

Report Year	Filed Date
2020	06/25/2020
2021	06/27/2021
2022	04/29/2022

Document Images

04/29/2022 -- ANNUAL REPORT	View image in PDF format
06/27/2021 -- ANNUAL REPORT	View image in PDF format
06/25/2020 -- ANNUAL REPORT	View image in PDF format
11/05/2019 -- Amendment	View image in PDF format
05/01/2019 -- ANNUAL REPORT	View image in PDF format
05/03/2018 -- ANNUAL REPORT	View image in PDF format
08/14/2017 -- Amendment and Name Change	View image in PDF format
12/23/2016 -- Domestic Non-Profit	View image in PDF format



MEMORANDUM
(Revised)

TO: Honorable Chairman Jose "Pepe" Diaz
and Members, Board of County Commissioners

DATE: September 1, 2022

FROM: 
Gen Bonzon-Keenan
County Attorney

SUBJECT: Agenda Item No. 8(N)(12)

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
Veto _____
Override _____

Agenda Item No. 8(N)(12)
9-1-22

RESOLUTION NO. _____ R-831-22

RESOLUTION APPROVING AWARD OF A DEVELOPMENT AGREEMENT TO MAGIC WASTE YOUTH FOUNDATION, INC., A FLORIDA NOT-FOR-PROFIT CORPORATION, PURSUANT TO SECTIONS 125.379 AND 125.38 OF THE FLORIDA STATUTES FOR THE DEVELOPMENT OF A MIXED-USE WORKFORCE HOUSING DEVELOPMENT ON COUNTY-OWNED PROPERTY LOCATED AT THE PALMETTO METRORAIL STATION, AND WHICH PROVIDES FOR ENTERING A LEASE AGREEMENT FOR EACH OF THE TWO DEVELOPMENT PHASES, EACH WITH A 90-YEAR TERM AND WITH PROJECTED REVENUE TO THE COUNTY IN THE TOTAL AMOUNT OF APPROXIMATELY \$178,000,000.00 IN RENTAL INCOME AND \$1,000,000.00 IN IMPROVEMENTS TO THE PALMETTO METRORAIL STATION FOR THE 90-YEAR TERM; AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE THE DEVELOPMENT AGREEMENT TO PERFORM ALL ACTIONS NECESSARY TO EFFECTUATE SAME AND TO EXERCISE ANY AND ALL PROVISIONS CONTAINED THEREIN; WAIVING THE PROVISIONS OF RESOLUTION NO. R-130-06 AND IMPLEMENTING ORDER 8-4 REQUIRING AGREEMENTS TO BE FINALIZED AND EXECUTED BY ALL NON-COUNTY PARTIES FOR THE LEASE AGREEMENTS AND AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE, FOLLOWING REVIEW BY THE COUNTY ATTORNEY'S OFFICE, TO FINALIZE THE NEGOTIATIONS AND EXECUTE THE LEASE AGREEMENTS AND TO NEGOTIATE AND EXECUTE A RENTAL REGULATORY AGREEMENT; AND WAIVING IMPLEMENTING ORDER 8-4 REQUIRING REVIEW BY THE VARIOUS COUNTY DEPARTMENTS AND CIRCULATION OF THE PROPERTY

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

WHEREAS, section 125.379 of the Florida Statutes requires that each county prepare an inventory list of all real property within its jurisdiction to which the county holds fee simple title that is appropriate for use as affordable housing; and

WHEREAS, section 125.379 further requires that the inventory list include the address and legal description of each such real property and specify whether the property is vacant or improved; and

WHEREAS, section 125.379 also requires that the governing body of the county review the inventory list at a public hearing and revise it at the conclusion of the public hearing and adopt a resolution that includes an inventory list of such property following the public hearing; and

WHEREAS, the County has identified an improved parcel of land located on a portion of Folio No. 22-3010-010-0010 at 7701 NW 79th Avenue, Medley, Florida 33166, adjacent to the Palmetto Metrorail Station (the “Property”); and

WHEREAS, prior to the adoption of this resolution, this Board, after a public hearing and in accordance with section 125.379(1) of the Florida Statutes, revised the inventory list of affordable housing to add the Property; and

WHEREAS, section 125.38 of the Florida Statutes allows this Board to lease County-owned property to a not-for-profit organization organized for the purposes of promoting community interest and welfare; and

WHEREAS, Magic Waste Youth Foundation, Inc (the “Youth Foundation”) is a not-for-profit corporation organized for the purpose of promoting community welfare including the development of workforce housing for the benefit of the community and providing services to youth aging out of foster care; and

WHEREAS, pursuant to sections 125.38 and 125.379 of the Florida Statutes, the Youth Foundation has made application to the County to the Property as a workforce housing project with a minimum of approximately (i) 25 residential units that are set aside for individuals and families whose total annual household income is no more than 60 percent of area median income for Miami-Dade County, (ii) 30 residential units that are set aside for individuals and families whose total annual household income is no more than 80 percent of area median income for Miami-Dade County, (iii) 70 residential units that are set aside for individuals and families whose total annual household income is no more than 100 percent of area median income for Miami-Dade County, and (iv) 607 residential units that are set aside for individuals and families whose total annual household income is no more than 120 percent of area median income for Miami-Dade County; and (v) a minimum of approximately 40 micro-residential units that are set aside for use by youth who age out of foster care program rent-free; and

WHEREAS, this Board finds that the Youth Foundation requires the Property for the purposes for which it was incorporated and to promote the community interest and welfare of the public; and

WHEREAS, this Board has determined that the property is not needed for County purposes; and

WHEREAS, the Youth Foundation has offered to make certain improvements to the Palmetto Metrorail Station as set forth in the accompanying form Lease Agreements; and

WHEREAS, this Board desires to approve the Development Agreement between Miami-Dade County and the Youth Foundation in order to develop the Property for the mixed-use workforce housing transit-oriented development,

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

Section 1. This Board incorporates and approves the foregoing recitals and the accompanying Mayor's memorandum as if fully set forth herein.

Section 2. This Board approves, pursuant to sections 125.379 and 125.38 of the Florida Statutes, the award of a Development Agreement, in substantially the form attached herein, to the Youth Foundation to develop mixed-use workforce housing on County-owned property and which provides for entering a lease agreement for each of the two development phases, each with a 90-year term and with projected revenue to the County in the total amount of approximately \$178,000,000.00 in rental income and \$1,000,000.00 in improvements to the Palmetto Metrorail Station for the 90-year term.

Section 3. This Board waives the provisions of Resolution No. R-130-06 and Implementing Order 8-4 requiring agreements to be finalized and executed by all non-County parties prior to approval for the Lease Agreements and the provisions of Implementing Order 8-4 requiring review by various County departments and circulation of the property.

Section 4. This Board authorizes the County Mayor or County Mayor's designee to execute the Development Agreement in substantially the form attached hereto, for and on behalf of Miami-Dade County, to perform all actions necessary to effectuate same and to exercise any and all provisions contained therein including any renewal and termination provisions. Provided that the following delegated acts: (1) are in accordance with the terms outlined in the Mayor's memorandum, this resolution, and the Development Agreement; (2) do not put the County in any less favorable position, financially or otherwise, than that contained in the Mayor's memorandum, this resolution and the Development Agreement; (3) do not contravene the policy, intent or purpose

of the Board as expressed in any of its legislative enactments; and (4) do not violate any provision of sections 125.379 and 125.38 Florida Statutes, or any required findings which must be made by this Board; this Board further authorizes the County Mayor or County Mayor's designee to: (a) in accordance with sections 125.379 and 125.38 of the Florida Statutes, and following review by the County Attorney's Office, finalize negotiations and execute Lease Agreements in generally the form attached to the Development Agreement; (b) exercise all renewal, termination and reversionary provisions in the Development Agreement and Lease Agreements; (c) review and approve construction plans for the Property and the Palmetto Station improvements required to be submitted and approved by the County; (d) consent to actions by the Youth Foundation and/or Res-Des Palmetto LLC which must be approved by the County under the terms of the Development Agreement; (e) consent to agreements required for financing the development; (f) make appointments of individuals or entities required to be appointed or designated by the County; (g) approve and consent to modifications to the required development schedule and master plans in the event that conditions in the development site or regulatory requirements must be accommodated or where the County Mayor or County Mayor's designee determines that the requested modifications are reasonable, are otherwise legally permitted, and are for good cause; and execute any instruments needed to effectuate the foregoing; (h) approve and execute a limited right of entry for the Youth Foundation and/or Res-Des Palmetto LLC onto the Property during the term of development agreement Development Agreement for purposes of due diligence and testing; (i) execute on behalf of the County, consents, agreements, easements, applications or other documents needed to comply with applicable regulatory procedures and to obtain approvals needed to accomplish the construction of the development such as plat applications, and building permits; (j) consent to and execute modifications to the Lease Agreement(s) that incorporate

reasonable and customary protections to lenders providing financing for the development; (k) consent to and execute modifications to the lease agreement(s) that incorporate reasonable and customary changes as a result of unforeseen conditions discovered during the due diligence period or as a result of approved changes to the project master plan; (l) approve the types and amounts of insurance coverages required to be maintained by developer at the various stages of project development and operation; (m) consent to and execute documents approving certain transfers of the rights and obligations of the developer under the development agreement or lease agreement(s), including consenting to the admission of the equity investor member of Res-Des Palmetto LLC; (n) execute recognition and non-disturbance agreement(s) and issue estoppel statements; (o) negotiate, and, following review by the County Attorney's Office, approve and execute agreements between the developer and the Miami-Dade Department of Public Housing and Community Development regulating rental rates and operating requirements related to workforce housing; (p) issue notice to developer requiring the repair, restoration or replacement of improvements and parking facilities in the event of damage or destruction;; and (q) correct typographical or non-material errors, omissions or inconsistencies in the Development Agreement and Lease Agreements.

Section 5. This Board waives Implementing Order 8-4 requiring review by the various County departments and circulation of the Property.

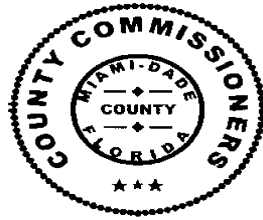
Section 6. This Board directs the County Mayor or County Mayor's designee to appoint staff to monitor the Development Agreement and Lease Agreements and to provide the County Property Appraiser a copy of the agreements within 30 days of execution in accordance with Resolution No. R-791-14.

Section 7. This Board directs the County Mayor or County Mayor’s designee, pursuant to Resolution No. R-974-09, to record in the public record the lease agreement, or memorandum of lease agreement, covenants, reverters and mortgages creating or reserving a real property interest in favor of the County and to provide a copy of such recorded instruments to the Clerk of the Board within 30 days of execution and final acceptance. This Board directs the Clerk of the Board, pursuant to Resolution No. R-974-09, to attach and permanently store a recorded copy of any instrument provided in accordance herewith together with this resolution.

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

	Jose “Pepe” Diaz, Chairman	aye	
	Oliver G. Gilbert, III, Vice-Chairman	aye	
Sen. René García	absent	Keon Hardemon	aye
Sally A. Heyman	aye	Danielle Cohen Higgins	aye
Eileen Higgins	aye	Joe A. Martinez	absent
Kionne L. McGhee	aye	Jean Monestime	aye
Raquel A. Regalado	aye	Rebeca Sosa	aye
Sen. Javier D. Souto	aye		

The Chairperson thereupon declared this resolution duly passed and adopted this 1st day of September, 2022. 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

Basia Pruna

By: _____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

A handwritten signature in black ink, appearing to be "Annery Pulgar Alfonso", written over a horizontal line.

Annery Pulgar Alfonso
Terrence A. Smith



Joint Development of Palmetto Station Property

Development Agreement

ISSUED BY MIAMI-DADE COUNTY:
The Department of Transportation and Public Works

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE 1 GENERAL TERMS OF DEVELOPMENT AGREEMENT	3
Section 1.1. Development Agreement to Enter Lease of Land and Air Rights	3
Section 1.2. Conditions Precedent to Effectiveness of Development Agreement	3
Section 1.3. Term of Development Agreement.....	4
Section 1.4. Development of Project Under Master Plan.....	4
Section 1.5. Changes and Alterations to the Master Plan	5
Section 1.6. Phased Development Contemplated (if applicable)	7
Section 1.7. Lease(s) Delivered at Closing	8
Section 1.8. Convertible Property and Leased Property	12
Section 1.9. Developer’s Pre-Closing Responsibilities.....	13
Section 1.10. Right of Entry.....	14
Section 1.11. Due Diligence Period	16
Section 1.12. Conditions Precedent to Lease Commencement and Closing	19
Section 1.13. Reserved	26
ARTICLE 2 DEFINITION OF CERTAIN TERMS.....	26
ARTICLE 3 SECURITY DEPOSIT AND DEVELOPMENT FEES	51
Section 3.1. Security Deposit	51
Section 3.2. Development Fee.....	52
Section 3.3. Delayed Closing Fee	53
Section 3.4. Net Lease.....	54
Section 3.5. Initial Rent.....	54
Section 3.6. Late Payments	54
Section 3.7. Enacted Restrictions	55
Section 3.8. Payment for Sale, Assignment or Transfer of Any Development Rights	56
Section 3.9. Additional Fees	58
Section 3.10. No Subordination of Development Fee.....	59

Palmetto Metrorail Station Development Agreement

ARTICLE 4 DEVELOPER RIGHTS AND OBLIGATIONS..... 59

Section 4.1. Land Uses 59

Section 4.2. Development Rights and Construction Phases..... 59

Section 4.3. Conformity of Plans 62

Section 4.4. Approval Rights 63

Section 4.5. Inspection by County. 63

Section 4.6. Design Plans; DTPW Review and Approval Process 64

Section 4.7. Construction Plans..... 65

Section 4.8. Developer Obligations..... 68

Section 4.9. Application for Development Approvals and Permits 69

Section 4.10. Site Conditions 69

Section 4.11. Art in Public Places 70

Section 4.12. Off-site Improvements 70

Section 4.13. Signage and Landscaping of Entrances..... 71

Section 4.14. Designation of County’s Representative..... 71

Section 4.15. Additional Work..... 73

Section 4.16. Small Business Enterprise Program 73

Section 4.17. Responsible Wages 74

Section 4.18. Development Partner..... 75

ARTICLE 5 DETERMINATION OF IMPOSITIONS 76

ARTICLE 6 PROPERTY RIGHTS..... 77

Section 6.1. Rights to Real Property after Agreement Expiration 77

Section 6.2. Rights to Personal Property After Agreement Termination
or Expiration..... 77

Section 6.3. Survival 77

ARTICLE 7 INSURANCE AND INDEMNIFICATION..... 77

Section 7.1. Terms and Provisions 77

Section 7.2. Insurance Requirements 79

Section 7.3. Premiums and Renewals 81

Section 7.4. Evidence of Insurance 81

Section 7.5. Effect of Loss or Damage..... 82

Section 7.6. Waiver of Subrogation 83

Palmetto Metrorail Station Development Agreement

Section 7.7. No County Obligation to Provide Insurance 83

Section 7.8. Right to Examine..... 83

Section 7.9. Personal Property 84

Section 7.10. Indemnification 84

Section 7.11. Hold Harmless..... 85

ARTICLE 8 OPERATION 86

Section 8.1. Control of Development Site..... 86

Section 8.2. Non-Subordination and Non Interference 86

ARTICLE 9 REPAIRS AND MAINTENANCE 87

Section 9.1. Developer Repairs 87

Section 9.2. County Repairs and Maintenance..... 87

ARTICLE 10 COMPLIANCE WITH LAWS AND ORDINANCES 87

Section 10.1. Compliance by Developer 87

Section 10.2. Contest by Developer 88

ARTICLE 11 DISCHARGE OF OBLIGATIONS 88

Section 11.1. Developer’s Duty 88

Section 11.2. County’s Duty 90

ARTICLE 12 USE OF DEVELOPMENT SITE 90

Section 12.1. Use of Development Site by Developer 90

Section 12.2. Dangerous Liquids and Materials 91

Section 12.3. Suitability of Development Site 92

Section 12.4. County’s Disclaimer of Liability..... 92

Section 12.5. Compliance with Environmental Law..... 93

Section 12.6. Environmental Indemnification..... 94

Section 12.7. Waste..... 95

Section 12.8. No Subordination of County’s Fee Interest..... 95

ARTICLE 13 INSPECTION BY COUNTY..... 95

Section 13.1. Inspection by County 95

Section 13.2. Inspection of Accounting Records 96

Palmetto Metrorail Station Development Agreement

ARTICLE 14 LIMITATION OF LIABILITY 96
 Section 14.1. Limitation of Liability of County..... 96
 Section 14.2. Limitation of Liability of Developer..... 97

ARTICLE 15 TRANSFERS 97
 Section 15.1. Right to Transfer 97
 Section 15.2. Transfer in Violation of Provisions Null and Void..... 102
 Section 15.3. Transfer of Interest by County 102

ARTICLE 16 EMINENT DOMAIN..... 103
 Section 16.1. Taking under Eminent Domain..... 103
 Section 16.2. Partial Taking; Termination of Agreement 103
 Section 16.3. Partial Taking; Continuation of Agreement 104
 Section 16.4. Temporary Taking..... 105

ARTICLE 17 DEFAULT BY DEVELOPER OR COUNTY 106
 Section 17.1. Events of Default of Developer..... 106
 Section 17.2. Failure to Cure Default by Developer 108
 Section 17.3. Surrender of Development Site Upon Default 109
 Section 17.4. Rights of County After Termination 113
 Section 17.5. Rights After Expiration 113
 Section 17.6. Events of Default of County..... 114

ARTICLE 18 NOTICES 114
 Section 18.1. Addresses 114
 Section 18.2. Method of Transmitting Notice..... 116

ARTICLE 19 CERTIFICATES BY COUNTY AND DEVELOPER..... 116
 Section 19.1. Developer Certificates..... 116
 Section 19.2. County Certificates..... 117

ARTICLE 20 CONSTRUCTION OF TERMS AND MISCELLANEOUS 118
 Section 20.1. Severability..... 118
 Section 20.2. Captions..... 118
 Section 20.3. Relationship of Parties 118
 Section 20.4. Recording 118
 Section 20.5. Construction 118

Palmetto Metrorail Station Development Agreement

Section 20.6. Consents 119

Section 20.7. No Waiver by County 119

Section 20.8. Entire Agreement 120

Section 20.9. Successors and Assigns 120

Section 20.10. (A) Station Plans and (B) Confidential and Exempt
Information 120

Section 20.11. Holidays 123

Section 20.12. Schedules 124

Section 20.13. Brokers 124

Section 20.14. Protest Payments 124

Section 20.15. Governing Law 125

Section 20.16. Counterparts 125

Section 20.17. Vendor Registration and Forms 125

Section 20.18. Conflict of Interest 126

Section 20.19. Time is of the Essence 127

Section 20.20. No Tax Abatement or Other Public Subsidies to Developer 127

Section 20.21. No Partnership or Joint Venture 127

Section 20.22. No Third-Party Beneficiaries 127

Section 20.23. Amendments 128

Section 20.24. No Liability for Approvals or Inspections 128

Section 20.25. Standard of Conduct 128

Section 20.26. No Option 128

Section 20.27. No Waiver of Sovereign Immunity 128

Section 20.28. County Representatives Not Individually Liable 129

Section 20.29. Independent Private Sector Inspector General Review 129

ARTICLE 21 REPRESENTATIONS AND WARRANTIES 130

Section 21.1. County’s Representations and Warranties 130

Section 21.2. Developer’s Representations and Warranties 130

ARTICLE 22 COMPLIANCE WITH REGULATIONS 131

Palmetto Metrorail Station Development Agreement

SCHEDULES:

Schedule 1.1	Development Site
Schedule 1.4A	Developer's Master Plan
Schedule 1.4B	Project Schedule
Schedule 1.6	Ground Lease
Schedule 2DD	Ownership Structure of Development Partner
Schedule 3	Payment of the Security Deposit, Development Fee, and Rent Schedule
Schedule 4.16	Building Construction Responsible Wages and Benefits Requirements
Schedule 19.2	County's Estoppel Certificate

Palmetto Metrorail Station Development Agreement

JOINT DEVELOPMENT AGREEMENT OF PALMETTO STATION PROPERTY

THIS DEVELOPMENT AGREEMENT, dated as of the ___ day of _____, 2022, made by and between MIAMI-DADE COUNTY, a political subdivision of the State of Florida, through the Miami Dade 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 “County” or “DTPW”), and MAGICWASTE YOUTH FOUNDATION, INC., a Florida non-profit corporation, having an office and place of business at _____, hereinafter called “Developer”, and together with “County” the (“Parties”).

WITNESSETH:

A. County owns certain real property located in Miami-Dade County, Florida, as more particularly described on Schedule 1.1, attached hereto and made a part hereof (the “Development Site” or “Site”).

B. Pursuant to Section 125.379, Florida Statutes, Developer submitted to County a proposal for construction of a mixed-use development on the Site (the “Project”), with a minimum of approximately 1,030 Community Housing Units and a minimum of approximately 7,500 square feet of commercial space devoted to Community Commercial Uses, along with the construction of the Parking Facilities and certain Station Improvements, and for the payment to County of rent and other consideration that meets or exceeds fair market value.

C. County recognizes the potential for public and private benefit through a joint use development of the Site, to serve as a positive model for transit-oriented development generally, to promote transit usage, workforce housing, and other community interests and welfare and further economic development in the County.

Palmetto Metrorail Station Development Agreement

D. Based on the Developer's proposal to the County and made a part hereof, County desires to enter into a Development Agreement ("Agreement") with Developer which sets forth the right and obligation to undertake the development of the Site in accordance with the Developer's Master Plan which sets forth the Developer's concept for the entire Development Site as described in Schedule 1.4A ("Master Plan") and the Developer's Project Schedule as set forth in Schedule 1.4B.

E. The intent of the County in awarding this Development Agreement is for the Developer to timely complete the Project upon the entire Development Site and not for speculation in landholding.

F. In furtherance of this goal, the Parties agree that Developer, upon timely completion of the Closing Conditions as contained herein, will enter a long-term ground lease with the County for the entire Development Site, or if Phased Development is contemplated, ground lease(s) for the Phases of the Development on a Phase-by-Phase basis, in substantially the form attached hereto as Schedule 1.6 (the "Lease"). The Lease(s), subject to the conditions set forth in this Agreement, will be executed and delivered at Closing on the Scheduled Closing Date(s).

G. Each of the Parties desire to enter into this Agreement for the timely development of the Project upon the Development Site in accordance with the Master Plan.

H. Capitalized terms used herein shall have the definitions set forth in Article 2 hereof and/or as elsewhere defined herein, including the foregoing recitals.

NOW, THEREFORE, in consideration of the foregoing and the covenants of the Parties set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

ARTICLE 1

GENERAL TERMS OF DEVELOPMENT AGREEMENT

Section 1.1. **Development Agreement to Enter Lease of Land and Air Rights**

In accordance with (a) Chapter 125, Florida Statutes; (b) the powers granted to County pursuant to authority properly delegated by the Florida legislature; (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 fees, covenants and agreements specified herein, County agrees, pursuant to the terms of this Development Agreement, and does hereby grant unto Developer, its successors and assigns, and Developer does hereby take and hire, upon and subject to the conditions and limitations herein expressed, the right and obligation to develop the Development Site as more particularly described in Schedule 1.1 in accordance with the Master Plan, and upon satisfaction of the Closing Conditions, Developer will enter into Lease(s) with County for the Development Site for such purposes, reserving to County the rights described herein, to have and to hold the same unto Developer, its successors and assigns for the Term. Except as expressly provided in Section 4.18 of this Agreement, all references in this Agreement to “Developer” shall also refer to “Development Partner,” which shall be jointly and severally responsible for all obligations of Developer under this Agreement.

Section 1.2. **Conditions Precedent to Effectiveness of Development Agreement**

This Development Agreement shall not become effective unless and until it is first approved by the Federal Transit Administration (FTA) and the Florida Department of Transportation (FDOT), as applicable, and then the Board of Miami-Dade County Commissioners adopts a resolution approving the Development Agreement, and such resolution is signed by the Mayor or otherwise becomes effective after the expiration of the Mayor’s veto period.

Palmetto Metrorail Station Development Agreement

Section 1.3. **Term of Development Agreement**

This Agreement shall be for a Term commencing on the Commencement Date and expiring on the Closing Date of the Project in its entirety (if Phased Development is not contemplated) or on the Closing Date of the final Phase of the Project to be developed under this Agreement (if Phased Development is contemplated), as provided herein (the “Term”). The obligation to pay Development Fee(s) shall begin on the Commencement Date. Notwithstanding any other provision of this Development Agreement, if the Project is developed in Phases, upon a Lease becoming effective for any Phase, all obligations of this Development Agreement with respect to that Phase shall be incorporated into the Lease for such Phase, and no Developer Default (as hereinafter defined) under the Development Agreement or an event of default under a Lease for any other Phase shall constitute an event of default under the Lease for such Phase. Notwithstanding the foregoing, any default under a Lease may become a default under this Development Agreement (but not vice versa) pursuant to the provisions of Section 17.3 of this Agreement. Upon the occurrence of both the Closing of the Lease and Completion of Construction for the final Phase of the Project, this Development Agreement shall terminate.

Section 1.4. **Development of Project Under Master Plan**

The Developer’s Master Plan which describes the Developer’s concept for the entire Development Site is attached hereto as Schedule 1.4A. Prior to the Closing of the Lease for each Phase, the Developer shall undertake all pre-development activities required to satisfy the Closing Conditions for each Phase in substantial conformity with the Master Plan and the Project Schedule, attached hereto as Schedule 1.4B as may be amended in accordance with Section 1.5 below. The Project Schedule sets forth the following deadlines for the development of the Project, or each Phase of the Project (“Milestones”):

Palmetto Metrorail Station Development Agreement

- A. Design Completion;
- B. The Closing Date;
- C. Construction Commencement; and
- D. Construction Completion.

For the avoidance of doubt, upon the Closing of each Lease, the timely completion of items (C) and (D), above, shall be the responsibility of the Tenant pursuant to the Lease, and not of the Developer pursuant to this Development Agreement.

Section 1.5. **Changes and Alterations to the Master Plan**

Developer shall have the right to propose changes to the Master Plan to County, which County may approve in its sole and absolute discretion, including but not limited to, the right to propose a change to a Phase of development. However, in no event shall such changes be approved by County unless the following conditions are satisfied:

- A. The method, Project Schedule, Preliminary Plans (as hereinafter defined) for the proposed amended Master Plan are submitted to County at least one hundred eighty (180) days prior to the date that the Closing Conditions are required to be satisfied for the Project or Phase of the Project as applicable; provided, however, the County may, for good cause, as determined by the County in its reasonable discretion, accept proposed amendments to the Master Plan after such deadline;
- B. The proposed amended Master Plan does not violate any other provisions of this Agreement;
- C. The proposed amended Master Plan shall not at any time change or adversely affect County facilities, or any access thereto except as may be required by Laws and Ordinances or agreed to by County;

Palmetto Metrorail Station Development Agreement

D. The proposed amended Master Plan will produce, based on reasonable projections, an amount of Fees and Rent to County over the term of the Agreement and Lease(s) entered into pursuant to this Agreement, which is not less than the amount in Fees and Rent that would have been paid to the County, over the same period of time prior to such amendment, unless otherwise provided by this Agreement or approved by the County in writing.

E. All residential units in the proposed amended Master Plan are Community Housing Units, including a minimum of forty (40) Youth Housing Units, and at least 258 Military Housing Units, and 125 Transit Operator Housing Units; provided, however, that if fewer than 1,030 residential units are included in the proposed amended Master Plan, then the minimum number of Military Housing Units and Transit Operator Housing Units shall be 25% and 12%, respectively, of the total number of residential units.

F. All commercial uses in the proposed amended Master Plan are Community Commercial Uses.

G. Notwithstanding the above, if due to site conditions which could not have been reasonably foreseen, the Master Plan must be amended, the Master Plan and Project Schedule shall be amended only to the extent that such amendment is required as a direct result of such site conditions.

H. Upon County's approval of the amended Master Plan, Developer shall continue to be obligated to obtain all pre-construction approvals, Permits and authorizations required under applicable Laws and Ordinances, as required by this Agreement, prior to Closing on any Lease(s). Post-Closing of the Lease the Developer or Tenant shall be required to obtain all Permits and authorizations, during and after construction, under applicable Laws and Ordinances pursuant to the terms of the Lease.

Palmetto Metrorail Station Development Agreement

Section 1.6. **Phased Development Contemplated (if applicable)**

The Developer has submitted a Master Plan, or the Parties have agreed to a Master Plan after the Commencement Date of this Agreement, and the County has approved such plan in writing. The Master Plan calls for a phased development approach (“Phased Development”) which shall mean the division of the Project into separate and distinct portions or phases (each a “Phase”), under separate Leases for the purposes of development, construction, financing and ownership of Improvements. The term is not meant to require development of the Phases in any particular sequence and Phases may be developed concurrently. Each Phase must be completed in conformity with the Master Plan, contained in Schedule 1.4A and the Project Schedule contained in Schedule 1.4B, as may be amended in accordance with Section 1.5 above, the approved Final Design Plans and the Project Schedule for such Phase, and must, on a stand-alone basis, be capable of operating independently from all other Phases (with the exception of shared infrastructure provided by plat, reciprocal easements, or other instrument approved by the County), comply with all Laws and Ordinances, including but not limited to, building and zoning codes, be commercially and economically viable and allow for free and open access unimpeded by fences, walls, or other similar blockades to and between all Phases and the Palmetto Station Property.

Each Phase may be developed and constructed through an assignment as provided by Article 15; however, all applicable obligations and Milestones under this Agreement with respect to a Phase will be incorporated into the Lease for each such Phase. All rights on, over, under, through, to, from and between each Phase of the development necessary for the continued construction, operation, maintenance, and usage of each and every Phase must be platted/recorded in advance of Closing of any Project Phase at Developer’s sole cost and expense. Shared easements may be platted/recorded within the Development Site.

Palmetto Metrorail Station Development Agreement

The proposed Project may not be cross-collateralized or cross-defaulted with any other property, project or other assets. Further, if a Phased development or similar type of development with separate components is proposed, each Phase or component of the Project must be independently financed and no Phase(s) or component(s) may be cross-collateralized or cross-defaulted with any other Phase(s) or component(s).

Section 1.7. **Lease(s) Delivered at Closing**

A. The Development Site being offered to the Developer is solely for the development of the Project and not for speculation in landholding. Prior to Closing (at which time a Lease shall be executed by the County and Developer), only this Development Agreement shall be in effect and there shall be no lease encumbering the Development Site.

B. Upon satisfaction of the Closing Conditions, the County will execute and deliver, and Developer will execute and deliver the Lease for the Development Site, or if phased development is contemplated, a Lease for the portion of the Development Site included within the Phase of the Project in which construction will be commencing, on a Phase-by-Phase basis. If Phased Development is contemplated, separate Leases will be executed on separate Closing Dates for each Phase of the Project subject to the terms and conditions hereof. Together with the delivery of the Lease for the Project or, if a Phased Development is contemplated, the Lease for each Phase, the County shall also execute and deliver a recognition and non-disturbance agreement (“Consent Agreement”), if required by a Lender for the Project, recognizing the Sublease of the entire Project, or if applicable of such Phase, to the Development Partner or its Affiliate, which Consent Agreement shall be in a form negotiated by the Parties, each acting reasonably and in good faith, but shall in all respects comply with the requirements of Section 4.18, including, but not limited to, the joint and several liability of Development Partner.

Palmetto Metrorail Station Development Agreement

C. At the Closing of the Lease for each Phase, any pre-paid Development Fee which has been allocated to such Phase, covering a period of time after which Closing has occurred shall be credited to the amount of the Initial Rent due under the Lease for such Phase. Additionally, any remaining amount of the Initial Rent due under the Lease for such Phase and any other amount due to County with respect to that Phase shall be deducted from the Security Deposit, or if applicable, the portion of the Security Deposit allocated to this Phase, as payment of Initial Rent and any other amounts due to County. If at Closing there are any amounts due to County which exceed the amount of any pre-paid Development Fee and applicable portion of the Security Deposit, Developer shall deliver to County a certified check or equivalent for any such amounts as a condition of Closing.

D. The Parties acknowledge and agree that as of the Commencement Date of this Agreement, the form of Lease to be utilized for each Phase has been substantially negotiated as set forth in Schedule 1.6, and shall not be modified in any respect, except as the Parties may mutually agree in their respective sole discretion (it being understood that the Parties will act in good faith and fair dealing). Material amendments to the Lease shall require approval first from the FTA, and the FDOT, as applicable, and then from the Miami-Dade County Board of County Commissioners, unless the resolution approving this Agreement specifically delegates to the County Mayor or County Mayor's designee the authority to negotiate and execute such material amendment. For the avoidance of doubt, amendments to the form of Lease that may be negotiated and agreed by the Parties in writing prior to the Closing of each Lease, on a Phase-by-Phase basis, without further approval by the FTA, the FDOT, or the Board of Miami-Dade County Commissioners, include the following:

Palmetto Metrorail Station Development Agreement

(i) Amendments that conform the Lease to the Master Plan, as such may be amended pursuant to the terms of the Agreement, including, but not limited to, the incorporation of an agreed legal description for each Phase and the incorporation of easement agreements, operating agreements, and interfacing agreements required for development of the applicable Phase;

(ii) Amendments that incorporate reasonable and customary market lender protections, based on the type of development and financing required for each Phase (including, but not limited to, provisions to facilitate subleasehold financing by the Development Partner or its Affiliate), and the County's reasonable and customary requirements for and limitations upon such protections;

(iii) Amendments that do not materially change the rights or obligations of either Party; and

(iv) Amendments that correct scrivener's errors, resolve internal inconsistencies, or otherwise manifest the intent of the Parties as of the Commencement Date of this Agreement.

Any such amendment must be approved in writing by the County. Notwithstanding the foregoing, any amendment to a Lease that, in the aggregate with all other previous amendments, has a material and adverse effect on the quality or scale of the Project to be developed or on the total financial consideration to be paid to the County during the Term as set forth in this Agreement or the term under the applicable Lease (except for as expressly permitted by this Agreement) shall require the approval of the FTA and FDOT, as applicable, and then the Board of County Commissioners.

Palmetto Metrorail Station Development Agreement

E. The execution and delivery of the Lease(s) and the execution of any such other instruments as may be necessary in connection therewith and/or otherwise in connection with the Project shall be held at the offices of the DTPW at 2:00 p.m. on the Scheduled Closing Date(s), or such earlier date as the Parties may mutually agree or such later date for Closing, as the same maybe extended pursuant to Section 3.3 of this Agreement.

The execution and delivery of a Lease for the Development Site or any Phase of the Project, as provided for by this Agreement, shall not require further resolution or action by the Board of County Commissioners. Notwithstanding the foregoing, amendments to any Lease which are not provided for by this Agreement or in the applicable Lease will require the approval first from the FTA, and the FDOT, as applicable, and then from the Miami-Dade County Board of County Commissioners, unless the resolution approving this Agreement specifically delegates to the County Mayor or County Mayor's designee the authority to negotiate and execute such material amendment.

In the event that the Parties are unable to reach agreement on the final terms and conditions of the Lease Agreement, or any other agreement referenced in the Development Agreement which is not yet finalized, including but not limited to the final terms and conditions of the Lease Agreement for each Phase of the Project prior to the Closing Date as set forth in the Project Schedule in Schedule 1.4B, then either party shall have the right to terminate this Development Agreement following 30-days written notice to the other party advising of the exercise of this right of termination and setting forth the terms and conditions that are the subject of disagreement. Such right of termination may not be exercised any earlier than one year following the execution of the Development Agreement. The issuing of such written termination notice shall be in the sole and absolute discretion of the terminating party, and may not be contested or challenged by the other

Palmetto Metrorail Station Development Agreement

party; provided however that if the other party agrees in writing to the terms and conditions being requested within the 30-day notice period, or the parties otherwise resolve the disagreement within such notice period as mutually confirmed by the parties in writing, or if the parties mutually agree in writing to extend the 30-day notice period, then the notice of termination shall be deemed withdrawn and void. Upon termination pursuant to the provisions set forth herein, neither party shall have any liability to the other as a result of such termination and neither party shall have any further obligations or rights under the Development Agreement, and each party shall bear its own costs. This section supercedes and prevails over any other term or provision set forth in the Development Agreement.

Section 1.8. **Convertible Property and Leased Property**

A. If Phased Development is not called for, until Closing, the County shall remain in possession and control of the entire Development Site, hereinafter referred to as “Convertible Property”, as defined.

B. If Phased Development of the Development Site is called for, until the Closing of any Phase or portion of the Project, County shall remain in possession and control of all portions of the Development Site not previously encumbered by a Lease, which portions of the Development Site hereinafter also referred to as “Convertible Property”, as defined. Notwithstanding the foregoing, to the extent that non-exclusive access to or use of Convertible Property is required for the development of Leased Property after the Closing of a Lease for such Lease Property, including, but not limited to, the construction of common roadways or other infrastructure, and such use or access is clearly identified by Developer in the Master Plan and approved by the County in connection therewith, then the County shall execute such easements or other instruments as may be reasonably required for the development of the Leased Property in

Palmetto Metrorail Station Development Agreement

accordance with the approved Master Plan; provided, however, that no such easement shall become effective unless and until the Closing of a Lease pursuant to this Agreement. .

C. As to Convertible Property, County shall remain in possession and control of all Convertible Property and retain all rights flowing therefrom as fee simple owner not otherwise encumbered by a Lease.

D. Upon the Closing of any Convertible Property and execution of a Lease upon the Development Site or portion thereof, such Convertible Property shall be referred to herein as “Leased Property”, as defined.

Section 1.9. Developer’s Pre-Closing Responsibilities

A. Prior to Closing, Developer at its sole cost and expense shall have full responsibility for the following (collectively, “Developer’s Pre-Closing Responsibilities”); provided, however, that Developer and the Development Partner shall be jointly responsible for the completion of Developer’s Pre-Closing Responsibility, and the County shall accept the Development Partner’s performance of Developer’s Pre-Closing Responsibilities in full satisfaction of such obligations:

- (i) the performance of studies, inspections, tests, evaluations, remediation, and similar type of work necessary to develop the Project in coordination with DTPW;
- (ii) obtaining insurance as set forth in Article 7;
- (iii) timely satisfying the Closing Conditions as set forth in Section 1.12 in accordance with the provisions of this Agreement; and
- (iv) timely payment of all the Development Fees, Delayed Closing Fees, if applicable, and any and all other amounts due to County.

Palmetto Metrorail Station Development Agreement

Section 1.10. **Right of Entry**

A. Prior to Closing, County hereby grants to Developer, the Development Partner and its Affiliates, including their officers, employees, contractors, subcontractors, agents, and assigns a non-exclusive license for the Term of this Agreement for the right of entry upon Convertible Property and for the purposes and uses as set forth in Section 1.9(A)(i) above. No other uses are permitted and no Improvements shall be constructed upon Convertible Property without County's express written consent.

B. There shall be no staging, storage or overnight parking upon Convertible Property, except as expressly approved by the County in writing. Parking shall be allowed only as necessary for the uses as set forth in Section 1.9(A)(i) above.

C. Necessary invasive testing such as core drilling, soil sampling and subsurface remediation is permitted, upon County's express written consent, at Developer's sole cost and expense and under sound and prudent engineering practices.

D. Developer shall provide County with copies of all final work plans, sampling and analytical protocols, laboratory analysis results, reports, test borings, subsurface engineering, surveys, and other available studies obtained in connection with this Development Agreement and shall correlate the results and its observations with the requirements of the construction and development of the Project Improvements in coordination with DTPW.

E. Developer shall provide County with reasonable advance notice and shall coordinate with County for entry on Convertible Property for the performance of any remediation, physical tests, investigations, analysis and/or studies on Convertible Property.

F. At County's election, County may designate a representative to accompany Developer while on Convertible Property, in which event Developer shall not enter on Convertible

Palmetto Metrorail Station Development Agreement

Property unless so accompanied. Should any such County escort or representative be necessary or appropriate, as determined by County in its sole and absolute discretion, Developer shall pay the charges in accordance with County's established, generally applicable fee schedule in effect at the time service is being provided therefore, upon demand.

G. Pursuant to the terms of this Agreement, Developer may only use Convertible Property in such manner as herein described and shall not interfere with the use or operations of County or any occupant of the Convertible Property approved by County. Developer shall not contact any such occupant directly without County's express written consent.

H. Developer shall not permit any mechanics lien or any other lien caused by Developer or caused by any action performed on behalf of Developer to remain upon the Convertible Property. This requirement shall survive the expiration or early termination of this Development Agreement.

I. In executing and accepting the Development Agreement, Developer expressly acknowledges and agrees that County has not made and is not making, and Developer is not relying upon any warranties, representations, promises or statements, except to the extent that the same are expressly set forth in this Agreement.

J. County shall have no liability for any actions, non-actions, or negligence of Developer. Neither the grant of this license, nor any provision thereof, shall impose upon County any new or additional duty or liability or enlarge any existing duty or liability of County. Nothing in this license shall be deemed to waive County's immunity as a sovereign entity.

K. No excavation of any of the land shall be made, no soil or earth shall be removed from the Development Site, and no well of any nature shall be dug, constructed or drilled

Palmetto Metrorail Station Development Agreement

on the Convertible Property, except as may be required for monitoring and testing purposes and only with the prior written consent of the County.

L. Developer shall not alter or disturb Convertible Property except as expressly approved by the County in writing. Upon Developer's completion of any remediation, physical tests, investigations, analyses and/or studies, or any other work Developer shall restore Convertible Property to substantially the same condition as the Convertible Property existed immediately prior to such testing unless Developer closes on a Lease for such Convertible Property or otherwise expressly approved by the County in writing.

M. In the event this Agreement is terminated and no Lease upon the Convertible Property or portion thereof is executed, Developer, if applicable, shall restore such Convertible Property to repair any damage caused by Developer, if applicable.

N. In any event, if Developer does not execute a Lease for the Convertible Property and Developer fails to restore the Convertible Property to repair any damage caused by Developer, the County may at its option, and subject to Unavoidable Delay, after thirty (30) days written notice to Developer, make such restoration, whereupon Developer shall promptly pay the County all actual costs and expenses incurred thereof within thirty (30) days notification by County.

Section 1.11. **Due Diligence Period**

Developer acknowledges that based upon the information available prior to award of this Development Agreement it submitted a proposal to develop the Project in substantially the form described in Schedule 1.4A and Schedule 1.4B (the "Proposal"). County and Developer acknowledge that the Development Fee and Delayed Closing Fee established in this Agreement were based on the understanding that the Developer would be able to develop the Project

Palmetto Metrorail Station Development Agreement

substantially as proposed including the Parking Facilities. Upon the commencement of this Agreement, Developer shall promptly proceed to conduct studies, testing and evaluations on the Site, including but not limited to, assessments of soil and subsurface conditions, utility services, environmental audits, title review, reports and commitments and surveys of the Development Site that are required by Laws and Ordinances or that Developer, in its reasonable discretion, determines to be necessary or prudent. Developer shall be allowed a period of one hundred and eighty (180) days to complete such studies, subject to Unavoidable Delays and extensions of time approved by the County in writing (“Due Diligence Period”). If during that period of time, conditions which could not have been reasonably foreseen at the time of the submission of the Proposal (“Unforeseen Conditions”), are found to exist which would prevent or significantly and materially impair the development of the Project, (including the Station Improvements and Parking Facilities) as proposed or which would add significantly to the cost of the Project (including the Station Improvements and Parking Facilities), then Developer has:

A. The right to terminate this Agreement by giving written notice to the County within one hundred and eighty (180) days of the Commencement Date of this Agreement. In such event the Agreement shall terminate fifteen (15) business days following County’s receipt of notice of termination; or

B. The right to propose an agreement with the County which provides for an equitable means of remediating the Unforeseen Conditions such that the Project, including the Parking Facilities, may be developed substantially as proposed by the Developer. Such proposal for remediating the Unforeseen Conditions must be submitted to the County in writing within sixty (60) days after discovery and notification by the Developer to the County of the Unforeseen Conditions, subject to Unavoidable Delays and extensions of time approved by the County in

Palmetto Metrorail Station Development Agreement

writing. The County shall have the right, in its sole but reasonable discretion, to determine the final form of any such agreement, which shall be in writing, or to reject any such proposal. The Parties agree to negotiate in good faith the terms and conditions of any such proposal for an agreement, and failure of the Parties to agree to such agreement within one hundred twenty (120) days of the County's receipt of Developer's proposal for remediating the Unforeseen Conditions, subject to Unavoidable Delays and extensions of time approved by the County in writing, shall (i) result in the termination of the Agreement or (ii) the Parties can agree to allow Developer to develop the Project in substantially the form described in Schedule 1.4A and Schedule 1.4B;

C. The right to request a redesign of the Project, or any applicable Phase, as may be reasonably required as a result of the Unforeseen Conditions found and request an equitable adjustment in the Development Fee and Delayed Closing Fee based upon the reduction in the amount and character of the Development Site described in the Master Plan attached hereto as Schedule 1.4A or the number of Community Housing Units which will be denied to the Developer as a result of the Unforeseen Conditions. Such request and adjustment, as may be negotiated and amended, must be approved by the County, in its sole but reasonable discretion and agreed to by the Parties in writing within one hundred twenty (120) days after the County's receipt of Developer's proposal for remediation of the Unforeseen Condition, subject to Unavoidable Delays and extensions of time approved by the County in writing. The Parties agree to negotiate in good faith the terms and conditions of any such redesign of the Project and failure of the Parties to agree to such redesign within such period of time shall (i) result in the termination of the Agreement or (ii) the Parties can agree, if feasible, to allow Developer to develop the Project in substantially the form described in Schedule 1.4A and Schedule 1.4B.

Palmetto Metrorail Station Development Agreement

In the event, that the Agreement is terminated as provided above, the Development Fee shall be abated upon termination of the Agreement, the entire Security Deposit shall be promptly refunded to the Developer and Developer shall restore the Development Site to repair any damage caused by Developer to the same condition of the Development Site existing prior to the Commencement Date of this Agreement.

In the event that the Agreement is not terminated, Developer shall promptly make any design revisions to the Project necessitated by the Unforeseen Conditions and submit the revisions to the County for its approval. Such revisions and adjustments shall not delay the Commencement of Construction or Completion of Construction for a period longer than one hundred and twenty (120) calendar days, subject to Unavoidable Delays and extensions of such period of time granted by the County in writing.

The rights provided by this Section shall not apply to any conditions which are discovered after the Due Diligence Period; provided, however, that Unforeseen Conditions discovered after Closing on any Lease shall be governed by the terms of the Lease.

Section 1.12. **Conditions Precedent to Lease Commencement and Closing**

A. Notwithstanding anything to the contrary in this Development Agreement, the County shall not be obligated to close and deliver possession of the Development Site, or a portion thereof required for a particular Phase, until each of the events described in this Section 1.12 shall have timely occurred for such Phase in accordance with the terms and conditions of this Development Agreement, at which time the County shall deliver at Closing the Lease and possession of the Development Site, or applicable Phase, to the Developer, which shall accept and execute the Lease and take possession of the Development Site, or applicable Phase, and Developer's rights as the Tenant under the corresponding Lease shall become effective in

Palmetto Metrorail Station Development Agreement

conjunction with this Agreement. Until such time, County shall remain in possession and control of the Convertible Property, as defined herein, and retain all rights flowing therefrom as fee simple owner of the Convertible Property not otherwise encumbered by a Lease, except as otherwise provided in this Agreement. For the avoidance of doubt, and notwithstanding anything to the contrary in this Agreement, the County shall not sell, lease, or encumber the Convertible Property or any portion thereof that would be binding on the Tenant after the closing of the Lease. A minimum of ten (10) days prior to Closing the following conditions precedent to such Closing and transfer of rights (collectively, “Closing Conditions”) must be met:

1) Developer shall have completed the DTPW submittal and review process by submitting the Preliminary Plans of the Project or Phase, as applicable, at the appropriate stage of the Project pursuant to Section 4.6 and shall have received DTPW written approval of such Preliminary Plans;

2) Developer shall submit to County evidence of a financing term sheet or similar agreement, or other evidence, in a form reasonably acceptable to County, that Developer has received from one or more Lenders or equity providers an expressed interest to finance the cost of construction of the Project or the applicable Phase of the Project, as applicable; provided, however, that Developer shall be obligated to close on such financing and begin Commencement of Construction within one hundred fifty (150) days after the Closing of the applicable Lease, subject to Unavoidable Delay or any other extension of time approved by the County, and the applicable Lease shall provide for automatic termination of such Lease in the event that such closing of the financing does not occur and Commencement of Construction is not achieved within the aforementioned time period, subject to Unavoidable Delay or any other extension of time approved by the County. In the event that Developer’s construction plan for a

Palmetto Metrorail Station Development Agreement

Phase includes development and construction in stages, and any portion of the development and construction is scheduled to commence at a later time after the initial stage of development and construction of such Phase (including, for example, an initial infrastructure stage of development and construction followed by one or more stages of vertical development and construction) then the evidence of financing required prior to Closing of the applicable Lease shall be required for only the initial stage of construction, so long as the following additional requirements are met: (a) the County has approved the development or construction for such Phase to be scheduled in stages, (b) a payment and performance bond as required by the Lease is obtained for the initial stage of construction and each subsequent stage(s) of construction, prior to Commencement of Construction of each such stage(s) of construction, (c) the Lease for the applicable Phase includes deadlines for commencement and completion of all stages of construction required to complete that Phase, to be set forth in the Project Schedule for such Phase, and a requirement that the Tenant under the Lease for such Phase provide the County with the evidence, as required above, of a financing term sheet or similar agreement for each subsequent stage of construction, at least ten (10) days prior to Commencement of Construction of such construction stage, or, if earlier, no later than eighteen (18) months after the Closing of the applicable Lease, and the Lease shall provide that it will automatically terminate in the event that Developer does not close on such financing within one hundred and fifty (150) days after such deadline, subject to Unavoidable Delay or any other extension of time approved by the County, (d) the Security Deposit shall not be released for such Phase until after the County has received evidence of financing for the last stage of construction of such Phase, and (e) prior to the Closing of the applicable Lease, Developer shall deliver to the County's satisfaction one or more letters of interest or similar evidence from potential Lenders or equity providers for the subsequent stages of construction of such Phase that,

Palmetto Metrorail Station Development Agreement

combined with Developer's own assets and proven capabilities to secure financing for similar projects, reasonably evidence Developer's ability to secure the required financing to construct the entire Phase which is the subject of this Lease within the agreed timelines set forth in the Lease;

3) Developer shall have contacted all appropriate utilities and verified the location, depth and nature of all utilities affecting the Development Site or the Project Phase, as applicable, and any borders thereupon;

4) Developer shall have delivered to County a fully executed copy of the construction contract for the Project or Phase, as applicable, or for the initial stage of construction of the Project or Phase, as applicable, or, in the event that Developer utilizes a design-build contract or other alternative delivery model, a copy of the fully executed design-build contract or other such agreement, as applicable;

5) Developer shall have obtained, and caused its general contractors, construction managers, architects, engineers and subcontractors, as applicable, to obtain insurance as required under Article 7 and delivered to County certificates evidencing such insurance naming County as an additional insured and loss payee;

6) Developer shall have obtained all Governmental Approvals necessary, as applicable, to the development and construction of the Project or Phase, as applicable, or for the initial stage of construction of the Project or Phase subject to the Lease, as applicable;

7) In coordination with DTPW, Developer shall have platted the entire Development Site, as necessary;

Palmetto Metrorail Station Development Agreement

8) Developer shall have applied for and obtained all Permits, licenses, easements, property rights and approvals necessary to begin construction of the Project or Phase, as applicable, subject to the Lease;

9) Developer shall have obtained any zoning changes or any other land use planning changes necessary to develop the Project or Phase, as applicable.

10) Developer shall have paid all Development Fees imposed by the County under this Development Agreement then due and payable and any other development or permitting fees imposed by any other agency of appropriate jurisdiction in connection with the development of the Project or Phase, as applicable;

11) Developer shall have completed good faith negotiations with County to finalize the Lease to be executed at Closing in accordance with Section 1.7 of this Agreement, including the terms of the rental regulatory agreement and the fee to be paid by Tenant to the Department Public Housing and Community Development, or successor department, for its cost of monitoring compliance, and to the extent required by a Lender for the Project, a separate parking agreement that memorializes the requirements of both Parties with respect to the construction and operation of the Parking Facilities, which parking agreement shall be consistent with the requirements of this Agreement, including, but not limited to, the provisions of Section 2.III and 4.7(C); and

12) Developer and County shall have identified any County tenant and defined the parameters of any County facilities or systems, Public Areas, County maintenance areas, or other restrictions or areas excluded, in whole or in part, from the Development Site, and such parameters have been incorporated in the applicable Lease, easement, or other appropriate document to be executed at Closing.

Palmetto Metrorail Station Development Agreement

B. Developer and County agree that all Construction Plans within the Development Site or such plans for development that may impact any Palmetto Station Property or County facilities and/or operations thereof shall be subject to the review and approval of DTPW to assure the public safety and the integrity and operation of County facilities and systems. Precedent to any proposed construction, excavation, demolition, restoration, testing or staging, Developer shall submit to the DTPW Right-of-Way, Utilities and Joint Development Division through the DTPW Director, or his or her designee, three (3) copies of the final design plans, drawings and calculations showing the relationship between the proposed activities and County facilities. County shall have sole discretion to determine the type and nature of any such plans, drawing, calculations, or other documentation required for County's review and approval process. The drawings and calculations shall have sufficient detail to allow DTPW to determine if such activities are likely to impact County facilities and/or operations and the extent of that impact, if any. The drawings and calculations shall include, but not be limited to, the following, as applicable:

- 1) Site plan;
- 2) Drainage area maps and calculations;
- 3) Sheeting and shoring drawings and calculations;
- 4) Architectural drawings for all underground levels through the top floor;
- 5) Sections showing foundations in relation to County structures;
- 6) Structural drawings;
- 7) Pertinent drawings detailing possible impacts to County facilities;
- 8) Geotechnical reports;

Palmetto Metrorail Station Development Agreement

9) Settlement monitoring, mitigation and remediation plan, if applicable; and

10) Proposed sequence of activities.

C. Any such proposed construction, excavation, demolition, restoration, testing, or any other work 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, all proposed construction shall be in compliance with the latest edition of the Department of Transportation and Public Works Adjacent Construction Manual and the Miami-Dade Transit Construction Safety Manual or their replacements, as applicable.

D. County shall review the Construction Plans, drawings and calculations described in subsection (B) above within a reasonable period of time; however, such review periods may depend upon the volume, complexity and potential impact on County facilities and operations thereof. Notwithstanding the foregoing, in the event that such review takes longer than thirty (30) business days after delivery thereof to the County, any additional time required for the County to review and approve such Construction Plans, drawings, and calculations shall be governed by the provisions of Section 4.6(E) of this Agreement. County reserves the right at all times to disapprove of the Construction Plans, drawings and calculations referenced in subsection (B) above in whole or in part if County, in its sole discretion, determines that County facilities or operations thereof, other public or private facilities or operations, or County tenants may be unacceptably impacted and/or to request additional information. If the County, in its sole discretion, determines that activities undertaken or authorized by the Developer or planned to be undertaken or authorized by the Developer, may impact County facilities or operations thereof, other public or private facilities or operations, or County's tenants the County may require the

Palmetto Metrorail Station Development Agreement

Developer to submit a plan to monitor, mitigate and remediate any such impacts. The plan may call for the alteration, relocation, or replacement of County and/or private facilities, either temporary or permanent, and with measures required to maintain County and/or private operations including coordination for the use of County employees or representatives required to monitor and coordinate such activities, if required. The plan must be approved by the County in writing prior to the commencement of any such activities and Developer shall reimburse County for all such actual costs incurred by County upon demand, including but not limited to for relocation, alteration, and repairs, and the use of County employees and/or representatives required to monitor such activities. If directed by the County, the Developer must promptly mitigate all such impacts as specified by the County and Developer shall promptly remediate all damage or impacts caused by activities performed or authorized by the Developer, to the satisfaction of the County, at Developer's sole cost and expense.

E. If such activities cause disruption or interruption to normal County operations at the Palmetto Station Property, the Developer shall pay all costs incurred by the County in providing replacement and/or alternative services. Additionally, the County shall have the right to slow or stop any activities that the County, in its sole and reasonable discretion, determines to be potentially hazardous to County facilities, operations thereof or to Miami-Dade County employees, patrons or to the public and to require the Developer to implement appropriate safety measures as deemed necessary by the County at the sole cost of the Developer. County shall not incur any expense as a result of such actions.

Section 1.13. **Reserved**

ARTICLE 2

DEFINITION OF CERTAIN TERMS

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

Palmetto Metrorail Station Development Agreement

A. ADA shall mean the Americans with Disabilities Act, as amended from time to time.

B. Additional Fees shall have the meaning ascribed to such term in Section 3.9.

C. Additional Rent shall mean all costs and expenses owed by the applicable Tenant to County under a Lease other than Initial Rent and Annual Rent. Tenant shall pay to County Additional Rent, as applicable, in accordance with the terms of the Lease(s) resulting from this Agreement attached hereto as Schedule 1.6.

D. Intentionally Deleted.

E. Affiliate shall mean any entity that is under common ownership and control with Development Partner. For the avoidance of doubt, the transfer of ownership from Developer, Development Partner, or Desarrollo Member to an Affiliate shall not be used as a mechanism to avoid the payment of the Transfer Fee to the County under Section 3.8 herein.

F. Agreement shall mean this Development Agreement and all amendments, supplements, addenda or renewals thereof.

G. Agreement Year shall mean each separate and consecutive period of twelve (12) full calendar months beginning upon the first day of the first month following the Commencement Date and upon each anniversary of such date thereafter provided that County, with written notice to Developer, may cause the Agreement Year to be a calendar year.

H. Annual Rent shall mean the rent due under a Lease for the Project or Phase upon Construction Completion or upon the date set forth in the Project Schedule. Developer (or the applicable Tenant) shall pay to County Annual Rent, as applicable, in accordance with the terms of the Lease(s) resulting from this Agreement attached hereto as Schedule 1.6 in all material respects.

Palmetto Metrorail Station Development Agreement

I. Board shall mean the Board of County Commissioners of Miami-Dade County, Florida.

J. BOMA Standard shall mean the Standard Method of Floor Measurement for Office Buildings, as most recently published by the Building Owners and Managers Association International (BOMA), which shall be used to compute square footage of all office and retail space.

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

L. Closing shall mean the execution and delivery of the Lease(s) for the Project or Project Phase, payment of applicable portion of Initial Rent, and the performance of such other obligations as may be necessary in connection therewith and/or otherwise in connection with the Project or Project Phase, at which time the County shall have delivered the Lease and, if applicable, the Consent Agreement recognizing the Sublease, to Developer (as Tenant) and Developer shall have taken possession of the Leased Property and the Lease provisions shall become effective in conjunction with this Development Agreement.

M. Closing Date shall mean the actual date Closing occurs for the overall Project or for each Phase of the Project, on a Phase-by-Phase basis, upon satisfaction of the Closing Conditions.

N. Code shall mean the Code of Ordinances of Miami-Dade County, as amended from time to time.

Palmetto Metrorail Station Development Agreement

O. Commencement Date shall mean the first day of the month following the tenth day after approval of this Agreement by the Miami Dade Board of County Commissioners and the Mayor and deposit of the Security Deposit.

P. Commencement of Construction, Construction Commencement and “commenced” when used in connection with construction of a Phase or the Project, as the case may be, shall mean the earlier of the filing of the notice of commencement under Florida Statutes Section 713.13 or the visible start of work on the site of a Phase or the Project. In order to meet the definition of “Commencement of Construction” or commenced herein, such filing of notice or visible start of work must occur after Developer has received Permit(s) necessary to begin construction for the Project or particular Phase of the Project on which construction is proposed to commence.

Q. Community Commercial Uses shall mean a minimum of approximately 7,500 square feet of commercial space including the following uses (a) approximately 1,000 square feet of office space occupied and utilized by MagicWaste Foundation, Inc., on a rent-free basis, to be utilized by MagicWaste Foundation, Inc., to (i) conduct its business and maintain an active presence on the Leased Property and (ii) provide services to the residents of the Community Housing Units (which may include specialized programming that is open only to the residents of the Youth Housing Units), including financial-literacy training, job/resume training, job fairs, and tutoring services; (b) office space or leasing office utilized by the property manager of the Project; and (c) retail space operated to primarily benefit the residents of the Community Housing Units, including, but not limited to, an on-site daycare facility, dry cleaner, or corner grocery store, provided that a minimum of 51% of such retail space shall be operated by a not-for-profit corporation organized for promoting community interests and welfare, and for such not-for-profit

Palmetto Metrorail Station Development Agreement

monthly rent shall be based on an agreed sharing of revenues, with no minimum guaranteed rental payment. All restrictions shall be in place for the term of the Lease, which shall be no less than 90 years.

R. Community Housing Units shall mean Workforce Housing Units, Military Housing Units, Transit Operator Housing Units, and Youth Housing Units. For the avoidance of doubt, all Community Housing Units shall be income and rent-restricted in accordance with the rent limits set forth in the definitions of Workforce Housing Units, Military Housing Units, Transit Operator Housing Units, or Youth Housing Units, as applicable. All restrictions shall be in place for the term of the Lease, which shall be no less than 90 years.

S. Completion of Construction or Construction Completion shall mean, for the Project or any Phase, the date a Certificate of Occupancy is issued for that Phase or Project.

T. Consent Agreement shall have the meaning set forth in Section 1.7 of this Agreement.

U. Construction Plans shall consist of the Final Design Plans for particular portion of the Improvements to be constructed in the Project or a Phase as approved by Miami-Dade County pursuant to Section 4.6.

V. Convertible Property shall have the meaning given to such term in Section 1.8 of this Agreement.

W. County or DTPW shall mean, on the Commencement Date, Miami-Dade County, a political subdivision of the State of Florida, through the Miami Dade Department of Transportation and Public Works. Thereafter, "County" shall mean the owner at the time in question of County's interest in the Development Site.

Palmetto Metrorail Station Development Agreement

X. Delayed Closing Fee shall have the meaning ascribed to such term in Section 3.3 herein.

Y. Desarrollo Member shall mean Desarrollo Florida, LLC, a Florida limited liability company, or another entity wholly owned and controlled by Alex Lastra.

Z. Developer shall mean, on the Commencement Date, MagicWaste Youth Foundation, Inc., a Florida Not for Profit Corporation. Thereafter, “Developer” shall mean the owner(s) at the time in question of the Developer’s interest under this Agreement, so that if Developer, or any successor to its interest hereunder ceases to have any interest in this Agreement or any Lease hereby created, whether by reason of assignment, transfer or sale of Developer’s interest hereunder, the assignor, transferor or seller shall, subject to the provisions of Section 3.8 and Article 17, be released from and relieved of all leases, agreements, covenants and obligations of Developer hereunder to be performed after the date of such assignment, transfer or sale. Nothing herein shall be construed to relieve Developer from any liability or damages arising from actions or omissions occurring or agreements, covenants and obligations required to be performed prior to the date of any such assignment, transfer or sale of Developer’s interest hereunder. Notwithstanding the foregoing, Developer shall remain liable for the representations and warranties of Section 21.2. For the avoidance of doubt, references to Developer in this Agreement with respect to a particular Phase after a Lease has commenced for that Phase shall refer to the Tenant under such Lease. Notwithstanding anything in this Agreement to the contrary, all obligations of Developer under this Agreement, or of the Tenant under any Lease, may be performed by the Development Partner or its Affiliate and such performance shall be accepted by the County in satisfaction of this Agreement, and except as expressly provided in Section 4.18 of

Palmetto Metrorail Station Development Agreement

this Agreement, Development Partner shall be jointly and severally liability for all obligations of Developer under this Agreement.

AA. Developer Default shall have the meaning ascribed to such term in Section 17.1.

BB. Development Agreement shall mean this Agreement and all amendments, supplements, addenda or renewals thereof.

CC. Development Fee or Fee shall have the meaning ascribed to such terms in Section 3.2 herein

DD. Development Partner shall mean Res-Des Palmetto, LLC, a Florida limited liability company, which is a joint venture between Desarollo Member and an entity wholly owned and controlled by an equity investor with experience investing in projects similar to the Project and approved by the County, including a determination that such entity is a responsible entity in accordance with applicable laws in its procedures, in its reasonable discretion, prior to or upon the Effective Date, together with its successors, assigns, and Affiliates, each in accordance with this Agreement. Desarollo Member shall initially have at least a ten percent (10%) ownership interest in Development Partner, and any subsequent changes shall be subject to the terms of this Agreement, including, but not limited to, Section 3.8. The anticipated ownership structure of Development Partner is illustrated in Schedule 2DD. Except as expressly provided in Section 4.18 of this Agreement, Development Partner shall be jointly and severally liable to the County for Developer's duties, obligations and responsibilities under this Agreement.

EE. Development Site shall mean the real property described in Schedule 1.1 attached hereto and made a part hereof, which Developer pursuant hereto has the right and

Palmetto Metrorail Station Development Agreement

obligation to develop in accordance with the Master Plan, which shall be subject to the provisions of this Agreement.

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

1) County reserves the right to exclude existing or proposed streets, sidewalks, and easements from the Development Site to provide and accommodate access to and from the entire Project or for all Project Phases, County facilities, any government agency property or facility, or any other entities' or persons' property or facility, provided that any time reasonably spent by Developer to amend its plans and drawings to accommodate such exclusions shall constitute an Unavoidable Delay; and

2) IT BEING UNDERSTOOD between the Parties hereto that no portion of the Palmetto Station Property are part of this Agreement or intended to be leased pursuant to this Agreement to Developer and that all existing and proposed portions or areas of Palmetto Property Facilities are expressly EXCEPTED AND RESERVED unto County, except to the extent that parts thereof are leased upon Closing or rights in respect thereof are expressly granted to Developer as herein provided.

FF. Environmental Law(s) shall mean all federal, state, regional, county and local statutes, regulations, ordinances, rules, regulations and policies, all court and administrative orders and decrees and arbitration awards, and the common law, which pertain to environmental matters or contamination of any type whatsoever, including to those relating to the presence, manufacture, processing, use, distribution, treatment, storage, disposal, generation or transportation of hazardous materials; air, water (including surface water, groundwater, and stormwater) or soil (including subsoil) contamination or pollution; the presence or release (which

Palmetto Metrorail Station Development Agreement

shall include, (a) spilling, leaking, pumping, pouring, emitting, emptying, discharging, migrating, injecting, escaping, leaching, dumping, or disposing any hazardous materials in, onto, from or about the air, water (including surface waters and groundwater), soils, subsoils or any other surface or media on-site, and (b) the abandonment or discarding of barrels, drums, containers, underground tanks, or any other receptacles ever containing any hazardous materials) of hazardous materials, protection of wildlife, endangered species, wetlands or natural resources; health and safety of employees and other persons; including the following statutes, and regulations adopted thereunder, including without limitation: Chapter 24 of the Miami-Dade County Code; the Comprehensive Environmental Response, Compensation and Liability Act, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. § 9601 et seq. (“CERCLA”); the Solid Waste Disposal Act, as amended by the Resource Conservation Recovery Act and the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. § 6901 et seq. (“RCRA”); the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977, 33 U.S.C. § 1251 et seq.; the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.; the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq. (“TSCA”); the Safe Drinking Water Act, 42 U.S.C. §§ 300f through 300j; the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 et seq.; the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq.; the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. § 11001 et seq.; and the Occupational Safety and Health Act, 19 U.S.C. § 6251 et seq.

GG. Event(s) of Default shall have the meaning ascribed to such term in Article 17 herein.

HH. Final Design Plans shall mean the Plans and Specifications submitted to the County when design is 100% complete.

Palmetto Metrorail Station Development Agreement

II. Financing Agreement shall mean a loan or financing agreement, other than a Leasehold Mortgage, but limited to mezzanine financing agreements, or preferred equity investment agreements, for the financing of the Project or Phase, leasehold interest, Development Site, or Improvements thereon. For the avoidance of doubt, Financing Agreements are specifically limited to agreements associated with Mezzanine Financing (including preferred equity investments) and are intended to exclude agreements associated with all other forms of financing, including but not limited to, crowd funding, or other mechanisms of funding by raising money from a large number of people who contribute a relatively small amount of funds, unless approved in writing by the County, which approval may be withheld in the County's sole discretion.

JJ. Governmental Approvals shall mean any and all governmental approvals necessary or advisable for the development of the Development Site or applicable Phase and the construction of the Improvements thereon, including, without limitation, zoning, re-zoning, land use designation changes, variances, conditional permits, site plan, platting, water management permits, drainage, sewer, retention and/or detention approvals, rapid transit zoning (RTZ approval) and concurrency and density approvals.

KK. Impositions shall mean all ad valorem taxes, special assessments and all other property assessments, use taxes, sales taxes, rent and occupancy taxes, taxes on personal property, all utilities, charges, all fines, fees, charges, penalties, and interest and other governmental charges, in each case of any kind or nature whatsoever, general or special, foreseen or unforeseen, ordinary or extraordinary and assessments levied, charged, confirmed, imposed or assessed with respect to, or become payable out of, or become a lien upon the Convertible Property, Improvements, personal property and the activities conducted thereon or therein by Developer or on behalf of Developer.

Palmetto Metrorail Station Development Agreement

LL. Improvements shall mean all enhancements to be erected and installed on, above or below the surface of the Development Site or a portion thereof in accordance with Article 4 below as a part of the Project on the Development Site (and all equipment and systems, located or to be located therein, and which are intended to remain attached or annexed, including any replacements, additions and substitutes thereof) including but not limited to, the buildings, structures, parking areas, utilities, utility lines and appurtenant equipment, vaults, infrastructure, landscaping and hardscaping, drives, streets, sidewalks and parking areas, but specifically excluding the Station Improvements and the Parking Facilities.

MM. Including shall always mean as used any time herein “including but not limited to”.

NN. Initial Rent shall have the meaning ascribed to it in Section 3.5.

OO. Land shall mean the real property described in Schedule 1.1 hereto.

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

QQ. Lease shall have the meaning ascribed to it in the recitals herein.

RR. Leased Property or Property shall mean that portion of the Development Site subject to a Lease.

SS. Leasehold Mortgage shall mean a mortgage or mortgages or other similar security agreements given to any Leasehold Mortgagee of any leasehold interest of Developer (or

Palmetto Metrorail Station Development Agreement

the applicable Tenant) upon Closing for the sole purpose of providing financing or capital for the Project, Phase, or any portion thereof hereunder, and shall be deemed to include any mortgage under which the Lease executed at such Closing shall have been encumbered.

TT. Leasehold Mortgagee shall mean a Lender meeting the requirements specified in the Lease to be executed pursuant to this Agreement as set forth in Schedule 1.6 in all material respects, that is or becomes the holder, mortgagee or beneficiary under a Leasehold Mortgage upon or after Closing and the successors or assigns of such holder, mortgagee or beneficiary, and shall be deemed to include the trustee under any such trust indenture and the successors or assigns of such trust.

UU. Lender shall mean any of the following entities that is not a Prohibited Person:

a) any federal or state chartered commercial bank, national bank, savings and loan association, savings bank or trust company, or any of their respective Lender Affiliates;

b) any pension, retirement or welfare trust or fund, public limited partnership, public real estate investment trust or other public entity investing in commercial mortgage loans, in each case whose loans on real estate are regulated by state or federal laws, or any of their respective Lender Affiliates;

c) any licensed life insurance company in the business of making commercial mortgage loans, in each case whose loans on real estate are regulated by state or federal laws and whose total assets (in name or under management) is in excess of \$500,000,000, or any of their respective Lender Affiliates;

d) a governmental agency;

Palmetto Metrorail Station Development Agreement

e) a securitization trust that is rated by S&P, Fitch or Moody's (or any like-extant national rating agency) and that has total assets (in name or under management) in excess of \$500,000,000, or any of their respective Lender Affiliates;

f) an investment bank, a hedge fund, opportunity fund, private debt or equity fund, or like entity that has total assets (in name or under management) in excess of \$500,000,000, or any of their respective Lender Affiliates; and

g) any other source of funding, public or private, which is otherwise approved by the County, which approval shall not be unreasonably withheld, conditioned or delayed. References to Lender shall include an entity or entities meeting the above definition that is a Leasehold Mortgagee or a Mezzanine Financing Source (or any combination thereof).

VV. Lender Affiliate shall mean, regarding any person or entity, any other person or entity directly or indirectly controlling, controlled by or under common control with such person or entity.

WW. Major Sublessee shall mean a Sublessee under a first tier (direct) Sublease with Tenant for all of the Demised Premises or one or more Phases thereof, which must be an organization or entity that is a "Registered Vendor" with Miami-Dade County. Development Partner is a Major Sublessee for purposes of this Lease. Except as expressly provided in Section 4.18 of this Agreement, Major Sublessee shall be jointly and severally liable to Landlord for Tenant's duties, obligations and responsibilities under the Lease.

XX. Master Plan shall mean the development plan for the entire Development Site as shown in Schedule 1.4A.

YY. 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,

Palmetto Metrorail Station Development Agreement

which shall be subject 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 Developer, Development Partner, the applicable Tenant or any Sublessee or structured as a preferred equity investment, which in the event of a bona-fide default by Developer, the Development Partner or any Affiliate, as applicable, who entered into the Mezzanine Financing, provides for “mezzanine style remedies” the exercise of which may result in a change of control. For the avoidance of doubt, the change of control as a result of the exercise of the “mezzanine style remedies” in the absence of a bona fide default shall not be used as a mechanism to avoid the payment of the Transfer Fee to the County under Section 3.8 herein.

ZZ. Mezzanine Financing Source shall mean a Lender selected by the Developer, Development Partner or the applicable Tenant or Sublessee, to provide Mezzanine Financing.

AAA. Milestones shall have the meaning as ascribed to such term in Section 1.4 herein.

BBB. Military Housing Units shall mean a minimum of approximately 258 residential units that (a) are rent-restricted to the amount established each year by the Florida Housing Finance Corporation for total household income equaling 120% of area median income for Miami-Dade County, and (b) are marketed to active and retired military personnel in coordination with the Miami-Dade Military Affairs Board or other governmental agency or not-for-profit entity approved by the County. All restrictions shall be in place for the term of the Lease, which shall be no less than 90 years.

CCC. Must, either in capitalized or in lower case form, when used in this Agreement is intended to always convey a mandate and/or a requirement.

Palmetto Metrorail Station Development Agreement

DDD. Must not, either capitalized or in lower case form, when used in this Agreement is intended to always convey a prohibition and/or something that is not allowable.

EEE. Palmetto Station Property shall mean the real property owned by Miami-Dade County and all existing and proposed improvements or modifications thereon, including those contemplated by the Master Plan, generally located immediately west of the Palmetto Expressway and north of NW 74th Street, but specifically exempting the Development Site. As used herein, the term “Palmetto Station Property” shall be deemed to include the Palmetto Station Facilities.

FFF. Palmetto Station Facilities shall mean the transit facilities, current and future, located at or operating at the Palmetto Station Property, including without limitation, all buses and transit vehicles, 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 Palmetto Station Property including those systems and structures operated by or a third party for a transit or transportation-related purpose but authorized to operate at Palmetto Station Property by Miami-Dade County.

GGG. Parties shall mean the County together with the Developer.

HHH. Intentionally Deleted.

III. Parking Facilities shall mean (i) the structured parking garage depicted on the Master Plan consisting of a minimum of approximately 1290 parking spaces (the “Parking Garage”), and (ii) the surface parking lot depicted on the Master Plan consisting of a minimum of approximately 50 parking spaces (the “Parking Lot”). The Parking Facilities shall be constructed by Developer at no cost to the County. Following completion of construction, the Parking Facilities, including all Tenant Spaces, Station User Spaces and Shared Spaces, shall be dedicated

Palmetto Metrorail Station Development Agreement

to and operated by County. The maintenance of the Parking Facilities, including all Tenant Spaces, Station User Spaces and Shared Spaces, shall be in accordance with the applicable Lease, and/or the parking agreement, if any, both of which shall be consistent with the requirements of this Agreement, including, but not limited to, the provisions of this Section 2.III and Section 4.7(C). The Parking Facilities shall include (i) a minimum of 640 spaces (the “Tenant Spaces”) for the exclusive use of Tenant and its Subtenants (including Subtenants of the residential dwelling units and commercial spaces) during the term of the Lease (for the avoidance of doubt, in the event that the Parking Facilities contain more than 1,340 parking spaces, any such additional spaces shall be Tenant Spaces, and in the event that the Parking Facilities contain less than 1,340 parking spaces, the number of Tenant Spaces shall be reduced by the amount of such shortfall); (ii) 400 spaces (“Station User Spaces”), which shall be made available (at the rates established by DTPW for parking facilities operated by DTPW) exclusively to passengers using the Palmetto 1 Station Facilities at all hours on the lower levels of the Parking Garage; and (iii) an additional 300 spaces shared between the County and the Tenant and its Subtenants (the “Shared Spaces”) for the non-exclusive use of (a) Tenant and its Subtenants (including Subtenants of the residential dwelling units and commercial spaces), and (b) to the extent that no Station User Spaces are available, passengers using the Palmetto Station Facilities during business hours and at the rates established by DTPW for parking facilities operated by DTPW; provided, however, that the number of Shared Spaces and Station User Spaces may be adjusted as follows. Throughout the term of any Lease, but not more frequently than once every two years, either Developer or County may upon written notice to the other request a parking study to be conducted at Developer’s or Tenant’s expense to ensure that sufficient spaces are available to meet the needs of Developer or passengers using the Palmetto Station Facilities, as applicable. In the event such parking study reflects a need for

Palmetto Metrorail Station Development Agreement

additional Station User Spaces, the number of Shared Spaces made available to Tenant and its Subtenants (including Subtenants of the residential dwelling units and commercial spaces) shall be reduced by the number of additional Station User Spaces required by County to meet the needs of the passengers using the Palmetto Station Facilities. In the event such parking study reflects the underutilization of Station User Spaces by passengers using the Palmetto Station Facilities, and the Tenant desires to use an additional number of Shared Spaces, the number of Shared Spaces may be increased by the amount desired by Tenant, up to the amount of underutilized Station User Spaces. In the event that the number of Shared Spaces is greater than 300, Tenant shall pay the cost for the use of such additional spaces (i.e., the number of Shared Spaces in excess of 300) at the greater of (i) \$540 per space per year or (ii) the rates established by DTPW for parking facilities operated by DTPW. By way of example, if the parking study reflects that only 300 Station User Spaces are required, and Tenant desires to use the remaining 1,040 spaces in the Parking Facilities for Tenant and its Subtenants (i.e., 640 Tenant Spaces and 400 Shared Spaces), then Tenant shall be required to pay to County an amount equal to 100 (i.e., the difference between 300 and 400 Shared Spaces) multiplied by the greater of (i) \$540 per space per year and (ii) the current rate established by DTPW for parking facilities operated by DTPW. Notwithstanding anything to the contrary, in no event shall the number of Shared Spaces available to Tenant be fewer than 300 spaces. Users of the parking spaces in the Parking Facilities shall be required to comply with County's established rules and regulations relating to such use, including any rules established by County, in cooperation with Developer or Tenant, to identify those users entitled to use the Tenant Spaces and the Shared Spaces. Tenant shall be responsible for ensuring that sufficient Shared Spaces are available during business hours to serve users of the Palmetto Station, and to the extent no Station User Spaces or Shared Spaces remain available to meet the needs of users of the

Palmetto Metrorail Station Development Agreement

Palmetto Station, Tenant shall be required, at no cost to the County, to tow any residents' vehicles that remain parked in Shared Spaces during business hours.

JJJ. Permit shall mean any permit issued or required 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.

KKK. Phase or Phases shall have the meaning ascribed to such term(s) in Section 1.6.

LLL. Phased Development shall have the meaning ascribed to such term in Section 1.6.

MMM. Plans and Specifications shall mean the plans and specifications (including Preliminary Plans and Final Design Plans) for all the work in connection with the alteration, construction, and reconstruction of the Project or Phase(s) of the Project required to be done or performed hereunder and shall include any changes, additions or modifications thereof, that are approved by the County in writing pursuant to this Agreement.

NNN. Preliminary Plans shall mean the site plan or conceptual plans for the Development Site, any Phase or a portion thereof, as the case may be, which have been submitted by the Developer to the County for its review and approval pursuant to this Agreement prior to the preparation and submittal of Final Design Plans.

OOO. Prohibited Person shall mean any of the following: (i) any person or entity (whose operations are directed or controlled by an individual) who has been convicted of or has pleaded guilty in a criminal proceeding for a felony or who is an on-going target of a grand jury

Palmetto Metrorail Station Development Agreement

investigation convened pursuant to United States laws concerning organized crime; or (ii) any person or entity organized in or controlled from a country, the effects of the activities with respect to which are regulated or controlled pursuant to the following United States laws and the regulations or executive orders promulgated thereunder to the extent the same are then effective: (x) the Trading with the Enemy Act of 1917, 50 U.S.C. App. §1, et seq., as amended; (y) the International Emergency Economic Powers Act of 1976, 50 U.S.C. §1701, et seq., as amended; and (z) the Anti-Terrorism and Arms Export Amendments Act of 1989, codified at Section 6(j) of the Export Administration Act of 1979, 50 U.S.C. App. § 2405(j), as amended (which countries are, as of the date hereof, Iran, Sudan and Syria); or (iii) any person or entity who has engaged in any dealings or transactions (i) in contravention of the applicable money laundering laws or regulations or conventions or (ii) in contravention of Executive Order No. 13224 dated September 24, 2001 issued by the President of the United States (Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), as may be amended or supplemented from time-to-time or any published terrorist or watch list that may exist from time to time; or (iv) any person or entity who appears on or conducts any business or engages in any transaction with any person appearing on the list maintained by the U.S. Treasury Department's Office of Foreign Assets Control list located at 31 C.F.R., Chapter V, Appendix A or is a person described in Section 1 of the Anti-Terrorism Order; or (v) any person or entity who appears on the convicted vendor list maintained by the State of Florida pursuant to Section 287.133, Florida Statutes; or (vi) any person or entity who has been debarred pursuant to the Miami-Dade County Code of Ordinances.

Palmetto Metrorail Station Development Agreement

PPP. Project shall mean the overall joint development of the Development Site, including all Phases of the Project, if applicable, contemplated by the Master Plan, based on the Proposal submitted to the County by Developer.

QQQ. Project Schedule shall mean the list of Milestones for the Project, including each Phase of the Project, if applicable, and the timetable for the completion of each Milestone, as approved by the County/Landlord and subject to Unavoidable Delays and duly requested changes which are approved by the County/Landlord in writing.

RRR. Proposal shall have the meaning set forth in Section 1.11 of this Agreement.

SSS. Public Areas shall mean those areas of the Development Site 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.

TTT. Rent shall collectively mean Initial Rent, Annual Rent and Additional Rent due to County in accordance with the terms of the Lease(s) resulting from this Agreement attached hereto as Schedule 1.6 in all material respects.

UUU. Intentionally omitted.

VVV. Restricted Entity shall mean those sanctioned, debarred or restricted persons and organizations that the U.S. government maintains in any federal list including: the Specially Designated Nationals and Blocked Persons List (U.S. Department of Treasury); the Foreign Sanctions Evaders List (U.S. Department of Treasury); The Entity List (U.S. Department of Commerce); the Denied Persons List (U.S. Department of Commerce); the Unverified List (U.S. Department of Commerce); and the Nonproliferation Sanctions List (U.S. Department of State); the AECA Debarred List (U.S. Department of State) and/or the Convicted Vendor List (Florida Department of Management Services).

Palmetto Metrorail Station Development Agreement

WWW. Scheduled Closing Date shall mean the date that Developer anticipates meeting all the Conditions for Closing for the overall Project or for each Phase of the Project, on a Phase-by-Phase basis, if applicable, as set forth in the Developer's Project Schedule as may be extended by Unavoidable Delay or by the payment of a Delayed Closing Fee.

XXX. Security Deposit shall have the meaning ascribed to such term in Section 3.1 herein.

YYY. Shall, either in capitalized or in lower case form, when used in this Agreement is intended to always convey a mandate and/or a requirement.

ZZZ. Shall not, either capitalized or in lower case form, when used in this Agreement is intended to always convey a prohibition and/or something that is not allowable.

AAAA. Station Improvements shall mean improvements to the Palmetto Station Property, which are anticipated to include (a) the painting of the Palmetto Station Property, at an approximate cost of \$125,000, (b) the replacement of light fixtures within the Palmetto Station Property to energy efficient light fixtures, at an approximate cost of \$150,000, (c) the construction of a covered walkway from the Parking Garage to the Palmetto Station Property, at an approximate cost of \$250,000, (d) the installation of bicycle racks and enhancements to the drop off and kiss and ride areas, including benches, at an approximate cost of \$100,000, and (e) the addition of upgrades to the plaza area at the base of the Parking Garage, including landscaping, hardscape, fountains, pavers, and canopy area, including landscaping upgrades throughout the Palmetto Station Property, including the entry, at an approximate cost of \$375,000, in each case, as further described in the Lease, substantially in conformance with the renderings attached to the Lease, as same may be modified with County's approval in connection with the Project pursuant to the plan approval process set forth herein and in the Lease. The Station Improvements shall be

Palmetto Metrorail Station Development Agreement

performed by Developer at a total approximate cost of \$1,000,000 (the “Station Improvements Budget”). Prior to Closing, the Parties shall define the Station Improvements with particularity for inclusion in the Lease. The Station Improvements are also anticipated to include the installation of a bicycle lane connecting the Palmetto Station Property to the NW 74th Avenue bicycle trail (the “Bike Lane”), as further described in the Lease, the cost of which is not included in the Station Improvements Budget. In consideration of the Project being a transit-oriented development on County land promoting transit ridership to and from the Palmetto Station Facilities, and subject to the Board of County Commissioners’ and the Transportation Planning Organization’s review and approval process pursuant to Chapter 33E of the Code of Miami-Dade County, Florida (the “Code”), the County agrees to offset as a contribution in lieu of impact fees against road impact fees that would otherwise be due and payable in amount equal to Developer’s capital contributions to the Bike Lane and other qualifying off-site improvements performed or required to be performed by Developer.

BBBB. Sublease shall mean any instrument pursuant to which all or a portion of the rights granted by any Lease executed upon Closing pursuant to this Agreement is transferred to an entity other than the Developer, and whereby the Developer retains all rights and obligations of Tenant under such Lease. Except as expressly provided by Section 4.18 of this Agreement, any Sublease that transfers development or sublandlord obligations (and not, for example, a Sublease with a residential tenant) shall expressly provide that the Sublessee shall be jointly and severally liable for the Tenant’s and/or Major Sublessee’s duties, obligations and responsibilities under the Lease, at least as to the portion of the demised premises to be sublet.

CCCC. Sublessee shall mean the entity, including an Affiliate, to which a Sublease is granted or its successors or assigns under any such Sublease.

Palmetto Metrorail Station Development Agreement

DDDD. Taking shall mean the exercise of the power of eminent domain as described in Article 18.

EEEE. Term shall have the meaning ascribed to such term in Section 1.3 herein.

FFFF. Tenant shall mean the lessee under a Lease entered into pursuant to this Agreement.

GGGG. Transit Operator Housing Units shall mean 125 of the Workforce Housing Units that shall be marketed to bus drivers and other transit operators employed by DTPW or successor department, and such operators shall have the first opportunity to rent such units, provided they otherwise qualify pursuant to the Workforce Housing Laws, any other applicable local, state and federal Laws and Ordinances, and any reasonable, non-discriminatory screening policies enforced by Tenant. The 125 Workforce Housing Units designated for individuals and families with incomes equal to or less than 100% of area median income shall be initially designated as the Transit Operator Housing Units. The Parties may agree to change the unit mix of the Transit Operator Housing Units to include Workforce Housing Units designated for greater household incomes, or to expand the eligibility criteria for Transit Operator Housing Units to include additional categories of DTPW employees; provided, however, that Developer shall not be required to provide more than 125 total Transit Operator Housing Units.

HHHH. Unavoidable Delays are unforeseen delays beyond the control of a party required to perform, such as (but not limited to) delays due to strikes; acts of God; floods; fires; named windstorms; enemy action; civil disturbance; epidemics or pandemics (other than the COVID-19 pandemic which shall not constitute an Unavoidable Delay based on conditions in existence on or prior to the Commencement Date, and which may constitute an Unavoidable Delay

Palmetto Metrorail Station Development Agreement

only to the extent that COVID-19, or a new variant/strain of COVID-19, is the documentable cause of a delay more than twelve (12) months after the Commencement Date or as a result of conditions that could not have been foreseen on or prior to the Commencement Date); governmental ordered closures; sabotage; restraint by court or public authority; litigation or administrative challenges by third parties to the execution or performance of this Agreement or any Lease or the procedures leading to its execution; or moratoriums; a Taking that does not result in the termination of this Agreement, to the extent that such action or event directly causes a delay in the ability of the Developer/Tenant to comply with its obligations under the Agreement or Lease. The obligated party shall be entitled to an extension of time because of its inability to meet a time frame or deadline specified in this Agreement where such inability is caused by an Unavoidable Delay, provided that such party shall, within fifteen (15) days after it has become aware of such Unavoidable Delay, give notice to the other party in writing of the causes thereof and the anticipated time extension necessary to perform. Neither party shall be liable for loss or damage or deemed to be in default hereof due to any such Unavoidable Delay(s), provided that party has notified the other as specified in the preceding sentence and further provided that such Unavoidable Delay did not result from the fault, negligence or failure to act of the party claiming the delay. Time is of the essence and failure to notify a party of the existence of Unavoidable Delays within the fifteen (15) days of its discovery by a party shall void and be deemed a waiver the party's ability to claim and extend time via Unavoidable Delays.

III. Workforce Housing shall, for the purpose of this Project, mean the rental of property for natural persons or families whose total annual household income ranges from sixty percent (60%) to one hundred twenty percent (120%) of the area median family income for Miami-

Palmetto Metrorail Station Development Agreement

Dade County, adjusted for household size, as published annually by the U.S. Department of Housing and Urban Development.

JJJJ. Workforce Housing Laws shall mean all Laws and Ordinances regarding Workforce Housing and the financing thereof, as amended from time to time.

KKKK. Workforce Housing Units shall mean a minimum of approximately (i) 25 residential units that are set aside for individuals and families whose total annual household income is no more than 60% of area median income for Miami-Dade County, (ii) 30 residential units that are set aside for individuals and families whose total annual household income is no more than 80% of area median income for Miami-Dade County, (iii) 70 residential units that are set aside for individuals and families whose total annual household income is no more than 100% of area median income for Miami-Dade County, and (iv) 607 residential units that are set aside for individuals and families whose total annual household income is no more than 120% of area median income for Miami-Dade County, in each case, as adjusted for household size, as published annually by the U.S. Department of Housing and Urban Development, and for which rent is capped at the amount established each year by the Florida Housing Finance Corporation for such income limitation. In the event of a change in law that permits the occupancy of property conveyed pursuant to Section 125.379, Florida Statutes, by individuals and families earning up to 140% of area median income, then, at Tenant's option, 495 of the 607 units identified in clause (iv) may be rented to individuals and families earning up to such higher income threshold, provided that 10 of the 607 units identified in clause (iv) are added to the units described in clause (i) and 30 of the 607 units identified in clause (iv) are added to the units described in clause (ii). All restrictions shall be in place for the term of the Lease, which shall be no less than 90 years.

Palmetto Metrorail Station Development Agreement

LLLL. Youth Housing Units shall mean a minimum of approximately 40 micro-residential units that are set aside for use by youth who age out of foster care program, as established by the Florida Department of Children and Families, and provided to such eligible residents on a rent-free basis (such residential units may developed as individual dwelling units or within shared living suites that utilize common kitchen, restroom, living, and dining facilities [or any combination thereof]). All restrictions shall be in place for the term of the Lease, which shall be no less than 90 years.

ARTICLE 3

SECURITY DEPOSIT AND DEVELOPMENT FEES

Section 3.1. **Security Deposit**

Developer shall as a condition precedent to the commencement of this Development Agreement deposit with DTPW cash (in form or its equivalent and from a lending institution reasonably satisfactory to DTPW) in an amount equal to five hundred thousand dollars (\$500,000) (the "Security Deposit") as a guarantee of performance under this Agreement.

A. The Security Deposit shall, be in cash or its equivalent, and be deposited by DTPW into an interest-bearing Miami-Dade County bank account, or if mutually agreed upon by the Parties, an escrow account. If Phased Development is contemplated the amount deposited shall be apportioned among the Phases based upon the approximate acreage contained in each Phase, based on the Master Plan. In the event that the Master Plan is amended pursuant to Section 1.5 of this Agreement, the Security Deposit shall be reapportioned among the Phases as amended.

B. If prior to any Closing, the entire Development Agreement is terminated by reason of a Developer Default, DTPW shall retain the entire Security Deposit. If prior to any Closing, the Development Agreement is terminated for a reason other than a Developer Default, DTPW shall return the entire Security Deposit to the Developer.

Palmetto Metrorail Station Development Agreement

C. If Phased Development is contemplated and prior to Closing the Development Agreement is terminated only as to a specific Phase(s), as a result of a Developer Default, the County shall retain the amount of the Security Deposit apportioned to the applicable Project Phase(s). If prior to any Closing, the Development Agreement is terminated as to a specific Project Phase for a reason other than a Developer Default, DTPW shall return the Security Deposit apportioned to the applicable Project Phase to the Developer.

D. If this Agreement has not been terminated by reason of Developer Default and Developer has satisfied the Closing Conditions and has closed on the Project, or if Phased Development is contemplated, the Developer has closed on a Phase of the Project (as the same may be extended by the payment of a Delayed Closing Fee as approved by the County), then upon the Closing of the Project or Phase of the Project, the applicable portion of the Security Deposit shall be treated as pre-paid Rent to be applied to Rents as it becomes due under the Lease for the Project or Phase, as applicable, until such Security Deposit has been exhausted. The provisions of this Section 3 shall survive this Agreement.

Section 3.2. **Development Fee**

Developer shall pay to County a non-refundable fee for the rights granted by County to Developer pursuant to this Development Agreement (subject to its terms and conditions), including but not limited to, the right to develop the Project upon the Development Site and the right to enter into long term Lease(s) for the Project or the Phase(s) of the Project, as applicable, upon satisfaction of the Closing Conditions (“Development Fee” or “Fee”). Developer shall pay to County the Development Fee in accordance with Schedule 3, attached hereto and by reference made a part hereof. The first payment of the Development Fee shall be due upon or prior to the Commencement Date of the Agreement and such payment shall be a condition precedent to the

Palmetto Metrorail Station Development Agreement

commencement of this Development Agreement. Subsequent payments shall be due without notice or demand from County at the times set forth in Schedule 3. Developer shall pay to County the Development Fee until the Scheduled Closing Date of the Project or Phase of the Project on a Phase-by-Phase basis, as applicable, in accordance with Schedule 3, or until the actual Closing of the subject Lease takes place, whichever occurs first.

Any prepaid Development Fee covering a period of time after which Initial Rent or Delayed Closing Fee becomes due shall be credited to Initial Rent or Delayed Closing Fee, as applicable, until the amount of prepaid Development Fee is exhausted.

Section 3.3. Delayed Closing Fee

Subject to the terms and conditions of this Agreement, if Developer has not closed on the Project or any Phase of the Project, as applicable, by the Scheduled Closing Date(s) due to Developer's inability to satisfy the Closing Conditions in accordance with the Project Schedule, subject to Unavoidable Delays and duly requested changes to the Project Schedule which are approved by the County in writing, Developer may request an extension of the applicable Scheduled Closing Date in consideration for the payment to the County of an amount equal to (i) the applicable Rent due under the Lease in accordance with Schedule 3, plus (ii) 10% of the applicable Rent due under Lease as reflected in Schedule 3 as delayed Closing fee ("Delayed Closing Fee") in lieu of Default until Closing has occurred. County shall have the right, in its sole discretion to approve or deny such request, which approval or denial shall be issued in writing; provided, however, that the County's approval shall not be required so long as the Closing Date occurs within twelve (12) months after the applicable Scheduled Closing Date and the Developer has paid the Delayed Closing Fee in accordance with this Section 3.3. Under no circumstances

Palmetto Metrorail Station Development Agreement

shall the Delayed Closing Fee be requested or approved for a period longer than three (3) years in the aggregate for each Phase from the original Scheduled Closing Date.

Section 3.4. **Net Lease**

Upon Closing, Developer shall enter into a Lease in substantially the form attached hereto as Schedule 1.6.

Section 3.5. **Initial Rent**

Upon the actual Closing Date of any Lease(s), or upon the Scheduled Closing Date, whichever occurs first, Developer shall cease payment of the Development Fee and, if applicable, the Delayed Closing Fee, and shall pay to County rent for the Project or Phase of Project as set forth in Schedule 3 (the "Initial Rent"). The first payment of Initial Rent shall be due on the actual Closing Date or Scheduled Closing Date, whichever occurs first. Subsequent payments of Initial Rent shall be payable annually, on the anniversary date of the Closing Date or Scheduled Closing Date, as applicable, without notice or demand from County as further set forth in Schedule 3.

Section 3.6. **Late Payments**

In the event that any payment of the Development Fee, Delayed Closing Fee, Additional Fees or any other monetary obligation due County shall remain unpaid for a period of five (5) days beyond their due date, a late charge of five percent (5%) of the amount of such Fee, Rent or other amount (irrespective of a partial payment) shall be added to such delinquent payment for each month that the payment remains delinquent. In the event any payments for Fees, Rents or other amounts are delinquent for concurrent months, subsequent payments will be credited to the delinquent month's Fee, Rent or amount of the corresponding Delayed Closing Fee that was first in time. Partial payment of any, Fee or Rent or amount for a month will not alleviate the late charge of 5% per month of the entire amount of the applicable Fee or Rent. In addition to the

Palmetto Metrorail Station Development Agreement

rights and remedies provided for herein, County shall also have all rights and remedies afforded by law for enforcement and collection of the Fees and/or Rents and any late charges which are not inconsistent with the limitations or remedies contained in this Agreement. All Fees, Rents and other payments due County under this Agreement shall be paid to County at the address specified herein for notice to County.

Section 3.7. **Enacted Restrictions**

Without limiting the rights provided to Developer pursuant to Section 1.11 of this Agreement, Developer agrees to perform reasonable due diligence regarding development of the Development Site and that, based upon that due diligence, agrees to develop the Project in substantially the form described in the Master Plan depicted in Schedule 1.4, as may be amended in accordance with Section 1.5 above. County and Developer acknowledge that the Development Fee and Delayed Closing Fee established in this Agreement were based on the understanding that Developer would be able to develop the Project as described in this Agreement and Schedule 1.4. If, due solely to Laws and Ordinances enacted subsequent to the effective date of this Agreement, which could not have been foreseen with due diligence, or, if after Developer makes commercial reasonable and timely efforts in good faith to obtain the required Governmental Approvals for the Project, Developer is not able to build the Project or Phase of the Project as described in the Master Plan as set forth in Schedule 1.4, solely as a result of such new Law or Ordinance, or due to such a failure to obtain the Governmental Approvals, then in addition to any other rights Developer has hereunder, Developer shall have the right to elect to (a) terminate this Agreement, by giving written notice to County within six (6) months after such inability becomes known to Developer, and the obligations of Developer to pay the Development Fee under this Agreement shall be abated as of the date of the giving of such notice, and in such event this Agreement shall terminate fifteen (15)

Palmetto Metrorail Station Development Agreement

days following the County's receipt of notice of termination; or (b) in the event Developer does not terminate this Agreement, as set forth above, Developer may with County's express written approval become entitled to an adjustment in the Development Fee, Delayed Closing Fee, Initial Rent and Rent, as applicable, and in the Development Site on an equitable basis taking into consideration the original total gross square footage of the Project described in the Master Plan, as compared with the gross square footage, the character or the other aspects of the Project, the use of which will be denied to the Developer. However, in no event, shall such adjustments in the proposed development delay the Commencement of Construction or Completion of Construction for a period longer than 120 calendar days, unless an extension of such period of time is granted in writing by the County, in its sole discretion. In the event the Agreement is terminated by Developer, Developer shall restore the Development Site to repair any damage caused by Developer or on behalf of Developer, free and clear of all encroachments and encumbrances. Any and all outstanding obligations under the Agreement, which expressly survive the termination of this Agreement, shall survive.

Section 3.8. Payment for Sale, Assignment or Transfer of Any Development Rights

The intent of the Parties is that the Developer and Development Partner shall equitably share with County the proceeds of any sale, assignment, or transfer of this Agreement (or otherwise of its rights to develop the Project or Phase), whether direct or indirect, and regardless of the method used to accomplish such transfer, which may include, but are not limited to, a sale, assignment, transfers of stock, partnership interests, or equity interests in Developer or Development Partner, and financing or refinancing agreements (except for a bona fide transfer made in connection with Leasehold Mortgage or Mezzanine Financing Agreement entered into in accordance with the terms of this Agreement) (each, a "Transfer").

Palmetto Metrorail Station Development Agreement

As such, in the event that, prior to Commencement of Construction, a Transfer occurs, and as a result thereof (a) Developer or Development Partner retains, in the aggregate, less than a fifty percent (50%) interest in the Project or Phase, or (b) there is an aggregate change in ownership of Developer or Development Partner of more than fifty percent (50%), or (c) Desarollo Member, directly or indirectly, retains less than the percentage interest in Development Partner (or otherwise in the Project or Phase) owned by Desarollo Member on the effective date hereof (which shall not be less than ten percent (10%)), then Developer or Development Partner, as applicable, shall pay County fifty percent (50%) of the amount of the total gross proceeds of such Transfer, less (x) hard and soft costs expended by the Developer, Development Partner, or Desarollo Member, and (y) any and all transaction costs paid by the Developer, Development Partner, or Desarollo Member (e.g., brokerage commissions, documentary stamp taxes, surtaxes and/or other transfer taxes, and other customary closing costs) (“Transfer Fee”). Any hard and soft costs and transaction costs deducted from the total gross proceeds in accordance with the foregoing shall be verifiable and documented in a form reasonably acceptable to Landlord. For the avoidance of doubt, investments made into Development Partner for the purpose of funding obligations of Developer in connection with the Project (including obligations of the Tenant of Subtenant under any Lease) shall not be considered proceeds resulting from a Transfer, except to the extent that such investment results in a cash distribution to any owner of Development Partner in exchange for any portions of its interest.

The applicable Transfer Fee shall be paid to County at the closing of the Transfer. The payments to County under this section shall be in addition to and with no offsets for any other fees or payments to which County is entitled under any other provisions of this Agreement.

Palmetto Metrorail Station Development Agreement

For the avoidance of doubt, the transfer of ownership to an Affiliate shall not be used as a mechanism to avoid the payment of the Transfer Fee under this Section, and any Transfer occurring after a Lease becomes effective for the Project or any Phase of the Project shall be governed solely by the provisions of the applicable Lease.

Prior to the effective date hereof and each year thereafter, Developer shall maintain in its records an annual certified statement from a Certified Public Accountant at a “Big Four” Accountant Firm or a reputable regional accounting firm or a Lawyer licensed in State of Florida with the ownership names and percentage of ownership for Developer, Development Partner, including the direct or indirect interest of Desarollo Member, under this Development Agreement. Upon five (5) business days’ written notice, Developer shall permit County to inspect such statement(s); provided, however, that such inspection shall be on a confidential basis to the extent that the Developer properly asserts its entitlement to any statutory exemptions to the public-disclosure requirements of Chapter 119, Florida Statutes.

Prior to or at the time of any Transfer, the Developer shall permit the County to inspect, on the terms provided in the preceding sentence, a certification, in the form of an itemized breakdown, prepared by a Certified Public Accountant at a “Big Four” Accountant Firm or a reputable regional accounting firm, or a Lawyer licensed in State of Florida that verifies the amount of the Transfer Fee in accordance with this Section 3.8.

Section 3.9. **Additional Fees**

Additional Fee shall be defined as all costs and expenses owed by Developer to County as provided for in this Agreement other than the Security Deposit, Development Fee, and Delayed Closing Fee.

Palmetto Metrorail Station Development Agreement

Section 3.10. **No Subordination of Development Fee**

The Development Fee, Delayed Closing Fees and Additional Fees, as applicable, payable to County hereunder shall never be subordinated, including but not limited to, any sums due under any Leasehold Mortgage, Financing Agreement or Developer obligation to any third party and County shall at all times have a first priority right to payment of the Development Fee, Delayed Closing Fees and Additional Fees as applicable.

ARTICLE 4

DEVELOPER RIGHTS AND OBLIGATIONS

Section 4.1. **Land Uses**

A. Developer shall use Convertible Property for the uses described in Section 1.8 above and for no other purposes. Developer shall use Leased Property for the uses as set forth in the corresponding Lease(s) executed for the Project or Phase of the Project, as applicable, upon any Closing(s).

B. The Parties recognize and acknowledge that the manner in which the Development Site is developed, used and operated are matters of critical importance to County and to the general welfare of the community. Developer agrees that at all times during the term of this Development Agreement, Developer will use best efforts to develop the Project, or Phase of the Project in conformity with the approved Master Plan, as may be amended in accordance with this Agreement.

Section 4.2. **Development Rights and Construction Phases**

Developer shall have the right and obligation to develop the Development Site and to plan the construction of the Improvements required in connection with such development in substantial conformity with the Master Plan as set forth in Schedule 1.4, including the right to develop the

Palmetto Metrorail Station Development Agreement

Project in Phases, if applicable, subject to the terms and conditions of this Development Agreement and Subsections A and B below.

A. Development Rights of Land

(i) In connection with this contemplated development, the Developer, or its successor, or successor under any other Phase of the Project, if applicable, hereby agree to join in such plat(s), easements, restrictive covenants, easement vacations or modifications and such other documents and instruments, as may be necessary for such parties to develop, maintain, operate and use their respective Phase(s) of the Project on, under, over, between and through the other such party's Phase of the Project in accordance with the overall Master Plan and approved Construction Plans and in a manner otherwise permitted hereunder. All such instruments shall require the approval of the County which shall not be unreasonably withheld or delayed.

(ii) In connection with this contemplated development and if required by Laws and Ordinances or the Master Plan, the County will join in such easements, restrictive covenants, plats, easement vacations or modifications and such other documents and applications, including, but not limited to, applications for the Governmental Approvals and Permits, as may be necessary for Developer to develop, use, and construct the development in accordance with the Master Plan and approved Construction Plans and in a manner otherwise permitted hereunder (including, if required by Laws and Ordinances or the Master Plan, executing such documents as the fee owner of the Development Site), provided that such joinder by County shall be at no additional liability, exposure, or cost to County 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 County, which acceptance shall not be unreasonably withheld or delayed.

Palmetto Metrorail Station Development Agreement

B. Miami-Dade County's Rights as Sovereign

It is expressly understood that notwithstanding any provision of this Development Agreement and Miami-Dade County's status as landowner thereunder:

(i) Miami-Dade County retains all of its sovereign prerogatives and rights as a county under Florida laws and shall in no way be estopped from withholding or refusing to issue any approvals of applications for building or zoning; from exercising its planning or regulatory duties and authority; and from requiring development in compliance with present or future Laws and Ordinances of whatever nature applicable to the design, construction and development of the Improvements provided for in this Agreement; and

(ii) Miami-Dade County shall not by virtue of this Development Agreement be obligated to grant Developer 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 Project Improvements provided for in this Agreement.

(iii) The County disclaims all responsibility and liability and makes no warranty that the Development Site is suitable for the Developer's Project, the intended purpose of this Development Agreement, or that Governmental Approvals or Permits will be issued for the uses contemplated by this Development Agreement. Developer is solely responsible for duly applying for, obtaining and maintaining any and all Governmental Approvals, Permits, licenses, easements and property rights necessary for Project completion and for resolving any objections related thereto and/or to the proposed uses, regardless of the source of such objection. Subject to the County's agreement to cooperate pursuant to Section 4.2(A)(ii) above, County is under no other obligation to join the Developer in applying for, obtaining, or maintaining such rights and

Palmetto Metrorail Station Development Agreement

approvals, to provide support or assistance to Developer in obtaining Governmental Approvals or Permits, or resolve objections in obtaining Governmental Approvals or Permits or to the proposed uses, including but not limited to, objections by community organizations, community activists, elected County officials, or officials charged with issuing such approvals and Permits.

Section 4.3. Conformity of Plans

Preliminary Plans, Final Design Plans and Construction Plans with respect to the Project or each Phase of Project, as applicable, shall be independent of any other Phase of the Project, be in conformity with this Development Agreement, the Master Plan, applicable building and zoning codes, and all other applicable Laws and Ordinances, including applicable provisions of the Miami-Dade Transit Construction Safety Manual and the Department of Transportation and Public Works Adjacent Construction Manual or their replacements. It should be noted that the these manuals contains minimum requirements and the County may impose more stringent requirements if the County reasonably determines that more stringent requirements are warranted to adequately protect County facilities, operations, employees or members of the public. All proposed work in connection with the development shall comply in all material respects with the Master Plan, as may be amended in accordance with the provisions in this Agreement and final Plans and Specifications as approved by County. The proposed materials, fixtures, machinery and equipment to be installed or used in the development and construction of the Improvements shall be of first-rate quality and new. If required by County upon written request, Developer shall furnish reasonable satisfactory evidence to County as to the quality of same. All work in connection with this Agreement shall be prosecuted with reasonable dispatch and completed within a reasonable time.

Palmetto Metrorail Station Development Agreement

Section 4.4. **Approval Rights**

County facilities and operations thereof are of critical importance to the County. Any alteration, relocation or replacement of County facilities or activities that may impact County facilities or Public Areas and/or operations thereof, either temporary or permanent, may be undertaken only with the express written consent of the County and may be subject to review and approval of the Miami-Dade Transit Rail Change Review Board, and shall be in compliance with the Miami-Dade Transit Construction Safety Manual, and the Department of Transportation and Public Works Adjacent Construction Manual (Exhibit G) or their replacements, as applicable, including the requirement to obtain contractor identification badges. The County shall have the right to approve, disapprove or amend, in its sole and absolute discretion:

A. All matters that affect the integrity, functionality, efficiency, safety, operation, maintenance, legal compliancy, cost or profitability of any County facility, operations and activities thereon or the safety and convenience of its employees and patrons;

B. The design and construction of any structure or connection, either temporary or permanent, impacting any County facility; and

C. Matters that affect the Developer's obligations related to the Project Schedule or changes to the Master Plan and/or components of the Master Plan or Phases, if applicable.

Section 4.5. **Inspection by County.**

County reserves the right for its employees or authorized representatives to inspect any work of Developer or its authorized agents at any time as permitted by this Agreement to insure itself of compliance with the provisions of this Agreement, ongoing county operations, and the safety of County facilities.

Palmetto Metrorail Station Development Agreement

Section 4.6. **Design Plans; DTPW Review and Approval Process**

A. Developer shall submit design and construction documents to DTPW for review, coordination and approval (of each Phase, if applicable), at the different stages of the Project. All such plans and documents shall be in conformity with applicable building codes, federal, state, county and local laws and regulations. For each submittal, Developer shall submit eight sets of prints with the date noted on each print.

B. At 15% of the overall design completion (of any Phase, if applicable) of the Project, Developer shall submit conceptual site layouts and plans, sections, and elevations to DTPW for review.

C. At 85% design completion (of any Phase, if applicable) of the Project, Developer shall submit drawings, conceptual site layouts and plans, sections, elevations and pertinent documentation to DTPW for review.

D. At 100% design completion (of any Phase, if applicable) of the Project, Developer shall submit to DTPW the Final Design Plans. DTPW shall review these plans to ensure that all previous DTPW comments to which the Parties have agreed have been incorporated therein. However, Developer 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) business days after receipt thereof, advise Developer in writing of its approval or disapproval, setting forth in detail its reasons for any disapproval. In the event of a disapproval, Developer shall, within thirty (30) business days after the date Developer receives such disapproval, make those changes necessary to meet DTPW's stated grounds for disapproval or request reconsideration of such comments and shall resubmit such altered plans to DTPW. Any resubmission shall be subject to review and approval by DTPW, in accordance with

Palmetto Metrorail Station Development Agreement

the procedure hereinabove provided for an original submission, until the same shall receive final approval by DTPW. DTPW and Developer shall in good faith attempt to resolve any disputes concerning the Final Design Plans in an expeditious manner.

In the event that the County fails to provide notice to the Developer of its approval or disapproval of the submittals or to request additional information within the thirty (30) business day period provided above, the Developer shall be entitled to an extension of any deadlines directly affected by such delay and such extension shall be considered an Unavoidable Delay. Such deadlines shall be extended only for the same number of days as the County delayed in notifying the Developer of its approval or disapproval beyond the thirty (30) business day period or such longer extension period as the County may allow provided such extension is provided by the County in writing.

F. Upon the written approval by the County of the Final Design Plans for each Phase, such design shall be the Construction Plan for that Phase. DTPW's approval shall be in writing and each party shall have a set of Final Design Plans signed by all Parties as approved. In the event any change occurs after approval of the Final Design Plan for a Phase, then Developer must resubmit the changed portion of the Construction Plans for DTPW's approval in accordance with the procedure described above in this Section 4.6.

Section 4.7. **Construction Plans**

A. Developer shall give DTPW final site and elevation plans (for each Phase, if applicable) prior to submittal for the building Permits for each Phase. All Construction Plans (for each Phase, if applicable), must be in conformity with the Final Design Plans approved (for that Phase, if applicable) by DTPW, the Master Plan and the provisions of this Agreement.

Palmetto Metrorail Station Development Agreement

B. Subject to the rights of any Leasehold Mortgagees or Mezzanine Financing Sources under any Lease executed pursuant to this Agreement, Developer hereby assigns to County all of Developer's right, title and interest in and to all construction and design contracts and Final Design Plans and Construction Plans and all Preliminary Plans, the Master Plan, final and working plans, specifications, drawings and construction documentation prepared in connection with this Agreement and all intellectual property rights in any of the foregoing. Moreover, Developer shall include a provision in each contract with any architect, engineer, general contractor, sub-contractor, design/builder, construction manager that vests DTPW with all right, title and interest to the such Final Design Plans and Construction Plans, all preliminary plans and in such work product, should a Developer Default occur under this Agreement and the affected Leasehold Mortgagee(s) or Mezzanine Financing Source(s), or their successors in interest under any Lease executed pursuant to this Agreement, after taking possession or title to Developer's interest in the Project or Phase, as applicable, does/do not elect to construct and compete the Improvements. Such contracts(s) must include an acknowledgement by the architect, engineer, general contractor, sub-contractor, design/builder, and construction manager (if applicable) that the contract has been assigned to the County and, the Parties consent to such assignment and will perform its obligations under such contract if elected by County after the occurrence of a Developer Default but subject to the rights of the Leasehold Mortgagee or Mezzanine Financing Source, and all sums due under the contracts are paid and that such contracts may not be materially and adversely modified without County's consent.

Notwithstanding the foregoing, County shall not exercise any of its rights as assignee unless and until after the occurrence of a Developer Default, this Agreement has been terminated and any Leasehold Mortgagee or Mezzanine Financing Source, or their respective successor, under

Palmetto Metrorail Station Development Agreement

any Lease executed pursuant to this Agreement, after taking possession or title to Developer's interest in the Project or Phase, as applicable, has failed to timely exercise its right as provided in such Lease with respect to the Project or any Project Phase.

C. Contemporaneously with Completion of Construction of the Parking Facilities, Developer (or Tenant under the applicable Lease) shall assign to, or cause County to be added as an express benefited party on, and shall provide County with a copy of, the construction warranties provided by the general contractor or any other contractor for the Parking Facilities together with any and all other assignable warranties or guaranties of workmanship or materials provided to Developer (or Tenant under the applicable Lease) by any subcontractor, manufacturer, supplier or installer of any element or system in the Parking Facilities (collectively, the "Construction Warranties"). To the extent the Construction Warranties are assigned by Developer (or Tenant under the applicable Lease) to County, the Construction Warranties shall nevertheless remain jointly enforceable by Developer (or Tenant under the applicable Lease) and County. All Construction Warranties shall be required to extend for a period of two (2) years following Completion of Construction of the Parking Facilities (the "Construction Warranty Period"); provided, however, if Developer obtains extended Construction Warranties for any portion of the Parking Facilities from any contractors, subcontractors or manufacturers, then the Construction Warranty Period for the applicable portion of the Parking Facilities shall extend for such time as the contractors', subcontractors' or manufacturers' extended Construction Warranties exist. County will provide the general contractor and any other contractors for the Parking Facilities with access to the relevant property at no charge in order to perform any remedial work, which shall be in accordance with the construction requirements set forth in the Lease, including, but not limited to, the requirements of Section 1.4 of the Lease, pursuant to the Construction Warranties; provided,

Palmetto Metrorail Station Development Agreement

however, that all such contractors shall use commercially reasonable efforts to mitigate impacts to operations of the Parking Facilities during its repair of defects pursuant to the Construction Warranties. Without limiting the foregoing, for a period of ten (10) years following Completion of Construction of the Parking Facilities, Tenant shall, at its sole cost and expense, be responsible for all repairs and replacements to the structural components of the Parking Facilities and correcting any defects in the construction thereof (the “Structural Maintenance”), subject to ordinary wear and tear and loss by fire or other casualty. Following such ten (10) year period, Landlord shall be responsible for the Structural Maintenance of the Parking Facilities at its sole cost and expense.

Section 4.8. **Developer Obligations**

Developer (or the Tenant under any applicable Lease) shall be responsible for duly applying for, obtaining, and maintaining all Permits, licenses, easements, property rights and Governmental Approvals necessary prior to, during, and after construction. DTPW approval of any Preliminary Plans pursuant to this Article 4 shall not relieve Developer of its obligations under this Agreement and at law to obtain required approvals and Permits from any department of the County or any other governmental authority having jurisdiction over developmental and/or zoning regulations, plat approval and the issuance of building or other Permits and/or approvals and to take such steps, at its sole expense, as are necessary to duly obtain issuance of such Permits and approvals. Although, the County retains jurisdiction for building and zoning approvals, including plat approval, issuance of building permits, building inspections and issuance of certificates of occupancy, Developer acknowledges that any approval given by DTPW, as County pursuant to this Article 4, 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,

Palmetto Metrorail Station Development Agreement

and no such approval shall impose any liability upon DTPW. The Parking Facilities are subject to the Sustainable Buildings Program provisions in Sections 2.1, 9-71 through 9-95 of the Miami-Dade County Code and Implementing Order 8-8, and Developer shall comply with the same in connection with the development of the Parking Facilities. Developer acknowledges that the Parking Facilities and Station Improvements are subject to the competitive-selection requirements set forth in Section 255.20, Florida Statutes, and Developer (or Tenant under any Lease) shall be responsible for competitively awarding such work to an appropriately licensed contractor in accordance with Section 255.20, Florida Statutes.

Section 4.9. Application for Development Approvals and Permits

Prior to or promptly following the expiration of the Due Diligence Period of this Agreement, the Developer will initiate and diligently pursue at its sole cost and expense all application with any government entity or other third party for any and all Governmental Approvals and Permits that may be required in connection with the Project. Developer shall be solely responsible for duly obtaining all final, non-appealable Governmental Approvals and Permits in connection with the development. No extension of any time herein shall be deemed to be an extension of any time period contained within any Governmental Approvals, including any land use and/or development orders and/or Permits.

Section 4.10. Site Conditions

Developer, by executing this Agreement, represents that it, or its agent(s), have visited the Site and is familiar with local conditions under which the construction and development is to be performed. Developer shall restore the Site to a condition substantially similar to its pre-testing condition after all testing and shall provide the County with a copy of all test results. The County makes no warranty as to soil and subsurface conditions. Without limiting the rights provided by

Palmetto Metrorail Station Development Agreement

Section 1.11 of this Agreement, Developer shall not be entitled to any adjustment of any Development Fee or other payments due to the County or of any applicable time frame or deadline under this Agreement or Lease executed pursuant thereto in the event of any abnormal site conditions unless the site conditions are so unusual that they could not have reasonably been anticipated, and in such event, time periods for the payment of the Development Fee/Rent and the commencement of any Delayed Closing Fees and/or Rent under the Agreement or any Lease executed pursuant hereto shall be extended by the reasonable time necessary to accommodate any redesign of the Master Plan and lengthened construction schedules resulting from that event.

Section 4.11. 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>

Section 4.12. Off-site Improvements

Unless otherwise agreed to by the Parties in writing, any off-site improvements required to be paid or contributed as a result of the development of County facilities shall be paid or

Palmetto Metrorail Station Development Agreement

contributed by County. Any off-site improvements or alteration of County facilities required to be paid or contributed which are caused by or are a result of Developer's development of the Development Site (Parking Facilities, streets, street widening, streetlights, sidewalks, water/sewer infrastructure, landscaping, etc.) pursuant to its Final Design Plans shall be paid or contributed by Developer. The requirement for the Developer to pay for or contribute to off-site improvements which are caused by or are a result of Developer's development shall not prohibit the Developer from obtaining impact fee credits if permitted by applicable law, and subject to the Board of County Commissioners' and the Transportation Planning Organization's review and approval process pursuant to Chapter 33E of the Code of Miami-Dade County, Florida (the "Code"). Notwithstanding the foregoing, in no event shall the Developer have the right to apply any such credits to any financial benefits to the County which the Developer proposed to contribute to County pursuant to this Development Agreement or any Lease or Sublease.

Section 4.13. Signage and Landscaping of Entrances

County agrees to cooperate with Developer in the development of plans regarding entrances to the Development Site in order to achieve an aesthetic blend of landscaping and signage. All costs of developing and implementing such plans shall be paid by Developer. Any and all signage is subject the requirements, restrictions, and prohibitions of applicable Law and Ordinances law, including but not limited to Article VI of chapter 33 of the Code of Miami-Dade County, Florida (the "Sign Code of Miami-Dade County").

Section 4.14. Designation of County's Representative

The County Mayor, or such person as subsequently designated by the County Mayor upon notice to Developer, shall have the power, authority and right, on behalf of the County, in its

Palmetto Metrorail Station Development Agreement

capacity as County hereunder, and without any further resolution or action of the County Commission, to:

- A. Execute Lease(s) provided for by this Development Agreement;
- B. Review and approve documents, plans, applications, assignments and requests required or allowed by Developer to be submitted to County pursuant to this Article and this Agreement;
- C. Consent to actions, events, and undertakings by Developer for which consent is required by County;
- D. Make appointments of individuals or entities required to be appointed or designated by County in this Agreement;
- E. Execute non disturbance agreements and issue estoppel statements;
- F. Execute any and all documents on behalf of County necessary or convenient to the foregoing approvals, consents, and appointments;
- G. Execute on behalf of Miami-Dade County any and all consents, agreements, easements, plats, applications or other documents needed to comply with applicable regulatory procedures and secure Permits or other approvals needed to accomplish the construction of any and all improvements in and refurbishments of the Development Site, excluding consents to material amendments to this Agreement requiring approval by the Miami-Dade County Board of County Commissioners; and
- H. To correct any typographical or non-material errors or omissions in this Agreement.

Notwithstanding the foregoing, or any other provision of this Agreement, any authority delegated to the County Mayor or the County Mayor's designee that is not expressly authorized in

Palmetto Metrorail Station Development Agreement

the resolution adopted by the Board approving this Agreement, or otherwise authorized by an ordinance or resolution of the Board or by applicable law, shall be reserved to the Board.

Section 4.15. Additional Work

County and Developer hereby acknowledge, that if both Parties hereto agree, that the County may contract for certain work or services to be provided by Developer at appurtenant structure and/or structures or facilities, including but not limited to, construction and maintenance items, not otherwise provided for or contemplated by this Agreement. Such work shall be at the cost of the County and, if the Parties hereto agree, may be paid in the form of a Fee or Rent credit.

Section 4.16. Small Business Enterprise Program

Developer shall comply, and shall cause its contractor, architect/design professionals, and all subcontractors, sub-consultants, subtenant and licensees to comply, with the County's Small Business Enterprise ("SBE") Programs including, without limitation, SBE-Construction, SBE-Architectural and Engineering, SBE-Goods, SBE-Services, Responsible Wages and Benefits Program, the Community Workforce Program, Residents First Training and Employment, and First Source Hiring Programs, as set forth in Sections 10-33.02, 2-10.4.01, 2-8.1.1.1.1, 2-8.1.1.1.2, 2-11.16, 2-1701 and 2-11.17 of the Code and the Employ Miami-Dade Program Administrative Order No. 3-63. Prior to advertisement and entering into any design or construction contract for the Project, and in the case of a design or construction management contract, prior to the authorization of any design or construction package, the Developer shall deliver the proposed contract and design and construction package to the Small Business Division of the Internal Services Department of the County ("SBD") for a determination and recommendation to the County Mayor of the SBE measures applicable to such design and construction. The County Mayor shall establish the applicable goals upon receipt of the recommendation of SBD

Palmetto Metrorail Station Development Agreement

(“Applicable Measures”). Developer shall include the Applicable Measures in design and construction documents, as applicable, and shall adhere to those Applicable Measures in all design and construction activities. Developer shall incorporate in all design and development contracts the prompt payment provisions contained in the Code with respect to SBE entities. Developer agrees to include in construction contracts a prohibition against imposing any requirements against SBE entities that are not customary, not otherwise required by law, or which impose a financial burden that intentionally impact SBE entities. Developer shall require that its contractor(s) shall, at a minimum, use SBD’s hiring clearinghouse, Employ Miami-Dade Register, and Employ Miami-Dade Project – all available through CareerSource to recruit workers to fill needed positions for skilled laborers on the Project, and any Project enhancements. Developer shall comply with the SBE requirements during all phases of construction of the Project, including in accordance with the SBE requirements package attached hereto as Schedule 4.15, which is incorporated herein by this reference. Developer shall require its contractor(s) to include Responsible Wages, and Workforce Programs requirements in all subcontractor agreements. Should the Developer fail to comply with any of the SBE requirements, Developer shall be obligated to make up such deficit in future Phases of construction of the Project, and/or pay the applicable monetary penalty pursuant to the Code.

Section 4.17. Responsible Wages

The Developer further acknowledges and agrees that it is required to pay, or to require all contractors and/or subtenants to pay, all workers Responsible Wages, in accordance with Section 2-11.16 of the Code, whichever wage rate schedule is applicable. Developer shall complete the Fair Wage Affidavit.

Palmetto Metrorail Station Development Agreement

Section 4.18. **Development Partner**

In order to access the expertise and financial resources required to successfully finance, construct, and operate the Project, Developer has notified County that Developer intends to collaborate with a private, for-profit development partner, and for Development Partner to undertake all obligations of Developer pursuant to this Agreement and, pursuant to a Sublease with Development Partner or its Affiliate, all obligations of the Tenant under any Lease resulting from this Agreement. County has agreed to recognize the Development Partner as the representative of Developer under this Agreement and as the Major Sublessee under any Lease resulting from this Agreement. Except as expressly provided in this Section 4.18, Development Partner shall be jointly and severally liable to the County for Developer's duties, obligations and responsibilities under this Agreement, and the Major Sublessee shall also be jointly and severally liable for Tenant's duties, obligations, and responsibilities under any Lease. This Agreement shall be interpreted in a manner that effectuates the purpose and intent of this Section 4.18, including, but not limited to, interpreting all references to "Developer" throughout this Agreement to include the Development Partner wherever required to permit the Development Partner to perform the obligations of Developer under this Agreement and achieve the Closing Conditions. Development Partner shall receive copies of all correspondence and be notified of and have rights to attend and participate in all meetings or actions. Subject to Section 3.8 of this Agreement, the Development Partner shall have the right from time to time to make transfers of its rights under this Agreement or any Lease. Notwithstanding the foregoing, Development Partner shall not be jointly and severally liable for any obligations of Developer that, by their nature, are personal to Developer and cannot be performed by Development Partner, either on its own or by subcontracting with another party (such as a corporate dissolution of Developer or a Developer bankruptcy). For the

Palmetto Metrorail Station Development Agreement

avoidance of doubt, Development Partner shall be jointly and severally liable for the operational obligations of MagicWaste Youth Foundation, Inc., pursuant to this Agreement (including the management of the Youth Housing Units and the occupancy and use of the space designated for MagicWaste Youth Foundation, Inc., in Section 2.Q of this Agreement). In the event of an uncured Developer default or Tenant default that is personal to Developer, then Development Partner shall continue to be responsible for the Project pursuant to a development agreement or lease directly between Development Partner and the County upon the same terms and conditions as this Agreement or any subsequent Lease, as applicable, except that Development Partner shall be required to utilize its commercially reasonable efforts to identify and subcontract with a qualified non-for-profit corporation to perform the foregoing operational obligations of MagicWaste Youth Foundation, Inc. Notwithstanding anything in this Agreement to the contrary, the foregoing requirement that a qualified non-for-profit corporation perform the foregoing operational obligations of MagicWaste Youth Foundation, Inc. shall apply in any circumstance in which Magic Waste Youth Foundation is not the Tenant.

ARTICLE 5

DETERMINATION OF IMPOSITIONS

Because the Development Site is County-owned property, it is not currently subject to real estate taxes. However, it shall be the responsibility of the Developer to determine and, to pay, after Closing of a Lease(s), any and all taxes, assessments and Impositions which may arise in connection with any Lease(s) resulting from this Development Agreement and placing the development on County-owned land. The County makes no representations or warranties as to the continued availability of any exemption or tax benefit, or to the Developer's ability to receive any such exemption or benefit.

ARTICLE 6

PROPERTY RIGHTS

Section 6.1. **Rights to Real Property after Agreement Expiration**

Upon the Closing of the Lease (or, if later, the closing of the financing for construction) for the final Phase of the Project, pursuant to Section 1.3, this Development Agreement shall terminate and the Lease(s) executed at the Closing(s) pursuant hereto shall then be solely operative for the Leased Property thereunder.

Section 6.2. **Rights to Personal Property After Agreement Termination or Expiration**

After the fifteenth (15th) day following the expiration or early termination of this Agreement, if no Closing has occurred on the Project or Project Phase, as applicable, any personal property of Developer which remains on the Development Site may, at the option of County, be deemed to have been abandoned by Developer without court action and, said personal property may be retained by County as its property or be disposed of, without accountability, in such manner as County may see fit.

Section 6.3. **Survival**

The provisions of this Article 6 shall survive the termination of this Agreement.

ARTICLE 7

INSURANCE AND INDEMNIFICATION

Section 7.1. **Terms and Provisions**

A. At all times during the Term, Developer at its sole cost and expense shall procure the insurance specified in Section 7.2 below. In addition, Developer shall ensure its contractor(s) or any third party hired by or providing work on Developer's behalf upon the Development Site maintain the coverages set forth in Section 7.2 below and name the County as

Palmetto Metrorail Station Development Agreement

an additional insured and loss payee; provided, however, that a contractor or other third party shall not be required to maintain such coverages in the event that its work on behalf of Developer is covered by a policy maintained by the higher-tier contractor or by the Developer that does include the required coverages. The terms and conditions of all policies may not be less restrictive than those contained in the most recent editions of the policy forms issued by the Insurance Services Office (ISO) or the National Council on Compensation Insurance (NCCI). Said insurance policies shall be primary over any and all insurance available to the County whether purchased or not and shall be non-contributory. The Developer, its contractor(s), or any third party hired by or providing work on Developer's behalf upon the Development Site shall be solely responsible for all deductibles contained in their respective policies. All policies procured pursuant to this Section shall be subject to a maximum deductible reasonably acceptable to the County. The County shall be included and an "additional insured" and "loss payee" on such policies.

B. The insurance coverage required shall include those classifications, as listed in standard liability insurance manuals, which most nearly reflect the operations of the Developer. 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

Palmetto Metrorail Station Development Agreement

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.

C. Whenever, in County’s reasonable judgement, good business practices and changing conditions indicate a need for additional liability limits or different types of insurance coverage, Developer shall, within thirty (30) days after County’s written request, obtain such insurance coverage, at Developer’s expense, provided that the requested amounts and types of coverage are customary and available for issuance in the State of Florida and provided that County shall not require any increase in the limits of coverage more than once every three years.

Section 7.2. **Insurance Requirements**

Insurance required for Developer and any contractor under this Development Agreement is as follows, unless otherwise approved by the County:

A. 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.

B. Commercial General Liability Insurance in an amount not less than \$1,000,000 per occurrence, and \$2,000,000 in the aggregate, not to exclude Explosion Collapse and Underground Hazards and Products & Completed Operations. Miami-Dade County must be shown as an additional insured with respect to this coverage.

C. Worker’s Compensation Insurance for all employees of the Developer as required by Florida Statute 440.

D. Umbrella Liability Insurance in an amount not less than \$5,000,000 per occurrence and in the aggregate.

Palmetto Metrorail Station Development Agreement

a. If Excess Liability is provided, it must follow the form for coverage's A and B above.

Design Activities for Development Phase

In addition to the insurance required in (A)-(D) above, prior to commencement of any design work for the Project, the Developer is required to provide or shall cause its contractors and/or design professional to provide, Certificate(s) of Insurance which indicate that insurance coverage has been obtained which meets the requirements as outlined below:

A. Professional Liability or Errors & Omissions insurance covering architectural and/or engineering project design, construction supervision, administration and any related professional qualifications or functions required by the project for the licensed design professional and/or contractor in an amount not less than \$5,000,000 per claim.

(i) If any required insurance purchased by the Developer, design-builder, subcontractor, and licensed design professional has been issued on a 'claims made' basis, the policy holder of such claims made coverage must have an extended reporting or discovery "tail" period of not less than ten years after the project completion date and shall have a retroactive date that precedes the date the contractor or design professional first performed any professional services. The limits of liability and the extensions to be included remain the same.

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.

Palmetto Metrorail Station Development Agreement

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

Section 7.3. **Premiums and Renewals**

Developer shall pay as the same become due all premiums for all insurance required by this Article. Developer shall renew or replace each such policy and deliver to the County evidence of payment of the full premium thereof thirty (30) days prior to the expiration of such policy.

Section 7.4. **Evidence of Insurance**

Prior to the Commencement Date of this Agreement, and annually thereafter, Developer shall deliver satisfactory evidence of required insurance to the County. Satisfactory evidence shall be: (i) a certificate of insurance for all required coverage; and (ii) a copy of the declaration page. The County, at its sole option, may request a certified copy of any or all insurance polices required by this Agreement, or the applicable portions thereof if insurance is provided through a master insurance program. All insurance policies must specify that they are not subject to cancellation or non-renewal without thirty (30) days’ notice provided by the insurer to DTPW, the County’s Internal Services Department (“ISD”), Risk Management Division, and any Leasehold Mortgagee or Lender as applicable. The Developer will deliver to the County, no later than thirty (30) days prior to the date of expiration of any insurance policy, a renewal policy replacing any policies

Palmetto Metrorail Station Development Agreement

expiring during the Term of this Agreement, or a certificate thereof, together with evidence that the full premiums have been. All certificates of insurance required herein shall: (i) be in a form acceptable to County, (ii) name the types of policies provided, (iii) state each coverage amount and deductible for each policy, (iv) refer specifically to this Agreement, (v) list County as an additional insured and loss payee (vi) evidence the waiver of subrogation in favor of County as required herein; and (vii) evidence that coverage shall be primary and non-contributory, and (viii) that each policy includes a cross liability or severability of interests provision, with no requirement of premium payment by the County. Developer shall deliver, together with each certificate of insurance, a letter from the agent or broker placing such insurance, certifying to the County that the coverage provided meets the coverage required under this Agreement. The official title of the certificate holder is “Miami-Dade County”. Additionally, insured policies for the County shall read “Miami-Dade County” and shall be addressed pursuant to the notice requirements to County in Section 18.2 and to ISD, Risk Management Division.

Section 7.5. Effect of Loss or Damage

Any loss or damage by fire or any other casualty of or to the Development Site at any time shall not operate to terminate this Agreement or to relieve or discharge Developer from (i) the payment of the Development Fee or Rent due under any Lease, (ii) payment of any money to be treated as Additional Fees or Additional Rent in respect thereto, or (iii) from the performance or fulfillment of any of Developer obligations pursuant to this Agreement as the same may become due or payable as provided in this Agreement. No acceptance or approval of any insurance agreement or agreement by the County shall relieve or release or be constructed to relieve or release Developer from any liability, duty, or obligation assumed by, or imposed upon it by the provisions of this Agreement. Notwithstanding the foregoing, only in the event that a casualty or

Palmetto Metrorail Station Development Agreement

fire destroys all or a portion of the Convertible Property for a one or more Phases in a manner that frustrates the purposes of this Agreement or precludes Developer from developing the Convertible Property pursuant to the Master Plan as to the applicable Phase(s), then Developer shall be permitted to terminate this Agreement as to the applicable Phase(s); provided, however, that any damage that could have been reasonably ascertained by Developer during the Due Diligence Period may not be the basis of a termination pursuant to this paragraph after the expiration of the Due Diligence Period.

Section 7.6. **Waiver of Subrogation**

Where permitted by law, each party (including those claiming through Developer) hereby waives all rights of recovery by subrogation or otherwise (including, without limitation, claims related to deductible or self-insured retention classes, inadequacy of limits of any insurance policy, insolvency of any insurer, limitation or delusion of coverage against the other party and its respective officers, agents or employees). Such waiver of subrogation shall be expressly stated in each policy of insurance as required herein.

Section 7.7. **No County Obligation to Provide Insurance**

Developer acknowledges and agrees that County shall have no obligation to provide any insurance of any type upon the Development Site.

Section 7.8. **Right to Examine**

The County reserves the right, upon reasonable notice, to examine the original or true copies of policies of insurance (including binders, amendments, exclusions, riders and application, or applicable portion of any master insurance policy) to determine the true extent of coverage. The Developer agrees to permit such inspection and make available such policies or portions thereof at the office of the County.

Palmetto Metrorail Station Development Agreement

Section 7.9. **Personal Property**

Any personal property of Developer or others placed by or on behalf of Developer in the Development Site shall be at the sole risk of the Developer or the owners thereof, and the County shall not be liable for any loss or damage thereto for any cause.

Section 7.10. **Indemnification**

Developer shall indemnify and hold harmless the County and its officers, employees, agents and instrumentalities from any and all liability, costs, penalties, fines, expenses, losses, business damages or any other damage(s), including but not limited to (i) any injury to or death of any persons, (ii) damage to, destruction of, or loss of any property, vehicles, Improvements, rights, privileges, or business including attorneys' fees and costs of defense through litigation and appeals, which the County or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance or non-performance of this Agreement or any subsequent Lease which (i) is or is alleged to be directly or indirectly caused, in whole or in part, by any act, omission, default, or negligence (whether active or passive) by the Developer or its employees, agents, servants, partners, principals, Sublessees, assigns invitees, contractors or subcontractors or (ii) the failure of Developer or its employees, agents, servants, partners, principals, subtenant, assigns, invitees, contractors or subcontractors to comply with any applicable statutes, ordinances, or other regulations or requirements of any governmental authority in connection with the performance of this Agreement or (iii) the failure of Developer or its employees, agents, servants, partners, principals, subtenant, invitees or subcontractors to comply with any other, obligation, covenant, restriction, contract, right, title, obligation, Sublease, assignment or duty in law or in equity in connection with the performance of this Agreement.

Palmetto Metrorail Station Development Agreement

Notwithstanding the foregoing, Developer shall have no indemnification obligation to the extent a loss is caused by the gross negligence, bad faith, or willful misconduct of an indemnitee, or by the failure of an indemnitee to perform its contractual obligations. Developer shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the County, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. Developer expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by Developer shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County or its officers, employees, agents and instrumentalities as herein provided.

Section 7.11. **Hold Harmless**

A. It is expressly understood by the Parties and Developer acknowledges that particles and sediments and elevated noise levels resulting from transit operations may adversely affect the Development Site. Developer agrees that it will take reasonable measures to minimize any damages that may occur as a result of such particles, sediments and elevated noise levels. Developer shall hold harmless the County for any costs, losses, injuries or damages resulting from particles, sediments and/or elevated noise levels caused by transit operations.

B. Developer shall hold harmless County and waive and relinquish any legal rights and monetary claims which it might have for full compensation, or damages of any sort including but not limited to those related to (i) business damages, special damages, severance damages, loss of profits; (ii) removal costs, zoning requirements, Plans and Specifications, design costs, contractor costs, permitting costs, cost of compliance with laws and ordinance, any other direct or indirect costs; (iii) Developer's loss of rights to develop the Development Site; (iv)

Palmetto Metrorail Station Development Agreement

Developer's loss of the future right to use or occupy of the Development Site; and/or (v) any such rights, claims or damages flowing from adjacent properties, owned, leased or under a development agreement by Developer as a result of (i) the early termination or expiration of this Development Agreement and/or (ii) the inability of the Developer to obtain the approvals, Permits, and rights necessary and/or (iii) the inability of Developer to develop or construct the Project as intended.

ARTICLE 8

OPERATION

Section 8.1. **Control of Development Site**

Parties hereby agree that, subject to any express limitations imposed by the terms of this Agreement, County shall be free to perform and exercise its rights as fee simple owner of Convertible Property not otherwise encumbered by a Lease and shall have exclusive control and authority to direct, operate, lease and manage the Development Site until the Development Site or any portion thereof and/or Phase is encumbered by a Lease.

Section 8.2. **Non-Subordination and Non Interference**

The Parties agree that any rights, title, access, and privileges granted under this Agreement are subordinate and inferior to all of County's rights, title, access, and privileges. As to the rights granted herein and any Lease for the use of the Development Site executed pursuant hereto, Developer shall not interfere, obstruct, or restrict County or the public of its facilities. County shall at all times have access to the County facilities and shall have the right to use and enjoy Convertible Property without interruption, subject to Developer's rights under this Agreement. Developer hereby agrees not to interfere with the free flow of pedestrian or vehicular traffic to and from County facilities. Developer further agrees that, no fence, or any other structure of any kind (except structures which are reasonably necessary for security and safety, as may be specifically

Palmetto Metrorail Station Development Agreement

permitted or maintained under the provisions of this Agreement, and are mutually agreed upon in writing) shall be placed, kept, permitted or maintained on Convertible Property.

ARTICLE 9

REPAIRS AND MAINTENANCE

Section 9.1. **Developer Repairs**

Developer shall be responsible for the remediation and repair of any damage or impacts to County facilities, or private systems, or the Palmetto Station Property or operations thereof resulting from activities undertaken or authorized by the Developer pursuant to this Agreement.

Section 9.2. **County Repairs and Maintenance**

County shall keep and maintain in good condition and repair the Convertible Property and the Palmetto Station Property and shall maintain said premises in a clean and orderly condition, reasonably free of dirt, rubbish, graffiti and unlawful obstructions, ordinary wear and tear, and loss by fire or other casualty excepted. The term “repairs” shall include all replacements, alterations, additions and betterments deemed necessary by County. All repairs made by County shall be substantially similar in quality and class to the original work. County will not be required to furnish any services, utilities or facilities whatsoever to the Development Site or improvements thereon.

ARTICLE 10

COMPLIANCE WITH LAWS AND ORDINANCES

Section 10.1. **Compliance by Developer**

Throughout the term of this Agreement, Developer, at Developer’s sole cost and expense, shall promptly comply with all applicable Laws and Ordinances. To the extent that Developer’s compliance shall require the cooperation and participation of County, County agrees to use its best

Palmetto Metrorail Station Development Agreement

efforts to cooperate and participate and so long as there is no cost, liability or other exposure to County.

Section 10.2. Contest by Developer

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

ARTICLE 11

DISCHARGE OF OBLIGATIONS

Section 11.1. Developer's Duty

A. During the term of this Agreement, Developer shall promptly pay all persons furnishing labor or materials with respect to any work by Developer or any Developer's contractors on or about the Development Site and discharge and/or bond off any and all obligations incurred by Developer which give rise to any liens on Convertible Property, to the satisfaction of County, it being understood and agreed that Developer shall have the right to withhold any payment so long as it is in good faith disputing liability therefor or the amount thereof, provided

Palmetto Metrorail Station Development Agreement

(i) such contest of liability or amount operates as a stay of all sale, entry, foreclosure, or other collection proceedings against Convertible Property in regard to such obligations, or disputed payments are escrowed while the parties negotiate the dispute, (ii) such action does not subject County to any expense or liability and (iii) Developer transfers any such lien to a bond in accordance with applicable Florida law. In the event Developer withholds any payment as described herein, it shall give written notice to County of such action and the basis therefor.

B. Developer acknowledges and agrees that the Agreement is solely between Developer and County, and therefore the limitation of indemnity provisions in Section 725.06, Florida Statutes, as such statute may be amended from time to time, do not apply to this Agreement. Accordingly, to the fullest extent permitted by law, the Developer shall defend, indemnify, and hold harmless the County from any and all liability, losses or damages, including reasonable attorney's fees and costs of defense, which the County may incur as a result of claims, demands, suits, causes of action or proceedings of any kind or nature first arising from a lien, charge, or encumbrance due to Developer's actions or actions on behalf of Developer or which could result in same against County.

C. Notwithstanding the above, if Developer fails to cause any such lien, charge or encumbrance forthwith to be so discharged or bonded within thirty (30) days following the Developer's Receipt of any notice of the filing thereof, then in addition to any other right or remedy of County's, County may bond or discharge the same by paying the amount claimed to be due, and the amount claimed to be due and the amount so paid by County, including attorney's fees incurred by County, together with interest thereon and an administrative charge of 15% of such costs shall be due and payable to County as Additional Fee.

Palmetto Metrorail Station Development Agreement

Section 11.2. **County's Duty**

During the term of this Agreement, County will discharge any and all obligations incurred by County as a result of the County's action or inaction (and within the County's control) and which give rise to any liens on County property or the Development Site, it being understood and agreed that County 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 Developer to any expense or liability; provided, however, that any liens on any Phase of the Development Site shall be resolved by the County prior to the Closing date for that Phase of the Lease, or upon a later date as agreed by the Parties.

ARTICLE 12

USE OF DEVELOPMENT SITE

Section 12.1. **Use of Development Site by Developer**

A. Developer shall only use Convertible Property for the uses stated in Section 1.9(A)(i) above subject to the terms and conditions of this Agreement. The Development Site shall not knowingly be used by Developer or any other third party acting on behalf of Developer for the following:

- 1) 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);
- 2) Any purpose which violates the approvals of applicable government authorities;
- 3) Any use which causes or has the reasonable potential to cause waste;

Palmetto Metrorail Station Development Agreement

4) As to violate any insurance policy then issued in respect to the Development Site;

5) In any manner that violates the provisions of this Agreement; or

6) In a manner that violates any use, covenant, reservation or restriction appearing on the Plat or otherwise common to the subdivision and all easements, restrictions, reservations, covenants, limitations, and conditions of record.

B. No covenant, agreement, conveyance or other instrument shall be effected or executed by Developer, or any of its successors or assigns, whereby the Development Site or any portion thereof is restricted by Developer, or any successor in interest, upon the basis of race, color, religion, sexual orientation, sex or national origin. Developer shall comply with all applicable federal, 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.

Section 12.2. Dangerous Liquids and Materials

Developer shall not knowingly permit any persons or entities acting on behalf of the Developer to carry flammable or combustible liquids into or onto the Development Site, and shall prohibit the storage or manufacture by Developer, or any entity acting on behalf of Developer, of any flammable or combustible liquid or dangerous or explosive materials in or on the Development Site; provided that this restriction does not apply to prevent the following:

1) the entry and parking of motor vehicles carrying flammable or combustible liquids solely for the purpose of their own propulsion; or

2) the use of normal cleaning and maintenance liquids and substances.

Palmetto Metrorail Station Development Agreement

Section 12.3. **Suitability of Development Site**

The Developer acknowledges that although in an effort of full disclosure and good-faith, County provided certain environmental reports in its possession to Developer, the County does not make any representation or warranty, whatsoever regarding the condition of the site or its suitability for the uses contemplated by this Agreement and the development of the Development Site. Developer acknowledges that Developer has not relied upon and was not materially induced to enter into this Agreement by such reports and was fully responsible for making its own determination regarding the suitability of the property for the uses contemplated in this Agreement and for the development of the Development Site. Developer shall accept the Development Site in its “as-is” condition. Developer shall prepare required environmental reviews pursuant to the requirements of Miami- Dade Department of Environmental Resource Management (DERM) or any other applicable regulatory agency as they pertain to the Development Site. Developer shall be solely and fully responsible for providing any and all information and paying the cost of any and all studies and analysis required for the completion of these assessments.

Section 12.4. **County’s Disclaimer of Liability**

A. Subject to the rights provided by Sections 1.11, 3.7, and 4.10 of this Agreement, the property is being offered for development on an “as is” basis. The Developer is solely responsible for completing a comprehensive due diligence process regarding development of the Development Site. The County reserves the right to decline to accept changes in the Development Agreement or make allowances for factors which should have been discovered through a reasonable due diligence process.

B. The County disclaims all responsibility and liability for the completeness or accuracy of any information that it provides. Any error or omission will not constitute grounds

Palmetto Metrorail Station Development Agreement

for a claim for allowance, refund or deduction. In the event the site conditions are so unusual that they could not have been reasonably anticipated, then the provisions of Section 4.10 shall apply.

Section 12.5. **Compliance with Environmental Law**

A. Developer at Developer's expense shall comply and shall cause its employees, contractors and agents to comply in all material respects at all times, with all applicable Environmental Laws. Such compliance includes Developer's obligations, at its expense, to take remedial action when required by applicable law or this Agreement and to pay all fines, penalties, interest, and other obligations imposed by any governmental authority as a result of actions by the Developer, its employees, agents, and/or contractors on Convertible Property which violate Environmental Laws.

B. Developer shall promptly notify County if (i) Developer becomes aware of the presence or release of any hazardous substance at, on, under, within, emanating from or migrating to the Development Site which could reasonably be expected to violate in any material respect any Environmental Law or give rise to material liability or obligation to take remedial action or other material obligations under any Environmental Law, or (ii) Developer receives any written notice, claim, demand, request for information or other communication from a governmental authority, or a third party regarding the presence or release of any hazardous substance related to the Development Site.

C. If, as a result of actions taken or authorized by the Developer, its employees, agents and/or contractors, remediation of the Convertible Property becomes necessary, the Developer shall take and complete all such remediation in full compliance with all Environmental Laws and shall, when such remedial action is completed, submit to County written confirmation from the applicable governmental authority that no further remedial action is required to be taken.

Palmetto Metrorail Station Development Agreement

In connection with any material remedial action, (i) Developer shall promptly submit to County its plan of remedial action and all material modifications thereof, (ii) Developer shall use an environmental consultant reasonably acceptable to County, and (iii) Developer shall apprise County on a quarterly basis, or more frequently if requested by County, of the status of such remediation plan.

Section 12.6. **Environmental Indemnification**

A. Developer covenants and agrees, at its sole cost and expense, to defend, indemnify and hold harmless the County, its successors, and assigns from and against any and all environmental related claims brought against the County by any governmental authority or any third party as a result of actions taken or authorized by Developer, its employees, agents, and contractors in violation of any Environmental Law, and shall reimburse County, its successor and assigns, for any costs and expenses incurred by County as a result of such claims or actions; provided that in no event shall Developer be required to indemnify an indemnitee hereunder in connection with any hazardous substances released by the indemnitee or that existed on the Development Site prior to the Commencement Date.

B. Developer covenants and agrees, at its sole cost and expense to defend, indemnify and hold harmless County against all costs of removal, response, investigation or remediation of any kind and disposal of any hazardous substances as necessary to comply with any Environmental Law, all costs associated with claims for damages to persons, property, or natural resources, and the County's attorney's fees, consultant fees, costs and expense incurred in connection therewith resulting from actions taken or authorized by Developer, its employees, agents, and contractors.

Palmetto Metrorail Station Development Agreement

Section 12.7. **Waste**

Developer shall not knowingly permit, commit or suffer waste or material impairment of the Improvements or the Development Site, or any part thereof provided; provided, however, that Developer shall be permitted to conduct all diligence, site investigation, and other pre-development activities authorized by this Agreement, subject to Developer's obligations under this Agreement to restore and any damage caused by such activities.

Section 12.8. **No Subordination of County's Fee Interest**

A. Notwithstanding any provision in this Lease or any other agreement entered into by Miami-Dade County, in its capacity as Landlord or otherwise, no Leasehold Mortgagee or Lender may impose any lien or encumbrance upon the Landlord's fee simple interest in the Land, and, there shall be no subordination of County's fee simple interest in the Development Site and no Lender or any party may impose any lien or encumbrance on the County fee simple interest in the Development Site, and the County's fee simple interest shall be superior and prior to any loans, mortgages, liens or any type of encumbrance.

B. Nothing contained in this Agreement, or any action or inaction by County, shall be deemed or construed to mean that County has granted to Developer any right, power or permission to do any act or to make any agreement which may create, give rise to or be the foundation for any right, title, interest, lien, charge or any encumbrance upon the fee estate of the County in the Development Site or in any reversionary interest.

ARTICLE 13

INSPECTION BY COUNTY

Section 13.1. **Inspection by County**

County reserves the right for its employees or authorized representatives to inspect any work of Developer or its authorized agents at any time as permitted by this Agreement to insure

Palmetto Metrorail Station Development Agreement

itself of compliance with the provisions of this Agreement and to ensure that County operations and County facilities and/or access to County facilities are not impacted.

Section 13.2. **Inspection of Accounting Records**

The Developer shall permit the County or any of its duly authorized representatives, at reasonable times and places and with reasonable prior written notice to Developer, access to any books, documents, papers and records, including certified financial statements and tax returns that are directly pertinent to this Development Agreement and/or Lease(s) executed pursuant to this Agreement, including but not limited to, such books, documents, papers and records relating to the financial strength or condition of the Developer, any payment obligations under the resulting Development Agreement, Lease(s) and/or proposed or actual financing of the Project or any portion of the Project. The County shall be permitted to audit, inspect, examine and copy such books, documents, papers and records at County's own cost. The Developer shall retain all such records for a minimum of three (3) years after the required submission, audit or inspection date.

ARTICLE 14

LIMITATION OF LIABILITY

Section 14.1. **Limitation of Liability of County**

A. County shall not be liable to Developer for any special damages, punitive damages, incidental or consequential loss or damage whatsoever arising from the rights of County hereunder.

B. Developer acknowledges that its use of the Development Site is at its own risk. County shall not be liable to Developer, or those claiming through Developer, for any loss or damage which may result from the acts or omissions of any person's use or occupancy of space in any part of the Improvements or Development Site or their agents, employees, contractors, subtenant, assigns, or invitees.

Palmetto Metrorail Station Development Agreement

Section 14.2. **Limitation of Liability of Developer**

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

ARTICLE 15

TRANSFERS

Section 15.1. **Right to Transfer**

A. This Agreement is granted to Developer solely to develop the Development Site according to the terms hereof and not for speculation in landholding. Developer recognizes that, in view of the importance of developing the Project to contribute to the general welfare of the community, the Developer's qualifications and identity are of a particular concern to the community and the County. Accordingly, Developer acknowledges that it is because of such qualifications and identity that the County is entering into the Agreement with Developer and in so doing, the County is further willing to accept and rely on Developer's obligations for faithfully performing all its undertakings and covenants, with the understanding that all Developer obligations pursuant to this Agreement shall be fulfilled by the Development Partner or its Affiliate, and that the Tenant pursuant to any Lease entered into pursuant to this Agreement shall be entitled to sublease the Development Site or any Phase thereof, in its entirety, to the Development Partner or its Affiliate, and any such sublease shall expressly provide that the Development Partner or its Affiliate shall be jointly and severally liable for Tenant's duties, obligations and responsibilities under the Lease, at least as to the portion of the demised premises to be sublet, except as expressly provided by Section 4.18 of this Agreement.

B. Notwithstanding Section 15.1(A) above, subject to Section 3.8, Developer shall have the right and privilege to Transfer all or any portion of its rights under this Agreement or its rights to any Phase of the Project, to such other persons, firms, corporations, general or

Palmetto Metrorail Station Development Agreement

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 Developer shall select; subject, however, to the following:

(i) No Developer Default shall have occurred under this Agreement (and such Developer Default remains uncured after the expiration of any applicable cure periods) at the time of such Transfer without specific written consent from County.

(ii) Unless it is a transfer to an Affiliate or otherwise a permitted transfer as set forth in this Agreement, Developer shall obtain written consent of the County, which shall not be unreasonably withheld, both as to the proposed transfer and the proposed transferee.

C. If Developer requests from County a release from liability as part of the assignment, then such Transfer shall be subject to County's prior approval as provided herein, shall be submitted in writing and shall be accompanied by (1) an accounting of any all outstanding and satisfied obligations of Developer; (2) copies of the proposed assignment or transfer documents; (3) the latest audited financial statement of the proposed transferee; (4) a summary of the proposed transferee's and their prior experience in managing and operating real estate developments as well as current real estate holding; (5) list of any proposed transferee's past, present, or future bankruptcies, reorganizations, or insolvency proceedings; (6) together with records of any convictions, indictments, allegations, investigations or any other proceedings for felonies under the law of any foreign or United States jurisdiction. The transfer documents shall specify the allocation, as applicable, of the Development Fee, Delayed Closing Fees, Initial Rent, Annual Rent and any other payments under this Agreement and any applicable Lease to be paid to County by the transferee. County shall not unreasonably withhold or delay such consent to release from liability hereunder where the proposed transferee (i) in the case of a not-for-profit transferee,

Palmetto Metrorail Station Development Agreement

is a duly organized not-for-profit corporation dedicated to a similar community purpose and with an equal or better reputation in the community, as the transferor, or (ii) in the case of a for-profit transferee, has been demonstrated to have financial strength at least equal to the original Developer (or is otherwise financially acceptable to County), a sound business reputation and demonstrated managerial and operational capacity for real estate development and the transfer complies with all applicable Laws and Ordinances.

D. County reserves the right to withhold approval of the Transfer and to condition the release of the Developer from its liability under the Agreement until: (i) the transferee has provided performance bonds if Construction Commencement has occurred and insurance as required under Section 1.5 and Article 7 of this Agreement; (ii) all monetary payments then due and payable under this Agreement have been paid, including but not limited to any outstanding Fees and Rent; (iii) all non-monetary obligations then due under the Agreement or resulting from the use of the Convertible Property and required under the Agreement have been satisfied; (iv) the County receiving any outstanding payment of all expenses, including reasonable attorney's fees and disbursements and court costs incurred in connection with Agreement, that are payable to County pursuant to the Agreement; (v) completion of Closing Conditions for the applicable Phase; (vi) that Developer, Development Partner and any transferee shall all be jointly and severally liable for any outstanding Fees and Rents, obligations and liabilities of the original Developer hereunder not paid or performed prior to such Transfer until such obligations are satisfied; (vii) all monetary Developer Defaults hereunder have been cured; (viii) all non-monetary Developer Defaults susceptible of being cured by the transferee have been remedied and cured; (ix) if a Developer Default has occurred and is continuing, the County has received payment of all expenses, including reasonable attorney's fees and disbursements and court costs incurred in connection with the

Palmetto Metrorail Station Development Agreement

enforcement of this Agreement; and/or (x) if a Developer Default is ongoing, that Developer and any transferee shall be jointly and severally liable for any monetary or non-monetary Developer Default not yet satisfied or cured and the payment of reasonable attorney's fees and disbursements and court costs, incurred by the County in connection with such Developer Default and/or (xi) until all past-due obligations under this Agreement are satisfied and cured to the satisfaction of County and/or (xii) until satisfaction of any or all Closing Conditions has occurred. Any Transfer of all or any part of Developer's interest in the Agreement and the Development Site shall be made expressly subject to the terms, covenants and conditions of this Agreement, and such transferee shall expressly assume all of the obligations of Developer under this Agreement applicable to that portion of the Development Site or Phase of the Project being Transferred, and agree to be subject to all conditions and restrictions to which Developer is subject. However, nothing in this subsection or elsewhere in this Agreement shall abrogate (i) County's right to payment of all Rent, Fees, and other amounts due County which accrued prior to the effective date of such transfer; and (ii) the obligation for the transferee's use and operation of every part of the Development Site to be in compliance with each and every requirement of this Agreement.

E. There shall be delivered to County a notice which designates the name and address of the transferee and the post office address of the place to which all notices required by this Agreement shall be sent.

F. Once a sale, assignment or transfer has been made with respect to any portion of the Development Site or Phase of the Project, the transferee and County may thereafter modify, amend or change the Agreement with respect to such portion of the Development Site or Phase, so long as Developer has been released from all rights and obligations under the Agreement pertaining to the assigned portion of the Development Site or Phase, all subject to the provisions

Palmetto Metrorail Station Development Agreement

of the assignment so long as they do not diminish or abrogate the rights of Developer (or anyone claiming through Developer) as to any other part of the Development Site or Phase of the Project, and no such modification, amendment or change shall affect any other part of the Development Site or any other Phase of the Project.

G. Except as may otherwise be specifically provided in this Article 15, only upon County's written consent to a Transfer shall such transferor be released and discharged from all of its duties and obligations hereunder which pertain to the portion of the Development Site or Phase transferred for the then unexpired term of the Agreement.

H. If Developer is a corporation, limited liability company, unincorporated association, general or limited partnership, consortium or joint venture, the Transfer of any: (i) stock of Developer in the case Developer is a corporation, (ii) partnership interest in Developer, in the case Developer is a general or limited partnership, (iii) members interest in Developer, in the case Developer is a limited liability company, or (iv) interest in Developer, in the case the Developer is another type of entity, in each instance described herein, in which 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, shall be deemed a Transfer within the meaning and provisions of this Section. "In the aggregate", means the sum of all stock or other interests transferred over the entire period of this Agreement.

I. No confirmation by County of a proposed transferee as holding the proper qualification or its meeting the approval of County shall have the effect of waiving or estopping the County from later claims that said transferee is no longer in compliance with the terms and conditions of this Agreement or is in fact properly qualified as a transferee.

Palmetto Metrorail Station Development Agreement

J. Upon demand, Developer shall pay any charges established by County in accordance with County's established, generally applicable fee schedule in effect at the time a transfer is requested for County's review and approval, if applicable, of the same; and if no such fee schedule has been established, Developer shall reimburse County for staff time and expenses actually incurred with respect to County's review and approval, if applicable, in accordance with the rate established by County for similar services or, if no such rate has been established, then the hourly rate calculated by dividing the annual salary of the County employee performing the service by 2,000.

Section 15.2. Transfer in Violation of Provisions Null and Void

No transfer may or shall be made, suffered or created by Developer, its successors, assigns, or transferees without complying with the terms of Article 15. Any transfer that violates this Agreement shall be null and void and of no force and effect.

Section 15.3. Transfer of Interest by County

If Miami-Dade County or any successor to its interest hereunder ceases to have any interest in the Development Site or if there is any sale or transfer of County's interest in the Development Site, the seller or transferor shall be entirely freed and relieved of all agreements, covenants and obligations of County hereunder to be performed after the date of such sale or transfer provided that the purchaser, successor or transferee of County's interest in the Development Site assumes in writing all such agreements, covenants and obligations of County. Notwithstanding the foregoing and without limiting the previous sentence, Miami-Dade County shall remain liable for the representations and warranties of Section 21.1.

For purposes of this Article, the words "sale," "assignment," or "transfer" shall be deemed to have similar meanings unless the context indicates otherwise.

ARTICLE 16

EMINENT DOMAIN

Section 16.1. **Taking under Eminent Domain**

Developer and County agree that this Development Agreement does not grant Developer any property right in Convertible Property. If at any time during the term of this Agreement the power of eminent domain are exercised by any competent authority or their proper delegates, by condemnation proceeding (a “Taking”), to permanently acquire Convertible Property the Taking shall be deemed to have caused this Agreement to terminate and expire on the date of the notice of such Taking as to such Convertible Property. Termination of this Agreement as a result of a Taking shall not entitle Developer to compensation for any interest suffered or lost as a result of termination of this Agreement, including any residual interest in the Agreement, or any other factors or circumstances arising out of or in connection with this Agreement. Developer also hereby waives and relinquishes any legal rights and monetary claims which it might have for any compensation or damage of any sort as set out above, as a result of Developer’s loss of development rights of the Convertible Property. This waiver applies whether this Agreement is still in existence on the date of taking or sale or has been terminated prior thereto. In such event the County shall promptly return the entire Security Deposit to the Developer and refund all Development Fees that have been paid to the County by Developer under this Agreement.

Section 16.2. **Partial Taking; Termination of Agreement**

If, in the event of a Taking of less than the entire Development Site, the remaining portion of the Development Site not so taken cannot be adequately developed to substantially the same usefulness, design, construction, and commercial feasibility, as contemplated before such Taking, then Developer shall have the right, to be exercised by written notice to County within one hundred twenty (120) days after the date of Taking, to terminate this Agreement as to the Project on a date

Palmetto Metrorail Station Development Agreement

to be specified in said notice, which date shall not be earlier than the date of such Taking, in which case Developer shall pay and satisfy all fees and other payments due from Developer to any third party up to the date of such termination and shall perform all of the obligations of Developer hereunder to such date, and thereupon this Agreement or portion thereof shall cease and terminate and Developer shall not be entitled to compensation for any interest suffered or lost as a result of such termination of this Agreement, including any residual interest in the Agreement or any factor or circumstances arising out of or in connection with this Agreement. In such event the County shall promptly return the entire Security Deposit to the Developer and refund all Development Fees that have been paid to the County by Developer under this Agreement.

In the event the partial parcel taken or remaining portion of the Development Site not taken is Leased Property, then the executed Lease shall govern the respective rights of Developer and County.

Section 16.3. Partial Taking; Continuation of Agreement

If following a partial Taking this Agreement is not terminated as hereinabove provided, then this Agreement shall terminate as to the portion of the Development Site taken in such condemnation proceedings; and, as to that portion of the Development Site not taken, Developer shall proceed at its own cost and expense to amend the Master Plan and, with County's written approval, develop the site in conformity thereto. In such event the applicable provisions of Articles 1 and 4 shall be applicable to the amended Master Plan.

In the event Developer does not terminate this Agreement, as set forth above, Developer as to Convertible Property, shall become entitled to an adjustment in the Development Fee on an equitable basis taking into consideration the amount and character of the space or other aspect of the Project described in Schedule 1.1, the use of which will be denied to the Developer. If the

Palmetto Metrorail Station Development Agreement

partial parcel taken of the Development Site, or Project Phase taken is Convertible Property then Developer shall not be entitled to compensation for any interest suffered or lost as a result of partial taking,

However, in such event the County shall calculate the amount of the Security Deposit and Development Fee which has been paid to the County applicable to the portion of the Development Site so taken and shall promptly return the applicable portion of the Security Deposit to the Developer and refund the applicable portion of the Development Fees that have been paid to the County by the Developer under this Agreement. The above-described calculations shall be based solely upon the percentage of the entire Development Site represented by the square footage taken. For example, if the entire Development Site prior to any taking contained 100,000 square feet of property and 25,000 square feet of property was taken, then 25% of the Security Deposit would be returned to the Developer.

In the event of a partial parcel taking of the Development Site, or of the Project Phase, which are Leased Property, then the executed Lease shall govern the respective rights of Developer and County as to such Leased Property partially taken.

Section 16.4. **Temporary Taking**

If the whole or any part of the Convertible Property under this Agreement be taken or condemned by any competent authority for its or their temporary use or occupancy, this Agreement shall not terminate by reason thereof, and Development Fees shall be abated but only for the duration of the period of the temporary Taking and such period of time shall be deemed to be an Unavoidable Delay. Developer shall continue to perform and observe all of the other terms, covenants, conditions and all obligations hereof upon the part of Developer to be performed and observed, as though such Taking had not occurred.

Palmetto Metrorail Station Development Agreement

In the event a temporary taking of Leased Property, the executed Lease shall govern the respective rights of Developer and County.

ARTICLE 17

DEFAULT BY DEVELOPER OR COUNTY

Section 17.1. **Events of Default of Developer**

Events of default of Developer shall be the following (“Developer Default”), each subject to the notice and cure period stated therein or in the last paragraph of this Section 17.1:

- A. On the Scheduled Closing Date(s) as such dates may be extended in accordance with the provisions of this Agreement any Closing Conditions remain unsatisfied;
- B. On the Scheduled Closing Date(s) as such dates may be extended by the provisions of this Agreement, all Closing Conditions are satisfied and Developer refuses or willfully fails to close on such date(s);
- C. Subject to extension of these dates as a result of Unavoidable Delays or by the payment of a Delayed Closing Fee, Developer fails to comply with a Milestone in the Project Schedule on or prior to the Closing Date as set forth in Schedule 1.4B.
- D. Developer fails to join in any plat, easement, or other instrument required by Section 4.2(A)(1) of this Agreement, upon request by the County after the County’s approval of such instrument;
- E. Developer fails to pay any Development Fee, any other Fees, Rents or any other sum due and payable to County under this Agreement in accordance with the provisions of this Agreement;
- F. All or any portion of Developer’s interest in this Development Agreement, or any interest in the Development Site, is sold under attachment, execution, or similar process;

Palmetto Metrorail Station Development Agreement

G. Developer is adjudicated as bankrupt or insolvent under any bankruptcy or insolvency law or an order for relief is entered against Developer under the Federal Bankruptcy Code and such adjudication or order is not vacated within ninety (90) days;

H. The commencement of a case under the Federal Bankruptcy Code by or against Developer or any guarantor of Developer's obligations hereunder, or the filing of a voluntary or involuntary petition proposing the adjudication of Developer or any such guarantor with its creditors unless the petition is filed or case commenced by a party other than Developer or any such guarantor and is withdrawn or dismissed within ninety (90) days after the date of its filing;

I. The written admission of Developer of its general inability to pay Development Fees or its other debts and obligations when due;

J. The appointment of a receiver or trustee of an assignment for the benefit of Developer's creditors, or if in any other manner Developer's interest in this Agreement passes to another person or entity by operation of law;

K. Developer becomes a Restricted Entity;

L. Notwithstanding anything in this Agreement to the contrary, Developer fails to maintain or provide the bonding and/or insurance requirements in all material respects;

M. Developer conducts any business, the performance of any service, or the sale or marketing of any product or service on the Development Site which is prohibited by the provisions of this Agreement or law;

N. This Development Agreement is Transferred in violation with any provisions of this Agreement or otherwise without the consent of County or Developer attempts

Palmetto Metrorail Station Development Agreement

to consummate any Transfer without complying with the applicable the provisions governing same in this Agreement;

O. Developer fails to remove a mechanic's lien or other encumbrance placed on the Development Site when and to the extent required by Section 1.10(H) of this Agreement; or

P. Developer fails to keep, observe, or perform any other provision contained in this Development Agreement.

Unless a different cure period is specified above, Developer shall have thirty (30) days to cure any such Developer Default after written notice thereof from County to Developer setting forth with reasonable specificity the nature of the alleged breach; or in the case of such Developer Default which cannot with due diligence and in good faith be cured within thirty (30) days, Developer fails within said thirty (30) day period to proceed promptly and with due diligence and in good faith to pursue curing said Developer Default to completion within such reasonable period of time as approved by County.

Section 17.2. **Failure to Cure Default by Developer**

A. If prior to any Closing(s), a Developer Default occurs and Developer has failed to cure such Developer Default within such time period set forth in Section 17.1 above, County shall give written notice to Developer, stating that this Development Agreement shall expire and terminate on the date specified in such notice, which shall be at least thirty (30) days after the giving of such notice, during which time Developer shall have the right to cure such default.

B. If Developer fails to cure such Developer Default, within this additional time period, County shall have the following rights and remedies which are cumulative:

Palmetto Metrorail Station Development Agreement

- 1) County shall be entitled to retain the Security Deposit; and
- 2) To restrain, by injunction, the commission of or attempt or threatened commission of a Developer Default and to obtain a decree specifically compelling performance of any such term or provision of the Agreement.

C. Nothing contained in this Agreement shall limit or prejudice the right of County to obtain, in proceedings for the termination of the Agreement, including by reason of bankruptcy or insolvency, an amount equal to the maximum allowed by any statute or rule of law; and

D. The above-described rights shall be reserved to County regardless of the manner in which the Developer, Lender, or any such successor, as applicable, has acquired an interest in the Development Agreement.

E. If a Developer Default occurs, Developer shall nevertheless be obligated to continue to pay all Development Fees, Delayed Closing Fee, and all Fees, Rent and sums due hereunder and otherwise comply with all conditions and obligations under this Agreement.

Section 17.3. **Surrender of Development Site Upon Default**

A. Upon any early termination of this Development Agreement as a result of a Developer Default under this Development Agreement, Developer shall surrender the Development Site as follows:

- 1) If Phased Development is not contemplated under the Master Plan then Developer shall surrender the Development Site and the Development Agreement and its right to develop the Project upon the Development Site shall cease and terminate.

- 2) If Phased Development is contemplated and the Developer Default is applicable to one or more Phase(s) of Convertible Property under this Development

Palmetto Metrorail Station Development Agreement

Agreement but not to all Phases, then Developer shall surrender the Development Site (except for any Phases already subject to a Lease) at County's option, in its sole and absolute discretion, as follows:

a) The right to develop such Phase or Phases of the Project under the Development Agreement to which the Developer Default applies shall cease and terminate without recourse on the part of the Developer. However, upon the express written consent by the County, the Developer may retain the right to develop the Phase(s) of Convertible Property of the Project to which no Developer Default applies, and which Phases are specified in the County's written consent, subject to the terms and conditions of this Development Agreement and in conformity with the Master Plan; or

b) The Development Agreement and the right to develop all Phases of Convertible Property of the Project shall cease and terminate. If a Lease for such Phase of the Project has commenced, then such Lease shall not terminate and such Phase of the Project shall be constructed in conformity with the Master Plan, as may be redesigned or amended if the balance of the Development Site or any other Phase is not available for development, in conjunction with this Development Agreement, unless such Developer Default also constitutes a default under such Lease in which case the default provision of the Lease shall be operative.

3) If Phased Development is contemplated and the Developer Default is applicable to the entire Development Site, then Developer shall surrender the Development Site and the Development Agreement and the right to develop the Project under the Master Plan upon Convertible Property shall cease and terminate. If a Lease(s) for any Phase(s) of the Project has commenced then the default provision of the Lease shall be operative.

Palmetto Metrorail Station Development Agreement

B. Upon any early termination of a Lease (after a Closing has occurred) as a result of a Developer Default which also constitutes a default under the applicable Lease (except to the extent that (i) the Tenant is not the Developer or an Affiliate and (ii) the Developer and all Affiliates have been released from liability under the Lease pursuant to the terms thereof), Developer shall surrender the Convertible Property at County's option in its sole and absolute discretion as follows:

1) The right to develop such Phase or Phases of Leased Property under the Development Agreement to which the Developer Default applies shall cease and terminate without recourse on the part of the Developer. However, Developer shall retain the right to develop the Phase(s) of the Project in which no Developer Default has occurred subject to the terms and conditions of this Development Agreement, in conformity with the Master Plan; or

2) The Development Agreement and the right to develop all Phases of the Project in which Closing has not occurred and a Lease has not commenced (or a Lease has terminated) shall cease and terminate. For the sake of clarity if a Lease for any Phase of the Project has been executed, then such Lease shall not terminate as a result of a Developer Default under this Agreement or a default under a Lease for any other Phase of the Project. Each Lease shall stand alone and shall not be cross-defaulted with this Agreement or with any other Lease executed pursuant to this Agreement. Such Phase of the Project shall be constructed in conformity with the Master Plan in conjunction with this Development Agreement, unless such event is also a default under such Lease in which case the default provision of the Lease shall be operative.

In any such event, as to the surrender of any Convertible Property, Developer's license for the right of entry upon the Development Site, shall cease and terminate, and County shall remain

Palmetto Metrorail Station Development Agreement

in possession and control of such Convertible Property and retain all rights flowing therefrom as fee simple owner not otherwise encumbered by a Lease or this Development Agreement, and all rights of Developer created thereunder shall expire and terminate, with the exception of any rights which the County seeks to retain.

In any such event, as to the any Leased Property, the terms and conditions of the Lease shall take precedence.

As to the surrender of any of the Development Site under this Development Agreement, whether such property constitutes Convertible Property (which remained in possession and control of County) or Leased Property (which reverted back to County), County hereby reserves the right and option, but not obligation, in addition to all other rights of a fee simple landowner not encumbered by this Agreement or a Lease, to pursue the development of such property independently or under the terms of this Development Agreement.

In any such event, Developer shall surrender and deliver up the Development Site to the possession and use of County or County shall retain possession and use of the Development Site, in good condition and repair, reasonable wear and tear excepted.

The Development Site and Improvements thereon shall be returned free and clear of all debts, leases, mortgages, liens, encroachments and encumbrances and all outstanding Developer obligations that survive termination of this Agreement shall be satisfied.

County may require that Developer perform environmental studies to assess the property condition prior to the expiration or early termination of the Agreement and remediate any hazardous substances present on the Development Site in violation of an Environmental Law and caused as a result of Developer's activities upon the Development Site prior to surrender thereof,

Palmetto Metrorail Station Development Agreement

at Developer's sole cost and expense. If a Lease(s) for any Phase(s) of the Project has commenced then the remediation provisions upon early termination of such Lease(s) shall be operative.

The County and Developer covenant that, to confirm the automatic vesting or retention of title as provided in this paragraph, each party will execute and deliver such further assurances and instruments of assignment and conveyance as may be commercially and/or reasonably required by the other for that purpose.

Developer shall transfer and/or deliver to County, on such earlier date that this Agreement terminates or expires, upon County's request, all rights, plats, licenses, Permits, plans, drawings, warranties, and guaranties then in effect for the Development Site. This Section shall survive the early termination or expiration of this Agreement.

Section 17.4. **Rights of County After Termination**

County shall in no way be responsible or liable for any failure to relet the Development Site or enter into any agreement to develop the Development Site or any part thereof, or for any failure to collect any Rent or Fee due for any such reletting or under any such agreement.

Section 17.5. **Rights After Expiration**

A. If no phased construction is contemplated, upon the Lease being executed at Closing for the Development Site, this Development Agreement shall expire and such Lease shall be operative upon the Development Site.

B. If phased development is contemplated, the Development Agreement shall expire upon the Lease being executed at Closing for the last remaining Phase under this Development Agreement, and the executed Lease(s) shall be operative upon the Development Site.

Palmetto Metrorail Station Development Agreement

Section 17.6. **Events of Default of County**

The provisions of this Section 17.6 shall apply if any of the following “Events of Default of County” occur: if default occurs as a result of failure by County in keeping, observing or performing any of the duties imposed upon County pursuant to the terms of this Agreement and such default continues for a period of thirty (30) days after written notice thereof from Developer to County 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, County 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 of County. In the case of an uncured Event of Default of County, Developer shall be entitled to terminate this Agreement, as a whole or as to any Phase of development government by this Agreement, without limitation on any other available rights and remedies that may be available to Developer hereunder or under law or in equity (including, but not limited to, seeking a refund of the Development Fee or Security Deposit paid to County for any terminated Phase(s)).

ARTICLE 18

NOTICES

Section 18.1. **Addresses**

All notices, demands or requests by County to Developer shall be deemed to have been properly served or given, if addressed to Developer and the Development Partner as follows:

MagicWaste Youth Foundation, Inc.

8600 NW 17 Street, Suite 130

Doral, FL 33126

Palmetto Metrorail Station Development Agreement

And

Res-Des Palmetto, LLC

3123 Gifford Lane

Miami, FL 33133

and to such other address and to the attention of such other party as Developer may, from time as time, designate by written notice to County. If Developer at any time during the term hereof changes its office address as herein stated, Developer will promptly give notice of same in writing to County.

All notices, demands or requests by Developer to County shall be deemed to have been properly served or given if addressed as follows:

Director

Miami Dade Department of Transportation and Public Works

701 N.W. 1st Court, 17th Floor

Miami, Florida, 33136

and

Chief of Right-of-Way, Utilities, and Joint Development

Miami-Dade Department of Transportation and Public Works

701 N.W. 1st Court, 15th Floor, Miami, Florida, 33136

and to such other addresses and to the attention of such other parties as County may, from time to time, designate by written notice to Developer. If County at any time during the term hereof changes its office address as herein stated, County will promptly give notice of same in writing to Developer.

Palmetto Metrorail Station Development Agreement

Section 18.2. **Method of Transmitting Notice**

All such notices, demands or requests (a “Notice”) shall be 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 19

CERTIFICATES BY COUNTY AND DEVELOPER

Section 19.1. **Developer Certificates**

Developer agrees at any time and from time to time, upon not less than twenty (20) days’ prior written notice by County, to execute, acknowledge and deliver to County a statement in writing setting forth the Fees, Rents, payments and other monies then payable under the Agreement, if then known, certifying that this Agreement is unmodified and in full force and effect (or if there have been modifications that the Agreement is in full force and effect as modified and stating the modification) and the dates to which the Fees, Rents, payments and other monies have been paid and stating (to the best of Developer’s knowledge) whether or not County is in default in keeping, observing or performing any of the terms of this Agreement, and if in default, specifying each such default (limited to those defaults of which Developer has knowledge). It is intended that any such statement delivered pursuant to this Section 21.1 may be relied upon by County or any prospective assignee, transferee or purchaser of the fee, but reliance on such

Palmetto Metrorail Station Development Agreement

certificate shall not extend to any default of County as to which Developer has no actual knowledge.

Section 19.2. **County Certificates**

County agrees at any time and from time to time, upon not less than twenty (20) days' prior written notice by Developer or by a Leasehold Mortgagee, to furnish a statement in writing, in substantially the form attached hereto as Schedule 19.2 setting forth the Fees, Rents, payments and other monies then payable under the Agreement, if then known; certifying that this Agreement is unmodified and in full force and effect (or if there have been modifications that the Agreement is in full force and effect as modified and stating the modifications) and the dates to which Fees, Rents, payments and other monies have been paid; stating whether or not to the best of County's knowledge, Developer is in default in keeping, observing and performing any of the terms of this Agreement, and, if Developer is in default, specifying each such default of which County may have knowledge. It is intended that any such statement delivered pursuant to this Section 19.2 may be relied upon by any prospective assignee, transferee or purchaser of Developer's interest in this Agreement, or any Leasehold Mortgagee or Mezzanine Financing Source or any assignee thereof, but reliance on such certificate may not extend to any default of Developer as to which County has no actual knowledge. Upon demand, Developer shall pay any charges established by County in accordance with County's established, generally applicable fee schedule in effect at the time a Certificate is requested for County's provision of the same; and if no such fee schedule has been established, Developer shall reimburse County for staff time and expenses actually incurred in accordance with the rate established by County for similar services, or, if no such rate has been established, then the hourly rate calculated by dividing the annual salary of the County employee performing the service by 2,000.

ARTICLE 20

CONSTRUCTION OF TERMS AND MISCELLANEOUS

Section 20.1. **Severability**

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

Section 20.2. **Captions**

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

Section 20.3. **Relationship of Parties**

This Agreement does not create the relationship of principal and agent or of mortgagee and mortgagor or of partnership or of joint venture or of any association between County and Developer, the sole relationship between County and Developer being that of parties to this Agreement.

Section 20.4. **Recording**

Any recording in the public records or any other filing in connection with this Agreement shall be at the sole cost of Developer.

Section 20.5. **Construction**

All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine or neuter, singular or plural, as the identity of the party or parties may require. The Parties hereby acknowledge and agree that each was properly represented by counsel and this Agreement was

Palmetto Metrorail Station Development Agreement

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 Agreement which has been drafted by counsel for both County and Developer.

Section 20.6. Consents

Whenever in this Agreement the consent or approval of County or Developer is required, such consent or approval

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 Developer or County, as applicable, of the obligation of obtaining the other's prior written consent or approval to any future similar act or transaction.

Section 20.7. No Waiver by County

No failure by County to insist upon the strict performance of any of the terms of this Agreement or to exercise any right or remedy consequent upon a breach thereof, and no acceptance by County of full or partial Fees or Rents during the continuance of any such breach, shall constitute a waiver of any such breach or of any of the terms of this Agreement. None of the terms of this Agreement to be kept, observed or performed by Developer, and no breach thereof, shall be waived, altered or modified except by a written instrument executed by County. No waiver of any breach shall affect or alter this Agreement, but each of the terms of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach thereof. No waiver of any default of Developer hereunder shall be implied from any omission by

Palmetto Metrorail Station Development Agreement

County to take any action on account of such default, and no express waiver shall affect any default other than the default specified in the express waiver and then only for the time and to the extent therein stated. One or more waivers by County shall not be construed as a waiver of a subsequent breach of the same covenant, term or conditions. No reference to any specific right or remedy shall preclude either party from exercising any other right or from having any other remedy or from maintaining any action to which it may otherwise be entitled at law or in equity.

Section 20.8. **Entire Agreement**

This Agreement contains the entire agreement between the Parties hereto and shall not be modified or amended in any manner except by an instrument in writing executed by the Parties hereto.

Section 20.9. **Successors and Assigns**

The terms herein contained shall bind and inure to the benefit of County, its successors and assigns, and Developer, its successors and assigns, except as may be otherwise provided herein.

Section 20.10. **Station Plans and Confidential and Exempt Information**

A. **Station Plans**

Station County agrees, at the request of Developer, to make available to Developer for inspection all plans, specifications, working drawings and engineering data in the possession of County, or available to it, relating to the Palmetto Station Property and other County owned facilities, as necessary and appropriate, it being understood and agreed that Developer will reimburse County for any duplication costs incurred in connection therewith and County assumes no responsibility or liability for the information obtained pursuant to this Section.

Palmetto Metrorail Station Development Agreement

B. Confidential and Exempt Information

Developer understands that, due to Developer's involvement in the development of the Project, Developer will be entrusted with certain confidential and/or exempt information. This Confidential and/or Exempt information is being shared by the County in furtherance of the official duties and responsibilities of the County and for the Developer's work on the Project.

"Confidential and/or Exempt Information" means all security or fire safety system plans; threat assessments; threat response plans; emergency evacuation plans; sheltering arrangements; and/or manuals for security or fire safety personnel, emergency equipment, or security or fire safety training as defined and made confidential and/or exempt in sections 119.071(3)(a) and 281.301, Florida Statutes; building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, which depict the internal layout and structural elements of a building, arena, stadium, water treatment facility, or other structure owned or operated by the County, as made exempt from public disclosure in section 119.071(3)(b), Florida Statutes; building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, which depict the internal layout or structural elements of an attractions and recreation facility, entertainment or resort complex, industrial complex, retail and service development, office development, health care facility, or hotel or motel development, as set forth in section 119.071(3)(c), Florida Statutes; and any information furnished by a person to the County for the purpose of being provided with emergency notification by the County, as made exempt from public disclosure in section 119.071(5)(j), Florida Statutes. DEVELOPER PROMISES TO PROTECT THE CONFIDENTIAL AND/OR EXEMPT INFORMATION AND KEEP IT CONFIDENTIAL.

Palmetto Metrorail Station Development Agreement

This means that Developer agrees to the following:

A. Developer promises to only reveal the Confidential and/or Exempt Information to persons who need to know. “Need to know” means that the person must know the Confidential and/or Exempt Information in order to assist Developer in the development and/or construction of the Project.

B. Developer agrees not to write or share the Confidential and/or Exempt Information on emails, letters, plans, drawings, correspondence, and other documents and records unless absolutely necessary. When absolutely necessary and Confidential and/or Exempt Information is included in a record, the record shall be marked “Confidential” and shall be protected from view by anyone without a need to know.

C. Developer agrees not to discuss the Confidential and/or Exempt Information in public or with persons who do not need to know the Confidential and/or Exempt Information.

D. Developer agrees to redact the Confidential and/or Exempt Information from all records prior to producing them in response to a public records request and/or prior to producing records to unless by statute such release is permissible and then only with the County’s permission. Developer and agrees to notify the County if any request is made for the Confidential and/or Exempt Information and to provide the County an opportunity to object to revealing the Confidential and/or Exempt Information, including the County filing an action in an appropriate court.

E. Developer agrees to incorporate these confidentiality provisions into all of Developer’s subcontracts (if the Confidential and/or Exempt Information is revealed to the subcontractors on a need-to-know basis) and assignment agreements.

Palmetto Metrorail Station Development Agreement

F. Developer agrees to educate their respective employees and subcontractors with whom Developer shares the Confidential and/or Exempt Information about these confidentiality provisions and require that they abide by them.

G. Developer understands that these confidentiality obligations are on-going and do not end when the Project is completed. Should Developer's need for the Confidential and/or Exempt Information cease, Developer shall take appropriate steps to return or destroy the Confidential and/or Exempt Information.

H. Developer understands that failure to protect the Confidential and/or Exempt Information may result in physical harm or loss of life. Developer understands that failure to protect the Confidential and/or Exempt Information could result in financial losses to the County or to the people who use the Project. Developer understands that failure to protect the Confidential and/or Exempt Information may result in personal and/or corporate liability to Developer during the development of the Project and after the Project is completed.

I. Remedies. If there is a breach or threatened breach of any provision of this Section 20.10b, it is agreed and understood that the County shall have no adequate remedy in money or other damages and accordingly shall be entitled to injunctive relief; provided however, no specification in this Agreement of any particular remedy shall be construed as a waiver or prohibition of any other remedies in the event of a breach or threatened breach of this Section.

Section 20.11. **Holidays**

It is hereby agreed and declared that whenever the day on which a payment due under the terms of this Agreement, or the last day on which a response is due to a notice, or the last day of a cure period, falls on a day which is a legal holiday in Miami-Dade County, Florida, or on a Saturday or Sunday, such due date or cure period expiration date shall be postponed to the next

Palmetto Metrorail Station Development Agreement

following business day. Any mention in this Agreement of a period of days for performance shall mean calendar days.

Section 20.12. **Schedules**

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

Section 20.13. **Brokers**

County and Developer hereby represent and agree that no real estate broker or other person is entitled to claim a commission as a result of the execution and delivery of this Agreement.

Section 20.14. **Protest Payments**

If at any time a dispute arises as to any amount or sum of money to be paid by Developer to County under the provisions of this Agreement, in addition to the rights set forth in Article 19 herein, Developer shall have the right to make payment “under protest” and such payment shall not be regarded as a voluntary payment, and there shall survive the right on the part of Developer to seek the recovery of such sum, and if it should be adjudged that there was no legal obligation on Developer to pay such sum or any part thereof, Developer shall be entitled to recover such sum or so much thereof as it was not legally required to pay under the provisions of this Agreement; and if at any time a dispute arises between the Parties hereto as to any work to be performed by either of them under the provisions of this Agreement, the party against whom the obligation to perform the work is asserted may perform such work and pay the cost thereof “under protest” and the performance of such work shall in no event be regarded as a voluntary performance and there shall survive the right upon the part of said Developer and/or County to seek the recovery of the cost of such work, and if it is adjudged that there was no legal obligation on the part of said

Palmetto Metrorail Station Development Agreement

Developer and/or County to perform the same or any part thereof, said Developer and/or County shall be entitled to recover the cost of such work or the cost of so much thereof as Developer or County was not legally required to perform under the provisions of this Agreement.

Section 20.15. Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. Any dispute arising under, in connection with or related to this Agreement or related to any matter which is the subject of this Agreement shall be subject to the exclusive jurisdiction of the state and/or federal courts located in Miami-Dade County, Florida.

Section 20.16. Counterparts

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

Section 20.17. Vendor Registration and Forms

The Developer shall be a registered vendor with the County for the duration of the Agreement. In becoming a Registered Vendor with Miami-Dade County, the Developer confirms its knowledge of and commitment to comply with the following:

- | | |
|---|---|
| <p>A. Miami-Dade County Ownership Disclosure Affidavit
(Section 2-8.1 of the County Code)</p> <p>B. Miami-Dade County Employment Disclosure Affidavit
(Section 2.8.1(d)(2) of the County Code)</p> <p>C. Miami-Dade Employment Drug-free Workplace Certification
(Section 2-8.1.2(b) of the County Code)</p> | <p>Code)</p> <p>D. Miami-Dade Disability and Nondiscrimination Affidavit
(Section 2-8.1.5 of the County Code)</p> <p>E. Miami-Dade County Debarment Disclosure Affidavit
(Section 10.38 of the County Code)</p> |
|---|---|

Palmetto Metrorail Station Development Agreement

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

G. Miami-Dade Code of Business Ethics Affidavit
(Section 2-8.1(i) and 2-11(b)(1) of the County Code through (6) and (9) of the County Code and Section 2-11.1(c) of the County Code)

H. Miami-Dade County Family Leave Affidavit
Article V of Chapter 11 of the County Code

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

J. Miami-Dade County Domestic Leave and Reporting Affidavit
(Article 8, Section 11A-60 11A-67 of the County Code)

K. Subcontracting Practices
(Ordinance 97-35)

L. W-9 and 8109 Forms
(as required by the Internal Revenue Service)

M. 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

N. 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.

Section 20.18. **Conflict of Interest**

of Miami-Dade County Code, as amended, requires any County employee or any member of the employee's immediate family who has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County that is competing or applying for any such agreement, must first request a conflict of interest opinion

Palmetto Metrorail Station Development Agreement

from the County's Ethics Commission prior to their immediate family member entering into any agreement or transacting any business through a firm, corporation, partnership or business entity in which the employee or any member of the employees immediate family has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County and that any such contract, agreement or business engagement entered in violation of this subsection, as amended, shall render this Agreement voidable.

Section 20.19. **Time is of the Essence**

Time shall be deemed of the essence on the part of the Parties in performing all of the terms and conditions of this Agreement.

Section 20.20. **No Tax Abatement or Other Public Subsidies to Developer**

This Agreement does not, in and of itself, entitle Developer to any tax abatement, tax rebate, or public funding, nor does this Agreement prohibit Developer from seeking or receiving any tax abatement, tax rebate, public funding or public financing from any government entity.

Section 20.21. **No Partnership or Joint Venture**

It is mutually understood and agreed that nothing contained in this Agreement is intended or shall be construed in any manner or under any circumstances whatsoever as creating or establishing the relationship of co-partners or creating or establishing the relationship of a joint venture between the County and Developer, or as constituting Developer as the agent or representative of the County for any purpose or in any manner whatsoever.

Section 20.22. **No Third-Party Beneficiaries**

Except to the extent limited elsewhere in this Agreement, all of the covenants conditions and obligations contained in the Agreement shall be binding upon and inure to the benefit of the respective successor and assigns of the County and Developer. No third party shall have any rights

Palmetto Metrorail Station Development Agreement

or claims arising hereunder, nor is it intended that any third party shall be a third-party beneficiary of any provisions hereof.

Section 20.23. **Amendments**

No amendments to this Agreement shall be binding on either Party unless in writing and signed by both Parties and approved by the Miami Dade County Board of Commissioners, except for as otherwise expressly provided in this Agreement.

Section 20.24. **No Liability for Approvals or Inspections**

Except as may be otherwise expressly provided herein, no approval made by the County in its capacity as County under this Agreement or in its governmental capacity, shall render the County liable for its failure to discover any defects or nonconformance with any law or government regulation.

Section 20.25. **Standard or Conduct**

The implied covenant of good faith and fair dealings under Florida law is expressly adopted.

Section 20.26. **No Option**

The submission of this Agreement for examination does not constitute a reservation or option for the Development Site, and this Agreement shall become effective only upon execution and delivery thereof by the Parties.

Section 20.27. **No Waiver of Sovereign Immunity**

No provision of this Agreement, or of any other agreement related to this Agreement or the Development Site and Improvements thereon, whether read separately or in conjunction with any other provision, shall be intended, deemed, interpreted, or construed to waive the sovereign immunity of the County, as such immunity is guaranteed by the Eleventh Amendment to the

Palmetto Metrorail Station Development Agreement

Constitution of the United States and as may be limited by Section 768.28 of the Florida Statutes. Nothing in this Agreement is intended, nor will it be construed, to in any way limit the exercise by the County of its governmental powers (including police, regulatory and taxing powers) with respect to Developer, Development Partner, Tenant, Major Sublessee, any Sublessee, or the Land, Improvements and/or Development Site to the same extent as if it were not a party to this Agreement or the transactions contemplated by this Agreement.

Section 20.28. **County Representatives Not Individually Liable**

No member, official, elected representative or employee of the County shall be personally liable to Developer or any successor in interest in the event of any default or breach of County.

Section 20.29. **Independent Private Sector Inspector General Review**

In accordance with Section 2-1076 of the Miami-Dade County Code of Ordinances, as amended by Ordinance No. 99-63, the County has established the Office of the Inspector General, which is required to perform mandatory random audits on Landlord's contracts, including Lease Agreements, concessions, franchises and other revenue-generating contracts, throughout the duration of each contract. The Landlord Inspector General is authorized and empowered to review past, present and proposed Landlord contracts, transactions, accounts, records and programs. In addition, the Inspector General has the power to subpoena witnesses, administer oaths, require the production of records and monitor existing projects and programs. Monitoring of existing projects or programs may include a report whether the project is on time, within budget and in conformance with plans, specifications and applicable law. The Inspector General is empowered to analyze the necessity for and reasonableness of proposed change orders to the contract. The Inspector General is empowered to retain the services for independent private sector inspectors general to audit investigate, monitor, oversee, inspect and review operations, activities, performance and

Palmetto Metrorail Station Development Agreement

procurement processes, including but not limited to project designs, specifications, proposal submittals, activities of the contractor, its officers, agents and employees, lobbyists, Landlord staff and elected officials to ensure compliance with contract specifications and to detect fraud and corruption.

ARTICLE 21

REPRESENTATIONS AND WARRANTIES

Section 21.1. **County's Representations and Warranties**

County hereby represents and warrants to Developer that:

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

B. County will allow entry onto the Land by Developer and upon any Lease becoming effective will deliver possession of the Land 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 Developer in writing, and subject only to the rights reserved herein to County.

C. Developer acknowledges that in accordance with Florida Statutes Section 125.411(3) (1990) County does not warrant the title or represent any state of facts concerning the title to the Development Site, except as specifically stated in this Agreement.

Section 21.2. **Developer's Representations and Warranties**

Developer hereby represents and warrants to County that it has full power and authority to enter into this Agreement and perform in accordance with its terms and provisions and that the

Palmetto Metrorail Station Development Agreement

parties signing this Agreement on behalf of Developer have the authority to bind Developer and to enter into this transaction and Developer has taken all requisite action and steps to legally authorize it to execute, deliver and perform pursuant to this Agreement.

ARTICLE 22

COMPLIANCE WITH REGULATIONS

A. Developer shall comply with all of the following statutes, rules, regulations and orders to the extent that these are applicable to this Agreement:

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

(ii) requirements found in 49 CFR Parts 27.7, 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;

(iii) the Federal Transit Administration Master Agreement, Section 3, Subparagraphs (a)(1), (a)(2), and (b) thereof relating to conflicts of interests and debarment.

B. Developer agrees to not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, national origin, sex, pregnancy, age, disability, marital status, familial status, sexual orientation, gender identity or gender expression, status as victim of domestic violence, dating violence or stalking, or veteran status, and on housing related contracts the source of income, and will take affirmative action to ensure that employees and applicants are afforded equal employment opportunities without discrimination. Such action shall be taken with reference to, but not limited to: recruitment, employment, termination, rates of pay or other forms of compensation, and selection for training or retraining, including apprenticeship and on the job training.

Palmetto Metrorail Station Development Agreement

C. By entering into this Agreement, Developer attests that it is not in violation of the Americans with Disabilities Act of 1990 (and related Acts) or Miami-Dade County Resolution No. R-385-95. If Developer, or any owner, subsidiary or other firm affiliated with or related to Developer is found by the responsible enforcement agency, the County, or a court of competent jurisdiction to be in violation of the Act or the Resolution, then the Developer, in addition to complying with all other obligations and indemnification provisions of this Agreement, shall cure such violation within 30 days, or, in the case of a violation which cannot, with due diligence and in good faith, be cured within thirty (30) days, shall cure such violation in the time period as may be set by the County in writing which time period shall not exceed a total of 365 days. This Agreement shall be void if Developer submits a false affidavit pursuant to this Resolution or Developer violates the Act or the Resolution during the term of this Agreement, even if Developer was not in violation at the time it submitted its affidavit.

SIGNATURE PAGES FOLLOW

Palmetto Metrorail Station Development Agreement

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

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

LANDLORD

ATTEST:
HARVEY RUVIN, CLERK

**BY ITS BOARD
OF COUNTY COMMISSIONERS**

By: _____

By: _____

Palmetto Metrorail Station Development Agreement

Signed in the presence of:

MAGICWASTE YOUTH FOUNDATION, INC.
a Florida not for profit corporation

Witness: *Christie B. Martinez*
Print Name: Christie B. Martinez

By: *Rudy B*
Name: Rodolfo Bustamante

Witness: *Aileen V.*
Print Name: Aileen Valladares

Title: President

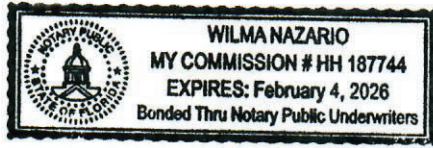
STATE OF FLORIDA
COUNTY OF MIAMI-DADE

The foregoing instrument was acknowledged before me by means of [] physical presence or [] online notarization, this 22 day of June, 2022, by Rodolfo Bustamante as President (Title) of Magicwaste Youth Foundation, Inc.

Personally Known X OR Produced Identification _____

Type of Identification Produced _____

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



MIAMI 8749276.14 100259/300790
6/10/2022 11:11 AM

JOINDER

As of the effective date of the Development Agreement to which this Joinder is attached, the undersigned joins in the execution of the Development Agreement for the purpose of agreeing to be jointly and severally liable with Developer with respect to Developer's obligations under the Development Agreement, except as expressly set forth therein.

Res-Des Palmetto, LLC, a Florida limited liability company

By: Desarrollo Florida, LLC, a Florida limited liability company

By: _____
Name: Alex Lastra
Title: Manager



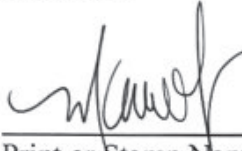
Acknowledgement to Palmetto Metrorail Station Development Agreement Joinder

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

The foregoing instrument was acknowledged before me this 25 day of August, 2022, by Alex Lastra, the Manager of Desarrollo Florida, LLC, a Florida limited liability company, the Manager of Res-Des Palmetto, LLC, a Florida limited liability company.

Personally Known X OR Produced Identification _____.

Type of Identification Produced:



Print or Stamp Name: Maria Lievano Cruz
Notary Public, State of Florida at Large
Commission No.: HH 186551
My Commission Expires: 10-14-25

Palmetto Metrorail Station Development Agreement

Schedule 1.1

Development Site

REVISIONS:

3191 GOLF WAY, SUITE 400
 MIAMI, FL 33145
 TEL: (305) 854-4070
 FAX: (305) 854-4070
 WWW: ATLASARCHITECTURE.COM

ANILLO
 TOLEDO
 LOPEZ



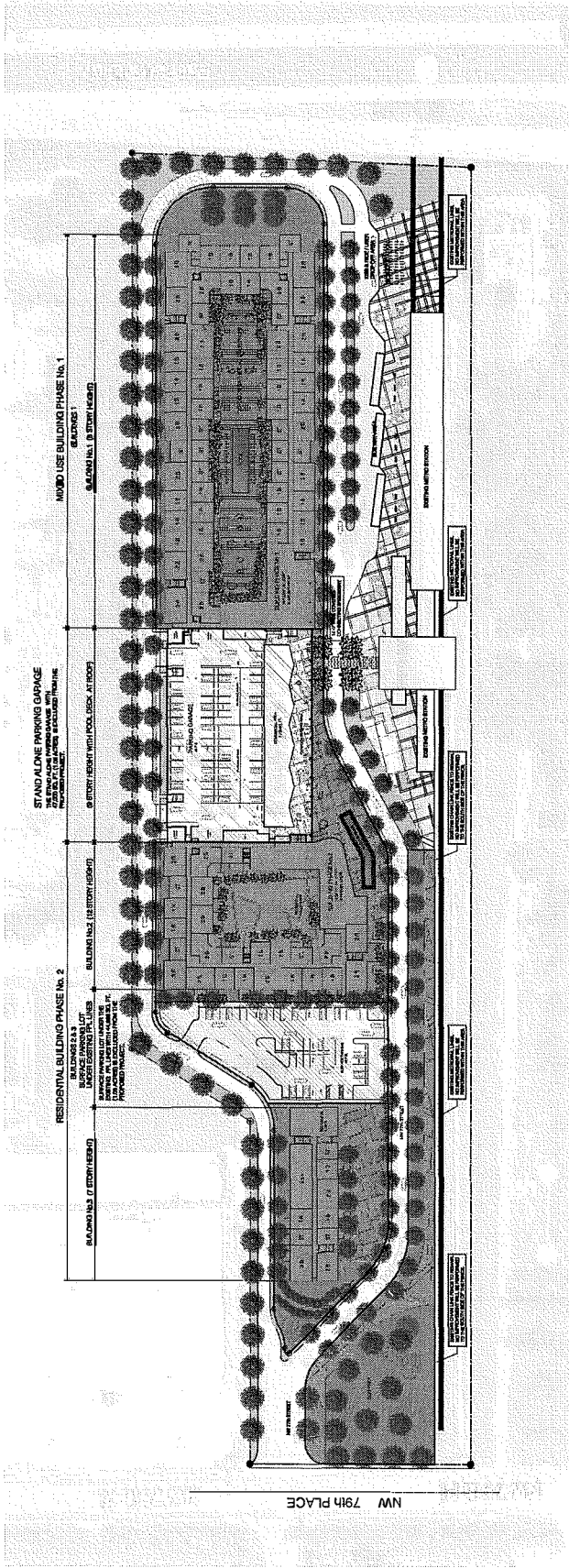
ATLAS ARCHITECTURE

THE STATION
 A TRANSIT ORIENTED DEVELOPMENT
 7701 NW 79 AVENUE
 MEDLEY, FLORIDA 33186

ARCHITECT LICENSE
 ARCHITECT NO. 14000000
 ARCHITECT FIRM NO. 1400000001
 JOB NO. 1400000001
 DATE: 03-08-2020
 WORK: AS SHOWN
 DRAWN BY: A.T.L.

A-1.1

PREVIOUS DEMISED AREA: 7.98 ACRES
 DEDUCT STAND ALONE PARKING GARAGE: 1.08 ACRES
 DEDUCT SURFACE PARKING LOT: 1.03 ACRES
 NEW DEMISED / LEAVE AREA: 5.87 ACRES



SCHEMATIC SITE / GROUND FLOOR PLAN:
 SCALE 1/64" = 1'-0"

REVISED PLANS 02.17.2022

Palmetto Metrorail Station Development Agreement

Schedule 1.4A

Developer's Master Plan

Palmetto Metrorail Station Development Agreement

Schedule 1.4B

Project Schedule

Schedule 1.4B

Project Schedule

As provided in Section 1.4, Developer shall be required to undertake the Pre-Development activities required to satisfy the Closing Conditions for each Phase in substantial conformity with the Master Plan and this Project Schedule. For purposes of this Schedule, the milestones described herein shall not be extended for a period of time greater than 90 days, subject to Unavoidable Delays and otherwise in accordance with the provisions of this Agreement.

PHASE 1

Commencement Date – October 1, 2022

Design Completion – September 1, 2023 (11 months after Commencement Date)

Closing Date (Lease Execution) – May 1, 2024 (19 months after Commencement Date)

Construction Start – May 1, 2024 (19 months after Commencement Date)

Construction Completion – March 1, 2026 (41 months after Commencement Date)

PHASE 2

Commencement Date – October 1, 2022

Design Completion – July 1, 2025 (33 months after Commencement Date)

Closing Date (Lease Execution) – September 1, 2026 (47 months after Commencement Date)

Construction Start – September 1, 2026 (47 months after Commencement Date)

Construction Completion – July 1, 2028 (69 months after Commencement Date)

Palmetto Metrorail Station Development Agreement

Schedule 1.6

Ground Lease



Joint Development of Palmetto Station Property

Lease Agreement (Phase ___)

ISSUED BY MIAMI-DADE COUNTY:
The Department of Transportation and Public Works

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE 1 Premises - General Terms of Lease.....	2
Section 1.1. Lease of Land and Air Rights	2
Section 1.2. Term of Lease.....	3
Section 1.3. Conditions Precedent to Effectiveness of Lease	3
Section 1.4. Conditions Related to Construction Activities.....	3
Section 1.5. Performance and Payment Bonds.....	8
Section 1.6. Responsible Wages	10
Section 1.7. Community Business Enterprise Program	11
Section 1.8. Non-Discrimination.....	12
Section 1.9. County Facilities and Operations	13
ARTICLE 2 Definition of Certain Terms.....	13
ARTICLE 3 Rent	34
Section 3.1. Net Lease.....	34
Section 3.2. Initial Rent.....	35
Section 3.3. Annual Rent.....	35
Section 3.4. Annual Adjustments to Rent	36
Section 3.5. Adjustment to Rent in Event of Redevelopment.....	36
Section 3.6. Late Payments	36
Section 3.7. Enacted Restrictions	36
Section 3.8. Payment Where Tenant Sells, Assigns or Transfers Any Development Rights	37
Section 3.9. Additional Rent	40
Section 3.10. No Subordination of Rent	40
Section 3.11. Operation of Station and System.....	40
ARTICLE 4 Development of Land and Construction of Improvements	41
Section 4.1. Master Plan/Land Uses.....	41
Section 4.2. Project Schedule Phased Development	44
Section 4.3. Miami-Dade County as Landlord.....	45
Section 4.4. Conformity of Plans	46

TABLE OF CONTENTS

	<u>Page</u>
Section 4.5. Design Plans; DTPW Review and Approval Process	47
Section 4.6. Construction Plans.....	49
Section 4.7. “As-Built” Plans	51
Section 4.8. Tenant Obligations	51
Section 4.9. Application for Development Approvals and Permits	52
Section 4.10. Construction Costs	53
Section 4.11. Commencement of Construction.....	53
Section 4.12. Progress of Construction	53
Section 4.13. Site Conditions	54
Section 4.14. Ownership of Improvements.....	55
Section 4.15. Mutual Covenants of Non-Interference.....	55
Section 4.16. Connection to Utilities	56
Section 4.17. Utility Connection Rights.....	57
Section 4.18. Art in Public Places	57
Section 4.19. Off-site Improvements	58
Section 4.20. Signage and Landscaping of Entrances.....	58
Section 4.21. Designation of Landlord’s Representative	59
Section 4.22. Additional Work.....	60
Section 4.23. Community Business Enterprise Program	60
Section 4.24. Developers or Co-Developers	62
Section 4.25. Rental Regulatory Agreement.....	62
ARTICLE 5 Payment of Taxes, Assessments, and Impositions	63
Section 5.1. Tenant’s Responsibility for Determining Impositions	63
Section 5.2. Tenant’s Obligations for Impositions.....	63
Section 5.3. Contesting Impositions.....	65
Section 5.4. Special Assessments.....	66
ARTICLE 6 Surrender.....	66
Section 6.1. Surrender of Demised Premises	66
Section 6.2. Removal of Personal Property or Fixtures	67
Section 6.3. Rights to Personal Property After Termination or Surrender	68

TABLE OF CONTENTS

	<u>Page</u>
Section 6.4. No Claim for Value of Tenant Improvements.....	68
Section 6.5. Survival	69
ARTICLE 7 Insurance and Indemnification	69
Section 7.1. Insurance Requirements	69
Section 7.2. Required Insurance Limits	70
Section 7.3. Premiums and Renewals	74
Section 7.4. Evidence of Insurance	75
Section 7.5. Effect of Loss or Damage.....	76
Section 7.6. Proof of Loss	76
Section 7.7. Waiver of Subrogation	77
Section 7.8. Inadequacy of Insurance Proceeds	77
Section 7.9. No Landlord Obligation to Provide Insurance	77
Section 7.10. Right to Examine.....	77
Section 7.11. Personal Property	78
Section 7.12. Indemnification and Hold Harmless	78
ARTICLE 8 Operation.....	80
Section 8.1. Control of Demised Premises.....	80
Section 8.2. Non-Subordination and Non-Interference.....	80
Section 8.3. Repair and Relocation of Utilities.....	81
Section 8.4. Rights to Erect Signs; Revenues Therefrom	82
Section 8.5. Landlord’s Signs Upon Demised Premises	84
Section 8.6. Tenants’ Signs in Station.....	84
Section 8.7. Use of Parking Facilities	84
ARTICLE 9 Repairs and Maintenance of the Premises	86
Section 9.1. Tenant Repairs and Maintenance	86
Section 9.2. Landlord Repairs and Maintenance.....	88
Section 9.3. Repair and Maintenance of Parking Facilities	89
ARTICLE 10 Compliance with Laws and Ordinances	90
Section 10.1. Compliance by Tenant	90
Section 10.2. Contest by Tenant.....	90

TABLE OF CONTENTS

	<u>Page</u>
Section 10.3. Public Records Law	91
ARTICLE 11 Changes and Alterations to Improvements by Tenant	93
Section 11.1. Tenant’s Right to Redevelop.....	93
Section 11.2. Conditions Precedent to Redevelopment	94
Section 11.3. Rent Adjustment in Redevelopment	95
Section 11.4. Payment of Rent in Redevelopment.....	98
ARTICLE 12 Discharge of Obligations	100
Section 12.1. Tenant’s Duty	100
Section 12.2. Landlord’s Duty	102
ARTICLE 13 Use of Premises	102
Section 13.1. Use of Demised Premises by Tenant.....	102
Section 13.2. Dangerous Liquids and Materials	104
Section 13.3. Tenant’s Duty and Landlord’s Right of Enforcement.....	104
Section 13.4. Compliance with Environmental Law and Remedial Action.....	105
Section 13.5. Environmental Indemnification.....	106
Section 13.6. Waste.....	107
Section 13.7. Designation of Improvements by Name.....	107
ARTICLE 14 Entry on Premises by Landlord	107
Section 14.1. Inspection by Landlord of Demised Premises.....	107
Section 14.2. Limitations on Inspection.....	108
ARTICLE 15 Limitation of Liability	108
Section 15.1. Limitation of Liability of Landlord.....	108
Section 15.2. Limitation of Liability of Tenant	109
ARTICLE 16 Damage and Destruction	109
Section 16.1. Tenant’s Duty to Restore.....	109
Section 16.2. Landlord’s Duty to Repair and Rebuild Station.....	110
Section 16.3. Interrelationship of Lease Sections	110
Section 16.4. Loss Payees of Tenant-Maintained Property Insurance	110
Section 16.5. Repairs Affecting County Owned Facilities or Demised	

TABLE OF CONTENTS

	<u>Page</u>
Premises	111
Section 16.6. Abatement of Rent	111
Section 16.7. Termination of Lease for Certain Destruction Occurring During Last Five Years of Lease Term	112
ARTICLE 17 Mortgages, Transfers, Transfer of Tenant’s Interest,.....	114
Section 17.1. Right to Transfer Leasehold	114
Section 17.2. Bifurcation of Lease	120
Section 17.3. Right to Mortgage Leasehold	123
Section 17.4. Notice to Landlord of Leasehold Mortgage	126
Section 17.5. Notices to Leasehold Mortgagee(s).....	127
Section 17.6. Leasehold in Reversion and Assignment in Lieu of Foreclosure	127
Section 17.7. Rights to Sublease and Non-Disturbance to Sublessees	129
Section 17.8. Estoppel Certificates from Landlord	132
Section 17.9. Limited Waiver of Landlord Lien	132
Section 17.10. No Subordination or Mortgaging of Landlord’s Fee Title	132
Section 17.11. Transfer of Interest by Landlord	133
Section 17.12. Lease Termination and New Lease	134
ARTICLE 18 Eminent Domain	136
Section 18.1. Taking of Entire Premises	136
Section 18.2. Proceeds of Taking.....	136
Section 18.3. Partial Taking; Termination of Lease.....	137
Section 18.4. Partial Taking; Continuation of Lease	138
Section 18.5. Temporary Taking.....	139
Section 18.6. Additional Takings	140
Section 18.7. Inverse Condemnation or Other Damages	140
Section 18.8. Involuntary Conversion.....	141
Section 18.9. Condemnation of Fee Interest	141
ARTICLE 19 Default by Tenant or Landlord	141
Section 19.1. Events of Default of Tenant	141
Section 19.2. Failure to Cure Default by Tenant.....	144

TABLE OF CONTENTS

	<u>Page</u>
Section 19.3. Lender/Sublessee Right to Cure Tenant Default.....	147
Section 19.4. Surrender of Demised Premises	149
Section 19.5. Rights of Landlord After Termination	150
Section 19.6. Events of Default of Landlord.....	150
Section 19.7. Failure to Cure Default by Landlord	150
Section 19.8. Holdover.....	151
Section 19.9. Holdover Rent	151
ARTICLE 20 Notices.....	151
Section 20.1. Addresses	151
Section 20.2. Method of Transmitting Notice.....	152
ARTICLE 21 Quiet Enjoyment.....	153
ARTICLE 22 Certificates by Landlord and Tenant	153
Section 22.1. Tenant Certificates	153
Section 22.2. Landlord Certificates.....	154
ARTICLE 23 Construction of Terms and Miscellaneous.....	155
Section 23.1. Severability.....	155
Section 23.2. Captions.....	155
Section 23.3. Recording	155
Section 23.4. Construction	155
Section 23.5. Consents	156
Section 23.6. No Waiver by Landlord.....	156
Section 23.7. No Waiver by Tenant	157
Section 23.8. Entire Agreement	157
Section 23.9. Successors and Assigns.....	158
Section 23.10. Holidays and Counting Days.....	158
Section 23.11. Schedules.....	158
Section 23.12. Brokers	158
Section 23.13. Protest Payments	158
Section 23.14. Radon	159
Section 23.15. Energy-Efficiency Rating Disclosure.....	159

TABLE OF CONTENTS

	<u>Page</u>
Section 23.16. Governing Law	160
Section 23.17. Counterparts	160
Section 23.18. Vendor Registration and Forms	160
Section 23.19. Conflict of Interest	162
Section 23.20. Time is of the Essence.....	162
Section 23.21. No Tax Abatement or Other Public Subsidies to Tenant	163
Section 23.22. No Partnership or Joint Venture.....	163
Section 23.23. Autonomy and Third-Party Beneficiaries	163
Section 23.24. Amendments.....	164
Section 23.25. No Liability for Approvals or Inspections	164
Section 23.26. Standard of Conduct.....	164
Section 23.27. No Option.....	164
Section 23.28. No Waiver of Sovereign Immunity.....	164
Section 23.29. Landlord Representatives Not Individually Liable	165
ARTICLE 24 Representations and Warranties.....	165
Section 24.1. Landlord’s Representations and Warranties	165
Section 24.2. Tenant’s Representations and Warranties	166
ARTICLE 25 Federal and County Regulations.....	166

ATTACHMENTS:

Schedule 1.1	Real Property Description of Demised Premises
Schedule 3	Rent
Schedule 4.1	Master Plan (Project or Phase Description)
Schedule 4.1.C	Station Improvements and Bike Lane
Schedule 4.1.D	Parking Facilities
Schedule 4.1.E	Uses for Project Phase
Schedule 4.2	Project Schedule
Schedule 4.24	Community Business Enterprise Program
Schedule 4.26	Rental Regulatory Agreement
Schedule 9.3	Landlord Parking Maintenance Standards
Schedule 17.7	SNDA
Schedule 22.2	Landlord’s Estoppel Certificate

Lease for Joint Development of Palmetto Station Property

THIS AGREEMENT OF LEASE, dated as of the ___ day of _____, 20____, is made by and between MIAMI-DADE COUNTY, a political subdivision of the State of Florida, through the Miami-Dade 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 MAGICWASTE YOUTH FOUNDATION, INC., a Florida non-profit corporation, having an office and place of business at _____ (hereinafter called “Tenant”). Together, Landlord and Tenant shall be hereinafter referred to as the “Parties”.

WITNESSETH:

A. Landlord owns certain real property located in Miami-Dade County, Florida, as more particularly described on Schedule 1.1, attached hereto and made a part hereof (the “Land”), upon which Landlord operates the Palmetto Station Facilities (as hereinafter defined).

B. Pursuant to Section 125.379 of the Florida Statutes, Tenant submitted to Landlord a proposal for construction of a mixed-use development on the Demised Premises (as defined below) with certain Community Housing Units (as defined below) and certain commercial space devoted to Community Commercial Uses (as defined below), along with the construction of the Parking Facilities (defined below) and certain Station Improvements (as defined below).

C. Landlord recognizes the potential for public and private benefit of an overall unified mixed-use development of the Demised Premises, with the Station, to serve as a positive model for transit-oriented development generally, to promote transit usage, workforce housing, and other community interests and welfare, and to further economic development in Miami-Dade County.

D. Landlord desires to lease the Demised Premises to Tenant pursuant to Section 125.379 of the Florida Statutes to enable Tenant (and sublessees, assignees and/or

Phase ___ of Palmetto Metrorail Station Lease

transferees as described herein) to develop the Demised Premises in phases as provided herein, and Tenant desires to lease the Demised Premises from Landlord for such purposes.

E. Landlord recognizes that the rent and other consideration payable to Landlord pursuant to this Lease meets or exceeds the fair market value of the Demised Premises.

F. Landlord and Tenant are parties to the Development Agreement entered on _____, 20__, granting Tenant the right and obligation to develop the Demised Premises in conformity with the approved Master Plan.

G. Tenant has satisfied the conditions required to commence construction and execute this Lease in accordance with the terms of the Development Agreement.

H. It is hereby mutually covenanted and agreed by and between the parties hereto that this Lease (hereinafter defined) is made upon the agreements, terms, covenants and conditions hereinafter set forth. Capitalized terms used herein shall have the definitions set forth in Article 2 hereof.

ARTICLE 1

Premises - General Terms of Lease

Section 1.1. Lease of Land and Air Rights

In accordance with (a) Chapter 125, Florida Statutes; (b) the powers granted to Landlord pursuant to authority properly delegated by the Florida legislature; (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, its successors and assigns, Landlord agrees, pursuant to the terms of this Lease, and does hereby lease and demise unto Tenant, its successors and assigns, and Tenant does hereby take and hire, upon and subject to the conditions and limitations herein expressed, the Demised Premises, reserving to Landlord the rights described herein, to have and to hold the same unto Tenant, its successors and assigns for

Phase ___ of Palmetto Metrorail Station Lease

the Term. Except as expressly provided in Section 2.W of this Lease, all references in this Lease to “Tenant” shall also refer to “Major Sublessee,” which shall be jointly and severally responsible for all obligations of Tenant under this Lease.

Section 1.2. **Term of Lease**

A. The initial term of this Lease shall be ninety (90) years, commencing on the Effective Date (the “Term”). The obligation to pay rent shall begin on the Effective Date.

B. Landlord shall deliver possession of the Demised Premises on the Effective Date at which time Tenant may take possession thereof.

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

This Lease shall not become effective unless and until the Federal Transit Administration (FTA), the Florida Department of Transportation (FDOT), and the Board of Miami-Dade County Commissioners shall have approved the execution of the Development Agreement, as evidenced by Resolution _____, adopted on _____, the terms of this Lease have been fully negotiated between Landlord and Tenant, all applicable provisions of the Development Agreement for a Lease to become effective have been met, as evidenced by Landlord’s execution of this Lease, and the first payment of Initial Rent has been paid to Landlord. For the avoidance of doubt, and notwithstanding any provision of this Lease to the contrary, upon the Effective Date of this Lease, all obligations in the Development Agreement related to the Demised Premises have been incorporated into this Lease, and any default under the Development Agreement shall not be a default under this Lease.

Section 1.4. **Conditions Related to Construction Activities**

A. Tenant shall have submitted to Landlord proof that it has closed on all loans(s) to Tenant from Lender required by Section 1.12(A)(2) of the Development

Phase ___ of Palmetto Metrorail Station Lease

Agreement and the Project Schedule contained herein; provided, however, that this Lease shall automatically terminate in the event that Tenant does not close on such loan(s) for the Project Phase or the first phase of development for the Project Phase, as applicable, and begin Commencement of Construction within one hundred and fifty (150) days after the Effective Date, subject to Unavoidable Delay (as defined below) or any other extension of time approved by Landlord. In the event that Tenant's construction plan for the Project or Phase includes phased development and construction, and any phases of development and construction are scheduled to commence after the initial phase of development and construction (including, for example, an initial infrastructure phase of development and construction followed by one or more phases of vertical development and construction), the following additional requirements shall be met: (a) a payment and performance bond is obtained for the initial phase of construction and each subsequent phase(s) of construction prior to Commencement of Construction of each phase, (b) deadlines for commencement and completion of all phases of construction required to complete that Phase shall be set forth in the Project Schedule, attached hereto and Tenant shall provide the County with the evidence, as required above, of a financing term sheet or similar agreement for each subsequent phase of construction at least ten (10) days prior to Commencement of Construction of such construction phase or, if earlier, no later than eighteen (18) months after the Closing of this Lease, and this Lease shall automatically terminate in the event that Tenant does not close on such financing within one hundred and fifty (150) days after such deadline, subject to Unavoidable Delay or any other extension of time approved by Landlord, and (c) the Security Deposit shall not be released for such Phase until after the County has received evidence of financing for the last phase of construction.

Phase ___ of Palmetto Metrorail Station Lease

B. Tenant shall have submitted to Landlord the payment of Initial Rent (as defined herein) pursuant to Section 3.2 and be current on all other Rent and Additional Rent;

C. Tenant, having previously complied with the terms of Section 1.12 Conditions Precedent to Lease Commencement and Closing of the Development Agreement, as evidenced by the Landlord's execution of this Lease, agrees that the terms of said Section 1.12 of the Development Agreement shall be incorporated into this Section 1.4C as if fully set forth herein and shall be applicable in the event of redevelopment of the Project or Phase and/or rebuilding of the Improvements.

D. Tenant and Landlord agree that all Construction Plans (as defined below) within the Demised Premises or such plans for development that may impact any County facilities and/or operations shall be subject to the review and approval of DTPW to assure the public safety and the integrity and operation of County facilities and systems. Precedent to any construction, excavation, demolition, restoration, testing or staging, Tenant shall have submitted to the DTPW Right-of-Way, Utilities and Joint Development Division through the DTPW Director, or his or her designee, three (3) copies of plans, drawings and calculations showing the relationship between the proposed activities and County facilities. The drawings and calculations shall have sufficient detail to allow DTPW to determine if such activities are likely to impact County facilities and/or operations and the extent of that impact, if any.

The drawings and calculations shall include, but not be limited to, the following, as applicable:

- 1) Site plan;
- 2) Drainage area maps and calculations;
- 3) Sheeting and shoring drawings and calculations;

Phase ___ of Palmetto Metrorail Station Lease

- 4) Architectural drawings for all underground levels through the top floor;
- 5) Sections showing foundations in relation to County structures;
- 6) Structural drawings;
- 7) Pertinent drawings detailing possible impacts to County facilities;
- 8) Geotechnical reports;
- 9) Settlement monitoring, mitigation and remediation plan, if applicable; and
- 10) Proposed sequence of activities.

E. If requested by Landlord, Tenant shall deliver to Landlord a fully executed and delivered copy of the construction contract between Tenant and prime construction contractor(s), together with each of the major contractors, and/or a construction management contract.

F. Tenant has obtained, and has caused its general contracts, construction managers, architects, and subcontractors to obtain such insurance required under Article 7, naming Landlord as an additional insured and loss payee and has delivered to Landlord certificates evidencing such insurance.

Any such proposed construction, excavation, demolition, restoration, testing or staging 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, all construction shall be in compliance with the latest edition of the Miami-Dade Transit Construction Safety Manual or its replacement, as applicable.

Landlord reserves the right at all times to request additional information and/or to disapprove of the Construction Plans and/or activities in whole or in part if Landlord, in its sole discretion, determines that County operations or facilities may be unacceptably impacted. If the Landlord, in

Phase ___ of Palmetto Metrorail Station Lease

its sole discretion, determines that activities undertaken or authorized by the Tenant, or planned to be undertaken or authorized by the Tenant, may impact County facilities or operations, the Landlord may require the Tenant to submit a plan to monitor, mitigate and remediate any such impacts. The plan may call for the alteration, relocation, or replacement of County and/or private facilities, either temporary or permanent, and with measures required to maintain County and/or private operations including arrangements acceptable to the County to ensure payment to the County for any expenses incurred by the County in providing County employees or representatives required to monitor and coordinate such activities, if required. 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 promptly mitigate all such impacts as specified by the Landlord and Tenant shall promptly 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. If such activities cause disruption or interruption to normal County operations at the Palmetto Station Property, the Tenant shall pay all costs incurred by the County in providing replacement and/or alternative services. Additionally, the Landlord shall have the right to slow or stop any activities that the Landlord, in its sole and reasonable discretion, determines to be potentially hazardous to County facilities, operations thereof or to Miami-Dade County employees, patrons or to the public and to require the Tenant to implement appropriate safety measures as deemed necessary by the Landlord at the sole cost of the Tenant. Landlord shall not incur any expense as a result of such actions.

G. Tenant acknowledges that the Parking Facilities and Station Improvements are subject to the competitive-selection requirements set forth in Section 255.20, Florida Statutes, and Tenant shall be responsible for competitively awarding such work to an appropriately licensed contractor in accordance with Section 255.20, Florida Statutes.

Phase ___ of Palmetto Metrorail Station Lease

Section 1.5. **Performance and Payment Bonds**

A minimum of ten (10) days before Tenant commences any construction work related to any portion of the Project or Phase, or any materials are purchased from a supplier for the Project or Phase, Tenant shall have executed and delivered to Landlord and recorded in the public records of the County, a payment and performance bond equal to the total cost of the construction of the Project or Phase, as reflected in the construction contract with the general contractor for the work. Each payment and performance bond shall be in compliance with all applicable laws including the terms of Section 255.05 of the Florida Statutes, including but not limited to, the requirements of Sections 255.05(1)(a) and (c), Section 255.05(3) and Section 255.05(6), and shall name the County and Tenant beneficiaries thereof as joint obligees.

As an alternative to the above-described payment and performance bond, the Tenant may provide security to Landlord (“Alternative Security”) in the following manner:

A. Provide the Landlord with a certified check that Landlord may deposit into a County-controlled bank account (escrow account) or an irrevocable letter of credit in a form and in an amount that is acceptable to the Landlord to remain in place until evidence reasonably satisfactory to the Landlord is submitted to demonstrate that all contractors and material suppliers performing any work on and/or supplying any materials for the Project or Phase have been paid in full and a Certificate of Occupancy has been issued for the Project or Phase; and

B. Require that each prime contractor hired by Tenant to perform construction work and/or make improvements on the Project or Phase to 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 its respective contract in a form acceptable to the Landlord to insure that its

Phase ___ of Palmetto Metrorail Station Lease

construction work shall be completed by the contractor, and its surety shall name the County as an additional obligee and shall meet the specifications set forth below; and

C. Require each prime contractor hired by Tenant to perform construction work and/or make improvements on the Project or Phase to 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 its respective contract in a form acceptable to the Landlord to secure the completion of the Project or Phase free from all liens and claims of sub-contractors, mechanics, laborers and materialmen and shall name the County as an additional obligee and payee and shall meet the specifications set forth below; and

D. The Alternative Security and bonds required above shall comply with the requirements of Section 255.05 of the Florida Statutes.

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

(i) Obtain a conditional release of lien from each of its prime contractor(s) at the time each progress payment is made;

(ii) Obtain an unconditional release of lien from each of its prime contractor(s) within five (5) business days after payment is made; and

(iii) In the event of Tenant's contractor(s) claim non-payment(s) and/or, fail to timely provide unconditional releases of lien within the timeframe stipulated, Landlord reserves the right but not the obligation to:

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

Phase ___ of Palmetto Metrorail Station Lease

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

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

Tenant shall not allow any mechanics liens or materialman's liens, or liens, judgements or encumbrances of any kind to remain on or to cloud the title of Landlord's fee simple interest in the Demised Premises 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 Landlord's fee simple interest in the Demised Premises within thirty (30) days after Tenant receives written notice from Landlord demanding removal of such encumbrance, in which case such encumbrance shall be deemed an Event of Default hereunder. Tenant shall promptly take all steps required to promptly remove and otherwise resolve all such encumbrances of which Tenant has been given actual notice.

Section 1.6. **Responsible Wages**

The Tenant acknowledges and agrees that it is required to pay or to require all contractors and/or subtenants to pay all workers Responsible Wages for work related to the construction of the development. Pursuant to Section 2-10.4.01 and 10-33.02 of the Code (Small Business Enterprise Program) of the code, all privately funded design and construction with a total value over \$200,000.00 must comply with the code which governs the County's Small Business Enterprise Programs. The Tenant shall submit or cause to be submitted the Design and Construction packages, to Small Business Development of the Internal Services Department prior

Phase ___ of Palmetto Metrorail Station Lease

to advertisement and/or award for review and determination of the appropriate small business program measures. All packages must be advertised and awarded with the applicable small business measure in accordance with the requirements. The Tenant shall also comply with all provisions of the Responsible Wages Ordinance as set forth in Section 2-11.16 of the Code of Miami-Dade County.

The Tenant or the Tenant's contractor shall be obligated to pay Responsible Wages in effect at the time construction work commences and for the full term of construction.

Section 1.7. **Community Business Enterprise Program**

In accordance with the County's Ordinance No. 12-05, which amended Sections 2-10.4.01 and 10-33.02 of the County Code, the development Project is subject to the requirements of both the Small Business Enterprise Program-Architectural & Engineering (SBE-A&E) and the Small Business Enterprise Program-Construction (SBE-Construction). As a result, for purposes of selecting and/or hiring any architectural, landscape architectural, engineering, surveying and mapping professional services, for purposes of design and/or construction, as well as any construction services, the Tenant shall submit or cause to be submitted design packages as well as construction packages, for any and all such work, to the County's Small Business Development Division of the Services Department ("SBD") prior to the Tenant's advertisement for such services, for review and determination of appropriate small business program measures, and the application of same. All packages must be advertised and awarded with the applicable small business measures in accordance with the requirements of the above-mentioned County Code. All privately funded construction with a total value over \$200,000 must comply with Sections 10-33.02 and 2-10.4.01 of the Code of Miami Dade County (the "Code"), which govern the County's Small Business Enterprise-Construction ("SBE-Construction") and Small Business Enterprise-

Phase ___ of Palmetto Metrorail Station Lease

Architectural & Engineering (“SBE-A&E”) programs. The Tenant shall submit or cause to be submitted the Design and Construction Packages, to the Small Business Development Division of Internal Services Department (“SBD/ISD”) prior to advertisement, for review and determination of appropriate small business program measures, and the application of same. All packages must be advertised and awarded with the applicable small business measures in accordance with the requirements of the above-mentioned Code.

Section 1.8. **Non-Discrimination**

A. During the performance of the Lease(s), the Tenant agrees to not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, national origin, sex, pregnancy, age, disability, marital status, familial status, sexual orientation, gender identity or gender expression, status as victim of domestic violence, dating violence or stalking, or veteran status, and on housing related contracts the source of income, and will take affirmative steps to ensure that employees and applicants are afforded equal employment opportunities without discrimination. Such action shall be taken with reference to, but not limited to: recruitment, employment, termination, rates of pay or other forms of compensation, and selection for training or retraining, including apprenticeship and on the job training.

B. By entering into this Lease, Tenant attests that it is not in violation of the Americans with Disabilities Act of 1990 (and related Acts) or Miami-Dade County Resolution No. R-385-95. If Tenant, or any owner, subsidiary or other firm affiliated with or related to Tenant is found by the responsible enforcement agency, the County, or a court of competent jurisdiction to be in violation of the Act or the Resolution, then the Tenant, in addition to complying with all other obligations and indemnification provisions of this Lease, shall cure such violation within 30 days, or, in the case of a violation which cannot, with due diligence and in good faith, be cured

Phase ___ of Palmetto Metrorail Station Lease

within thirty (30) days, shall cure such violation in the time period as may be set by the County in writing which time period shall not exceed a total of 365 days. This Lease shall automatically terminate, subject to the rights of Lenders in Section 17.12 of this Lease, if the Tenant submits a false affidavit pursuant to the Resolution or the Tenant violates the Act or the Resolution during the term of this Lease, even if the Tenant was not in violation at the time it submitted its affidavit.

Section 1.9. **County Facilities and Operations**

County facilities and operations are of critical importance to the County. All operations must be maintained at all times. Any alteration, relocation or replacement of County facilities or activities that may impact such facilities and/or operations, either temporary or permanent, may be undertaken only with the express written consent of the County and must be in compliance with the requirements set forth in the Miami-Dade Transit Construction Safety Manual and the Department of Transportation and Public Works' Adjacent Construction Manual, both as may be amended from time to time, or their replacements, as applicable, including the requirement to obtain Contractor identification badges.

ARTICLE 2

Definition of Certain Terms

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

- A. ADA shall mean the Americans with Disabilities Act, as amended from time to time.
- B. Additional Rent shall have the meaning ascribed to such term in Section 3.9.
- C. Affiliate shall mean any entity that is under common ownership and control with the Development Partner pursuant to the Development Agreement. For the avoidance of doubt, the transfer of ownership from Tenant, Development Partner or Desarrollo Member to an

Phase ___ of Palmetto Metrorail Station Lease

Affiliate shall not be used as a mechanism to avoid the payment of the Transfer Fee to the County under Section 3.8 herein.

D. Annual Rent shall have the meaning ascribed to such term in Section 3.3 herein.

E. Reserved.

F. Bifurcated Lease shall have the meaning ascribed to such term in Section 17.2(a).

G. Board shall mean the Board of County Commissioners of Miami-Dade County, Florida.

H. BOMA Standard shall mean the Standard Method of Floor Measurement for Office Buildings, as most recently published by the Building Owners and Managers Association International (BOMA), which shall be used to compute square footage of all office and retail space.

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, including any certificate designated as temporary or partial in nature, evidencing that the applicable Improvement(s) is (are) ready for occupancy or use in accordance with applicable Law or Ordinance.

J. Closing shall mean the execution and delivery of this Lease, payment of Initial Rent, and the satisfaction of the other Closing Conditions set forth in the Development Agreement.

Phase ___ of Palmetto Metrorail Station Lease

K. Closing Conditions shall mean the conditions precedent to commence construction that Tenant must satisfy pursuant to the terms of the Development Agreement to Close on this Lease.

L. Code shall mean the Code of Ordinances of Miami-Dade County, as amended from time to time.

M. Commencement of Construction, Construction Commencement and “commenced” when used in connection with construction of the Project or Phase shall mean the earlier of the filing of the notice of commencement under Florida Statutes, Section 713.13 or the visible start of work on the site of the Project or Phase. In order to meet the definition of “Commencement of Construction” or commenced herein, such filing of notice or visible start of work must occur after Tenant has received Permit(s) necessary to begin construction for the Project or Phase.

N. Community Commercial Uses shall mean a minimum of approximately 7,500 square feet of commercial space including the following uses (a) approximately 1,000 square feet of office space occupied and utilized by MagicWaste Youth Foundation, Inc., on a rent-free basis, to be utilized by MagicWaste Youth Foundation, Inc., to (i) conduct its business and maintain an active presence on the Demised Premises and (ii) provide services to the residents of the Community Housing Units (which may include specialized programming that is open only to the residents of the Youth Housing Units), including financial-literacy training, job/resume training, job fairs, and tutoring services; (b) office space or leasing office utilized by the property manager of the Project; and (c) retail space operated to primarily benefit the residents of the Community Housing Units, including, but not limited to, an on-site daycare facility, dry cleaner, or corner grocery store, provided that a minimum of 51% of such retail space shall be operated by

Phase ___ of Palmetto Metrorail Station Lease

a not-for-profit corporation organized for promoting community interests and welfare, and such not-for-profit corporation's monthly rent shall be based on an agreed sharing of revenues, with no minimum guaranteed rental payment. All restrictions shall be in place for the term of this Lease, which shall be no less than 90 years.

O. Community Housing Units shall mean Workforce Housing Units, Military Housing Units, and Youth Housing Units. For the avoidance of doubt, all Community Housing Units shall be income and rent-restricted in accordance with the rent limits set forth in the definitions of Workforce Housing Units, Military Housing Units, or Youth Housing Units, as applicable. All restrictions shall be in place for the term of this Lease, which shall be no less than 90 years.

P. Condition of Rights Granted shall mean any obligation imposed by Tenant on Sublessee, licensee or any third party in exchange for the right or entitlement to occupy and/or to use any portion of the Improvements or the Demised Premises, including but not limited to, payment(s) or compensation in any form, regardless of the designated use or the term applied to such payments or compensation.

Q. Construction Completion or Completion of Construction shall mean, for the Project or any Project Phase, the date a Certificate of Occupancy is issued for that Phase or Project.

R. Construction Plans shall consist of Final Design Plans for any Improvements as approved by Miami-Dade County, pursuant to Section 4.6.

S. Day shall mean a calendar day unless otherwise specified.

T. Demised Premises shall mean the Land, which is being leased to Tenant pursuant hereto, which shall be subject to the provisions of this Lease:

Phase ___ of Palmetto Metrorail Station Lease

RESERVING UNTO LANDLORD, subject to the remaining provisions of this Lease, the following:

1) the permanent and perpetual non-exclusive right of ingress, egress and passageway in, over, through and across the Public Areas of the Demised Premises which shall be necessary or desirable for entrance, exit and passageway of persons and property, including vehicles, to and from County facilities;

2) all subsurface rights under the sidewalks, streets avenues, curbs and roadways fronting on and abutting the Demised Premises subject to Tenant's rights described in this definition;

3) the permanent and perpetual non-exclusive right to use the space located in the Public Areas of the Demised Premises solely for the purpose of ingress and egress of patrons using County facilities, as well as the transportation of baggage, mail, supplies and materials of such passengers, from the Demised Premises, public thoroughfares and County facilities;

4) the permanent and perpetual non-exclusive right to use and occupy the space located in the Public Areas of the Demised Premises to be occupied by County directional signs approved by Tenant as to location, size, and consistency pursuant to the terms of this Lease;

5) the right to exclude existing or proposed streets and sidewalks from the Demised Premises to provide and accommodate access to and from the entire Project or for all Project Phases;

IT BEING UNDERSTOOD between the parties hereto that no portion of the existing or proposed Palmetto Station Facilities, and/or systems are leased or intended to be leased to Tenant and that all portions or areas of Palmetto Station Facilities and/or systems are expressly

Phase ___ of Palmetto Metrorail Station Lease

EXCEPTED AND RESERVED unto Landlord, except to the extent that parts thereof are leased or rights in respect thereof are granted to Tenant as herein provided.

U. Desarrollo Member shall mean Desarollo Florida, LLC, a Florida limited liability company, or another entity wholly owned and controlled by Alex Lastra.

V. Development Agreement shall mean the agreement wherein Tenant and the County are parties entered on _____, 20__ which contains the general terms and conditions and phasing, if applicable, under which Lease(s) will become effective and the entire Development Site is to be developed in conformity with the Master Plan.

W. Development Partner shall mean Res-Des Palmetto, LLC, a Florida limited liability company, which is a joint venture between Desarollo Member and an entity owned and controlled by an equity investor with experience investing in projects similar to the Project and approved by the County, in its reasonable discretion, prior to or upon the Effective Date, together with its successors, assigns, and Affiliates, each in accordance with this Lease. Desarollo Member shall initially have at least a ten percent (10%) ownership interest in Development Partner, and any subsequent changes shall be subject to the terms of this Lease, including, but not limited to, Section 3.8. Development Partner shall be jointly and severally liable to Landlord for Tenant's duties, obligations and responsibilities under this Lease. Notwithstanding the foregoing, Development Partner shall not be jointly and severally liable for any obligations of Tenant that, by their nature, are personal to Tenant and cannot be performed by Development Partner, either on its own or by subcontracting with another party (such as a corporate dissolution of Tenant or a Tenant bankruptcy). For the avoidance of doubt, Development Partner shall be jointly and severally liable for the operational obligations of MagicWaste Youth Foundation, Inc., pursuant to this Lease (including the management of the Youth Housing Units and the occupancy and use of

Phase ___ of Palmetto Metrorail Station Lease

the space designated for MagicWaste Youth Foundation, Inc., in Section 2.N of this Agreement). In the event of an uncured Tenant default that is personal to Tenant, then Development Partner shall continue to be responsible for the Project pursuant to a lease directly between Development Partner and Landlord upon the same terms and conditions as this Lease or any subsequent lease, as applicable, except that Development Partner shall be required to utilize its commercially reasonable efforts to identify and subcontract with a qualified non-for-profit corporation to perform the foregoing operational obligations of MagicWaste Youth Foundation, Inc. Notwithstanding anything in this Agreement to the contrary, the foregoing requirement that a qualified non-for-profit corporation perform the foregoing operational obligations of MagicWaste Youth Foundation, Inc. shall apply in any circumstance in which Magic Waste Youth Foundation is not the Tenant.

X. Development Partner Sublease shall have the meaning ascribed to such term in Section 17.7.

Y. Development Site shall mean the real property on which the overall Project is to be developed in accordance with the Development Agreement and in conformity with the Master Plan as set forth in Schedule 4.1.

Z. Effective Date shall mean the first day of the month following the date on which this Lease has been executed by both Parties, after the satisfaction of the effectiveness conditions in Section 1.3 of this Lease.

AA. Environmental Law(s) shall mean all federal, state, regional, county and local statutes, regulations, ordinances, rules, regulations and policies, all court and administrative orders and decrees and arbitration awards, and the common law, which pertain to environmental matters or contamination of any type whatsoever, including to those relating to the presence,

Phase ___ of Palmetto Metrorail Station Lease

manufacture, processing, use, distribution, treatment, storage, disposal, generation or transportation of hazardous materials; air, water (including surface water, groundwater, and stormwater) or soil (including subsoil) contamination or pollution; the presence or release (which shall include, (a) spilling, leaking, pumping, pouring, emitting, emptying, discharging, migrating, injecting, escaping, leaching, dumping, or disposing any hazardous materials in, onto, from or about the air, water (including surface waters and groundwater), soils, subsoils or any other surface or media on-site, and (b) the abandonment or discarding of barrels, drums, containers, underground tanks, or any other receptacles ever containing any hazardous materials) of hazardous materials, protection of wildlife, endangered species, wetlands or natural resources; health and safety of employees and other persons; including the following statutes, and regulations adopted thereunder, including without limitation: Chapter 24 of the Miami-Dade County Code; the Comprehensive Environmental Response, Compensation and Liability Act, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. § 9601 et seq. (“CERCLA”); the Solid Waste Disposal Act, as amended by the Resource Conservation Recovery Act and the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. § 6901 et seq. (“RCRA”); the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977, 33 U.S.C. § 1251 et seq.; the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.; the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq. (“TSCA”); the Safe Drinking Water Act, 42 U.S.C. §§ 300f through 300j; the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 et seq.; the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq.; the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. § 11001 et seq.; and the Occupational Safety and Health Act, 19 U.S.C. § 6251 et seq.

BB. Event(s) of Default shall have the meaning ascribed to such term in Article 19 herein.

Phase ___ of Palmetto Metrorail Station Lease

CC. Fair Market Value shall be that sum which, considering all applicable 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. Final Design Plans shall mean the Plans and Specifications submitted to the County when design is 100% complete.

EE. Financing Agreement shall mean any loan or financing agreement, other than a Leasehold Mortgage, but limited to mezzanine financing agreements, or preferred equity investment agreements, obtained or entered into for the purpose of financing any portion of the Project, leasehold interest, or Improvements. For the avoidance of doubt, Financing Agreements are specifically limited to agreements associated with Mezzanine Financing (including preferred equity investments) and are intended to exclude agreements associated with all other forms of financing, including but not limited to, crowd funding, or other mechanisms of funding by raising money from a large number of people who contribute a relatively small amount of funds, unless approved in writing by Landlord, which approval may be withheld in Landlord's sole discretion.

FF. Governmental Approvals shall mean any and all governmental approvals necessary or advisable for the development of the Demised Premises and the construction of the Improvements thereon, including, without limitation, zoning, re-zoning, land use designation changes, variances, conditional permits, site plan, platting, water management permits, drainage, sewer, retention and/or detention approvals, rapid transit zoning (RTZ approval) and concurrency and density approvals.

Phase ___ of Palmetto Metrorail Station Lease

GG. 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.

HH. Improvements shall mean all enhancements to be erected and installed on, above or below the surface of the Demised Premises in accordance with Article 4 below as a part of the Project, or Phase of the Project, including but not limited to, the buildings, structures, parking structures, utilities, utility lines and appurtenant equipment, vaults, infrastructure, landscaping and hardscaping, drives, streets, sidewalks and parking areas and all equipment and systems which are intended to remain attached or annexed, including any replacements, additions and substitutes thereof, but excluding the Station Improvements and the Parking Facilities.

II. Including shall always mean “including but not limited to.”

JJ. Initial Rent shall have the meaning ascribed to it in Section 3.2.

KK. Land shall mean the real property described in Schedule 1.1 hereto.

LL. Landlord shall mean, on the Effective Date, Miami-Dade County, a political subdivision of the State of Florida, through the Miami-Dade Department of Transportation and Public Works, or its successor. Thereafter, “Landlord” shall mean the owner at the time in question of Landlord’s interest in the Demised Premises.

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

Phase ___ of Palmetto Metrorail Station Lease

NN. Lease shall mean this Lease and all attachments, amendments, supplements, addenda or renewals thereof.

OO. Lease Year shall mean each separate and consecutive period of twelve (12) full calendar months beginning on upon the first day of the first month following the Effective Date and upon each anniversary of such date thereafter, provided that Landlord may cause the Lease Year to be a calendar year.

PP. Leasehold Mortgage shall mean a mortgage or mortgages of the leasehold interest of Tenant hereunder given to any Leasehold Mortgagee for the sole purpose of providing financing or capital for the Improvements under the Lease and shall be deemed to include any mortgage by which this Lease has been encumbered.

QQ. Leasehold Mortgagee shall mean the recognized lending institution meeting the requirements specified in Section 17.3 that is or becomes the holder, mortgagee or beneficiary under a Leasehold Mortgage and the successors or assigns of such holder, mortgagee or beneficiary.

RR. Lender shall mean any of the following entities that is not a Prohibited Person:

a) any federal or state chartered commercial bank, national bank, savings and loan association, savings bank or trust company, or any of their respective Lender Affiliates;

b) any pension, retirement or welfare trust or fund, public limited partnership, public real estate investment trust or other public entity investing in commercial mortgage loans, in each case whose loans on real estate are regulated by state or federal laws, and

Phase ___ of Palmetto Metrorail Station Lease

whose total assets (in name or under management) is in excess of \$500,000,000 or any of their respective Lender Affiliates;

c) any licensed life insurance company in the business of making commercial mortgage loans, in each case whose loans on real estate are regulated by state or federal laws, or any of their respective Lender Affiliates;

d) a governmental agency;

e) a securitization trust that is rated by S&P, Fitch or Moody's (or any like-extant national rating agency) and that has total assets (in name or under management) in excess of \$500,000,000, or any of their respective Lender Affiliates;

f) an investment bank, a hedge fund, opportunity fund, private debt or equity fund, or like entity that has total assets (in name or under management) in excess of \$500,000,000, or any of their respective Lender Affiliates; and

g) any other source of funding, public or private, which is otherwise approved by the County, which approval shall not be unreasonably withheld, conditioned or delayed.

References to Lender shall include an entity or entities meeting the above definition that is a Leasehold Mortgagee or a Mezzanine Financing Source (or any combination thereof).

SS. Lender Affiliate shall mean, regarding any person or entity, any other person or entity directly or indirectly controlling, controlled by or under common control with such person or entity.

TT. Major Sublessee shall mean a Sublessee under a first tier (direct) Sublease with Tenant for all of the Demised Premises or one or more Phases thereof, which must be an organization or entity that is a "Registered Vendor" with Miami-Dade County. Development

Phase ___ of Palmetto Metrorail Station Lease

Partner is a Major Sublessee for purposes of this Lease. Except as expressly provided in Section 2.W of this Lease, Major Sublessee shall be jointly and severally liable to Landlord for Tenant's duties, obligations and responsibilities under the Lease.

UU. Master Plan shall mean the development plan for the entire Development Site as set forth in Schedule 4.1.

VV. 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 subject 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, Development Partner or any Sublessee or structured as a preferred equity investment, which in the event of a bona-fide default by Tenant, Development Partner (or Affiliate) or any Sublessee, as applicable, who entered into the Mezzanine Financing, provides for mezzanine style remedies, the exercise of which may result in a change of control. For the avoidance of doubt, the change of control as a result of the exercise of the mezzanine style remedies in the absence of a bona fide default shall not be used as a mechanism to avoid the payment of the Transfer Fee to the County under Section 3.8 herein.

WW. Mezzanine Financing Source shall mean a Lender selected by the Tenant, Development Partner of any Sublessee to provide Mezzanine Financing.

XX. Milestones shall have the meaning as ascribed to such term in Section 4.2 herein.

YY. Military Housing Units shall mean a minimum of approximately 258 residential units that (a) are rent-restricted to the amount established each year by the Florida Housing Finance Corporation for total household income equaling 120% of area median income

Phase ___ of Palmetto Metrorail Station Lease

for Miami-Dade County, and (b) are marketed to active and retired military personnel in coordination with the Miami-Dade Military Affairs Board or other governmental agency or not-for-profit entity approved by the County. These units shall at all times be affordable in accordance with Florida Statutes, Section 420.0004. All restrictions shall be in place for the term of this Lease, which shall be no less than 90 years.

ZZ. Must, either in capitalized or in lower case form, when used in this Lease Agreement is intended to always convey a mandate and/or a requirement.

AAA. Must not, either capitalized or in lower case form, when used in this Lease Agreement is intended to always convey a prohibition and/or something that is not allowable.

BBB. Palmetto Station Property shall mean the property owned by Miami-Dade County and all existing and proposed improvements or modifications thereon, including those contemplated by the Master Plan, generally located immediately west of the Palmetto Expressway and north of NW 74th Street but specifically exempting the Development Site. As used herein, the term “Palmetto Station Property” shall be deemed to include the Palmetto Station Facilities.

CCC. Palmetto Station Facilities shall mean the County-owned and operated facilities of the Station including, without limitation, all buses and transit vehicles, 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 Palmetto Station Property including those systems and structures operated by a thirty party for a transit or transportation-related purpose but authorized to operate at the Palmetto Station Property by Miami-Dade County.

DDD. Parking Facilities shall have the meaning ascribed to it in Section 4.1(D).

EEE. Parking Garage shall have the meaning ascribed to it in Section 4.1(D).

Phase ___ of Palmetto Metrorail Station Lease

FFF. 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.

GGG. Phase shall mean a separate and distinct portion of the Project which may be developed, financed, constructed, operated and owned separately from any other Phase of the development.

HHH. Plans and Specifications shall mean the plans and specifications (including Preliminary Plans and Final Design Plans) for all the work in connection with the alteration, construction and reconstruction of the Project or Phase required to be done or performed hereunder and shall include any changes, additions or modifications thereof that are submitted to the County for approval pursuant to this Lease.

III. Preliminary Plans shall mean the site plan or conceptual plans for the Demised Premises, which have been submitted by Tenant to Landlord for its review pursuant to this Lease prior to the preparation and submittal of Final Design Plans.

JJJ. Prohibited Person shall mean any of the following: (i) any person or entity (whose operations are directed or controlled by an individual) who has been convicted of or has pleaded guilty in a criminal proceeding for a felony or who is an on-going target of a grand jury investigation convened pursuant to United States laws concerning organized crime; or (ii) any person or entity organized in or controlled from a country, the effects of the activities with respect to which are regulated or controlled pursuant to the following United States laws and the regulations or executive orders promulgated thereunder to the extent the same are then effective:

Phase ___ of Palmetto Metrorail Station Lease

(x) the Trading with the Enemy Act of 1917, 50 U.S.C. App. §1, et seq., as amended; (y) the International Emergency Economic Powers Act of 1976, 50 U.S.C. §1701, et seq., as amended; and (z) the Anti-Terrorism and Arms Export Amendments Act of 1989, codified at Section 6(j) of the Export Administration Act of 1979, 50 U.S.C. App. § 2405(j), as amended (which countries are, as of the date hereof, Iran, Sudan and Syria); or (iii) any person or entity who has engaged in any dealings or transactions (i) in contravention of the applicable money laundering laws or regulations or conventions or (ii) in contravention of Executive Order No. 13224 dated September 24, 2001 issued by the President of the United States (Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), as may be amended or supplemented from time-to-time or any published terrorist or watch list that may exist from time to time; or (iv) any person or entity who appears on or conducts any business or engages in any transaction with any person appearing on the list maintained by the U.S. Treasury Department's Office of Foreign Assets Control list located at 31 C.F.R., Chapter V, Appendix A or is a person described in Section 1 of the Anti-Terrorism Order; or (v) any person or entity who appears on the convicted vendor list maintained by the State of Florida pursuant to Section 287.133, Florida Statutes; or (vi) any person or entity who has been debarred pursuant to the Miami-Dade County Code of Ordinances.

KKK. Reserved.

LLL. Project shall mean the overall joint development, including all Phases of the Project, contemplated by the Master Plan, based on the proposal submitted to Landlord by Tenant, as such proposed development may be amended and/or revised from time to time.

MMM. Project Schedule shall mean the list of Milestones for the Project, including each Phase of the Project, if applicable, and the timetable for the completion of each Milestone, as

Phase ___ of Palmetto Metrorail Station Lease

approved by the County/Landlord and subject to Unavoidable Delays and duly requested changes which are approved by the County/Landlord in writing.

NNN. 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 does not include common areas in the respective residential, office or the commercial components.

OOO. Redevelopment shall have the meaning ascribed to it in Section 11.1.

PPP. Rent shall collectively mean Initial Rent, Annual Rent and Additional Rent.

QQQ. Restricted Entity shall mean those sanctioned, debarred or restricted persons and organizations that the U.S. government maintains in any federal list including: the Specially Designated Nationals and Blocked Persons List (U.S. Department of Treasury); the Foreign Sanctions Evaders List (U.S. Department of Treasury); the Entity List (U.S. Department of Commerce); the Denied Persons List (U.S. Department of Commerce); the Unverified List (U.S. Department of Commerce); the Nonproliferation Sanctions List (U.S. Department of State); the AECA Debarred List (U.S. Department of State); and/or the Convicted Vendor List (Florida Department of Management Services).

RRR. Scheduled Closing Date shall mean the date Tenant anticipates meeting all the Conditions for Closing for the Project or Phase, as set forth in the Project Schedule as may be extended by Unavoidable Delay or by the payment of a Delayed Closing Fee (as defined in the Development Agreement).

SSS. Security Deposit shall mean the money deposited into an account pursuant to the Development Agreement, which upon this Lease becoming effective shall be applied as pre-paid Rent to the first Rents becoming due under this Lease until the amount deposited into the account as a Security Deposit is exhausted.

Phase ___ of Palmetto Metrorail Station Lease

TTT. Shall, either in capitalized or in lower case form, when used in this Lease Agreement is intended to always convey a mandate and/or a requirement.

UUU. Shall not, either capitalized or in lower case form, when used in this Lease Agreement is intended to always convey a prohibition and/or something that is not allowable.

VVV. Station Improvements shall have the meaning ascribed to it in Section 4.1(C).

WWW. Sublease shall mean any instrument pursuant to which all or a portion of the rights granted by this Lease is transferred to an entity other than the Tenant, including to a Major Sublessee, including but not limited to, a space lease and/or license agreement, and whereby the original Tenant retains all obligations under the Lease, unless otherwise provide by the Lease. Except as expressly provided by Section 2.W of this Lease, any Sublease that transfers development or sublandlord obligations (and not, for example, a Sublease with a residential tenant) shall expressly provide that the Sublessee shall be jointly and severally liable for the Tenant's and/or Major Sublessee's duties, obligations and responsibilities under this Lease, at least as to the portion of the demised premises to be sublet.

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

YYY. 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.

ZZZ. Taking shall mean the exercise of the power of eminent domain as described in Article 18.

Phase ___ of Palmetto Metrorail Station Lease

AAAA. Tenant shall mean, on the Effective Date, MAGICWASTE YOUTH FOUNDATION, INC., a Florida not-for-profit corporation. Thereafter, “Tenant” shall mean the owner(s) at the time in question of the Tenant’s interest under this Lease, so that if Tenant, or any successor to its interest hereunder ceases to have any interest in the leasehold estate hereby created, whether by reason of (i) assignment, transfer or sale of Tenant’s interest hereunder, subject to the provisions of Section 17.1, or (ii) a bifurcation of this Lease pursuant to Section 17.2, the assignor, transferor or seller shall be released from and relieved of all agreements, covenants and obligations of Tenant hereunder to be performed after the date of such assignment, transfer, bifurcation or sale, provided that the purchaser, successor, or transferee assumes in writing all such agreements, covenants, and obligations for the portion of the Demised Premises being transferred. 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 shall remain liable for the representations and warranties of Section 24.2. Notwithstanding anything in this Lease to the contrary, all obligations of Tenant under this Lease may be performed by the Development Partner or its Affiliate and such performance shall be accepted by the Landlord in satisfaction of this Lease, and except as expressly provided in Section 2.W of this Agreement, Development Partner shall be jointly and severally liability for all obligations of Tenant under this Lease.

BBBB. Transit Operator Housing Units shall mean 125 of the Workforce Housing Units that shall be marketed to bus drivers and other transit operators employed by DTPW or successor department, and such operators shall have the first opportunity to rent such units, provided they otherwise qualify pursuant to the Workforce Housing Laws, any other applicable

Phase ___ of Palmetto Metrorail Station Lease

local, state and federal Laws and Ordinances, and any reasonable, non-discriminatory screening policies enforced by Tenant. The 125 Workforce Housing Units designated for individuals and families with incomes equal to or less than 100% of area median income shall be initially designated as the Transit Operator Housing Units. The Parties may agree to change the unit mix of the Transit Operator Housing Units to include Workforce Housing Units designated for households whose incomes exceed 100% of area median income, or to expand the eligibility criteria for Transit Operator Housing Units to include additional categories of DTPW employees; provided, however, that Tenant shall not be required to provide more than 125 total Transit Operator Housing Units.

CCCC.Unavoidable Delays are delays beyond the control of a party required to perform, such as (but not limited to) delays due to strikes; acts of God; floods; fires; any act, neglect or failure to perform of or by the Landlord; enemy action; civil disturbance; sabotage; restraint by court or public authority; litigation or administrative challenges by third parties to the execution or performance of this Lease or the procedures leading to its execution; or moratoriums. The obligated party shall be entitled to an extension of time because of its inability to meet a time frame or deadline specified in this Lease where such inability is caused by an Unavoidable Delay, provided that such party shall, within fifteen (15) days after it has become aware of such Unavoidable Delay, give notice to the other party in writing of the causes thereof and the anticipated time extension necessary to perform. Neither party shall be liable for loss or damage or deemed to be in default hereof due to any such Unavoidable Delay(s), provided that party has notified the other as specified in the preceding sentence and further provided that such Unavoidable Delay did not result from the fault, negligence or failure to act of the party claiming the delay.

Phase ___ of Palmetto Metrorail Station Lease

Time being of the essence, failure to give notice to the other party of the existence of Unavoidable Delays within the fifteen.

DDDD. Work shall mean all matters and things that will be required to be done for the construction, operation and maintenance of the Improvements and the Demised Premises by the Tenant in accordance with this Lease.

EEEE. Workforce Housing shall mean the rental of housing units for natural persons or families whose total annual household income ranges from sixty percent (60%) to one hundred twenty percent (120%) of the area median family income for Miami-Dade County, adjusted for household size, as published annually by the U.S. Department of Housing and Urban Development.

FFFF. Workforce Housing Laws shall mean all Laws and Ordinances regarding Workforce Housing and the financing thereof, as amended from time to time.

GGGG. Workforce Housing Units shall mean a minimum of approximately (i) 25 residential units that are set aside for individuals and families whose total annual household income is no more than 60% of area median income for Miami-Dade County, (ii) 30 residential units that are set aside for individuals and families whose total annual household income is no more than 80% of area median income for Miami-Dade County, (iii) 70 residential units that are set aside for individuals and families whose total annual household income is no more than 100% of area median income for Miami-Dade County, and (iv) 607 residential units that are set aside for individuals and families whose total annual household income is no more than 120% of area median income for Miami-Dade County, in each case, as adjusted for household size, as published annually by the U.S. Department of Housing and Urban Development, and for which rent is capped at the amount established each year by the Florida Housing Finance Corporation for such income

Phase ___ of Palmetto Metrorail Station Lease

limitation. In the event of a change in law that permits the occupancy of property conveyed pursuant to Section 125.379, Florida Statutes, by individuals and families earning up to 140% of area median income, then, at Tenant's option, 495 of the 607 units identified in clause (iv) may be rented to individuals and families earning up to such higher income threshold, provided that 10 of the 607 units identified in clause (iv) are added to the units described in clause (i) and 30 of the 607 units identified in clause (iv) are added to the units described in clause (ii). These units shall at all times be affordable in accordance with Florida Statutes, Section 420.0004. All restrictions shall be in place for the term of this Lease, which shall be no less than 90 years.

HHHH. Youth Housing Units shall mean a minimum of approximately 40 micro-residential units that are set aside for use by youth who age out of Florida's foster care program, as established by the Florida Department of Children and Families, and provided to such eligible residents on a rent-free basis (such residential units may developed as individual dwelling units or within shared living suites that utilize common kitchen, restroom, living, and dining facilities [or any combination thereof]). These units shall at all times be affordable in accordance with Florida Statutes, Section 420.0004. All restrictions shall be in place for the term of this Lease, which shall be no less than 90 years.

ARTICLE 3

Rent

Section 3.1. **Net Lease**

This Lease is an absolute net lease. Accordingly, Initial Rent, Annual Rent and Additional Rent shall be paid to Landlord without deduction for any expense or charge except as otherwise expressly provided for in this Lease. Tenant shall be responsible for and pay all expenses of every kind and nature, relating to or arising from the rights granted under this Lease

Phase ___ of Palmetto Metrorail Station Lease

thereon including Impositions and expenses arising from the construction, operation, maintenance, repair, use, occupancy and/or management relating to the Demised Premises and Improvements.

Tenant shall pay to Landlord Initial Rent, Annual Rent and Additional Rent in accordance with Schedule 3, attached hereto and by reference made a part hereof.

Section 3.2. **Initial Rent**

During the first ___ Lease Years, or until actual Construction Completion and a Certificate of Occupancy is issued, whichever occurs first, Tenant shall pay to Landlord Initial Rent for the Demised Premises as set forth in Schedule 3. The first payment of Initial Rent shall be due upon or prior to the Effective Date of this Lease. Subsequent payments shall be due in advance without notice or demand from Landlord.

Any prepaid Development Fee covering any period of time after which Initial Rent becomes due shall be credited to Rent due to Landlord until the amount of any prepaid Development Fee is exhausted.

Additionally, after the amount of any prepaid Development Fee is exhausted, the Security Deposit which was deposited into an account under the Development Agreement shall then be applied to any Rent payable to Landlord, until the Security Deposit is exhausted.

Section 3.3. **Annual Rent**

Upon Construction Completion and issuance of a Certificate of Occupancy for the Project or Phase or upon the ___ anniversary of the Effective Date, as set forth in the Project Schedule, whichever occurs first, and during remaining term of this Lease, Tenant shall pay to Landlord Annual Rent, as set forth in Schedule 3. Subsequent Annual Rent payments shall be payable in advance without notice or demand from Landlord.

Phase ___ of Palmetto Metrorail Station Lease

Section 3.4. **Annual Adjustments to Rent**

Commencing in the second full Lease Year, as defined in Article 2 above, and continuing each year during the term of this Lease and any renewal terms and/or extensions thereof, the amount of Annual Rent established for the previous year shall be increased by two percent (2%).

Section 3.5. **Adjustment to Rent in Event of Redevelopment**

In the event of Redevelopment of the Project or Phase, Annual Rent shall be adjusted as described in Article 11 of this Lease.

Section 3.6. **Late Payments**

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

Section 3.7. **Enacted Restrictions**

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, or Phase of the Project if applicable, in substantial compliance with the Master Plan described in Schedule 4.1. Landlord and Tenant acknowledge that the Initial Rent and Annual Rent established in this Lease were based on the understanding that Tenant would be able to develop the Project or Phase as described. If, due solely to Laws and Ordinances enacted

Phase ___ of Palmetto Metrorail Station Lease

subsequent to the effective date of this Lease and Tenant is not able to build the Project or Phase as described, 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, and the obligations of Tenant to pay Rent under this Lease shall be abated as of the date of the giving of such notice, and in such event this Lease shall terminate fifteen (15) days following the Landlord's receipt of notice of termination; and in the event Tenant does not terminate this Lease, as set forth above, Tenant may become entitled to an adjustment in Rent (Initial Rent and Annual Rent) on an equitable basis taking into consideration the amount and character of the space or other aspect of the Project or Phase described in Schedule 4.1, the use of which will be denied to the Tenant, as compared with the space described in the Schedule 4.1. However, in no event, may such adjustments in the proposed development delay the Commencement of Construction or Completion of Construction for a period of longer than 120 calendar days, unless an extension of such period of time is granted in writing by the County, in its sole discretion.

Section 3.8. **Payment Where Tenant Sells, Assigns or Transfers Any Development**

Rights

Landlord and Tenant acknowledge that they have entered into this Lease for joint development of public land for the potential of both public and private benefit. The intent of the Parties is that the Tenant and Development Partner shall equitably share with Landlord the proceeds of any sale, assignment, or transfer of this Lease (or otherwise of its rights to develop the Project or Phase), whether direct or indirect, and regardless of the method used to accomplish such transfer, which may include, but are not limited to, a sale, assignment, transfers of stock, partnership interests, or equity interests in Tenant or Development Partner, and financing or

Phase ___ of Palmetto Metrorail Station Lease

refinancing agreements (except for transfer made in connection with a Leasehold Mortgage or Mezzanine Financing) (each, a “**Transfer**”). As such, in the event that a Transfer occurs, and as a result thereof (a) Tenant or Development Partner retains, in the aggregate, less than a fifty percent (50%) interest in the Project or Phase, or (b) there is an aggregate change in ownership of Tenant or Development Partner of more than fifty percent (50%), or (c) Desarollo Member, directly or indirectly, retains less than the percentage interest in Development Partner (or otherwise in the Project or Phase) owned by Desarollo Member on the effective date hereof (which shall not be less than ten percent (10%)), then Tenant or Development Partner, as applicable, shall pay Landlord ten percent (10%) of the amount of the total proceeds from such Transfer, less (x) hard and soft costs expended by the Tenant, Development Partner, or Desarollo Member, and (y) any and all transaction costs paid by the Tenant, Development Partner, or Desarollo Member (*e.g.*, brokerage commissions, documentary stamp taxes, surtaxes and/or other transfer taxes, and other customary closing costs); provided, however, that if the Transfer occurs prior to Completion of Construction of the Phase, the amount payable to Landlord shall be based upon fifty percent (50%) of the total proceeds, versus ten percent (10%) (“**Transfer Fee**”); For subsequent Transfers over the Term of the Lease, the Transfer Fee shall also be net of the purchase price paid by the transferor, and the hard and soft costs deducted shall be only those expended by the transferor during its period of ownership. Any hard and soft costs and transaction costs deducted from the total proceeds in accordance with the foregoing shall be verifiable and documented in a form reasonably acceptable to Landlord. For the avoidance of doubt, investments made into Tenant or Development Partner for the purpose of funding obligations of Tenant or Development Partner in connection with the Project shall not be considered proceeds resulting from a Transfer, except to

Phase ___ of Palmetto Metrorail Station Lease

the extent that such investment results in a cash distribution to any owner of Tenant or Development Partner in exchange for any portion of its interest.

The applicable Transfer Fee shall be paid to Landlord at the closing of the Transfer. The payments to Landlord under this section shall be in addition to and with no offsets for any other fees or payments to which Landlord is entitled under any other provisions of this Lease.

For the avoidance of doubt, the transfer of ownership to an Affiliate shall not be used as a mechanism to avoid the payment of the Transfer Fee under this Section.

Prior to the Effective Date and each year thereafter, Tenant or Development Partner shall maintain in its records an annual certified statement from a Certified Public Accountant at a “Big Four” Accountant Firm, or a reputable regional accounting firm, or a Lawyer licensed in State of Florida .with the ownership names and percentage of ownership for Tenant, and Development Partner (including the direct or indirect interest of Desarrollo Member),. Upon five (5) days’ notice, Tenant or Development Partner shall permit County to inspect such statement(s); provided, however, that such inspection shall be on a confidential basis to the extent that the Tenant properly asserts its entitlement to any statutory exemptions to the public-disclosure requirements of Chapter 119, Florida Statutes. Prior to or at the time of the Transfer, as stated in this Section, the Tenant or Development Partner shall permit the County to inspect, on the terms provided in the preceding sentence, a certification, in the form of a detailed breakdown, from a Certified Public Accountant at a “Big Four” Accountant Firm, or a reputable regional accounting firm, or a Lawyer licensed in State of Florida that verifies the amount of the Transfer Fee in accordance with this Section 3.8. Notwithstanding the forgoing, if Tenant or Development Partner is a partnership, joint venture, consortium or similarly structured entity, within one (1) year of Completion of Construction and issuance of a Certificate of Occupancy for the Lease Phase, Tenant or Development Partner may

Phase ___ of Palmetto Metrorail Station Lease

assign the Lease Phase, one time only, to any one or more member(s) of such partnership, joint venture, consortium or similarly structured entity without payment to Landlord of any Transfer Fee. Any additional assignments shall be subject to the above-described payment to Landlord.

Section 3.9. **Additional Rent**

Additional Rent shall be defined as all costs and expenses owed by Tenant to Landlord as provided for in this Lease other than Initial Rent and Annual Rent.

Section 3.10. **No Subordination of Rent**

The Rent payable to Landlord hereunder shall never be subordinate to any other amounts due to any third party by Tenant, including to any sums due under any Leasehold Mortgage, Financing Agreement or Tenant obligation and Landlord shall at all times have a first priority right to payment of Rent.

Section 3.11. **Operation of Station and System**

Landlord covenants and agrees with Tenant that Landlord will not permanently discontinue or cease the operation of the Station or the System, or reduce the use of the Station in any material manner, at any time during the Term. For the avoidance of doubt, the foregoing sentence shall not prohibit Landlord for adjusting in good faith the frequency or mode of transit service to the Station to reflect the operational needs of the Station and the System, so long as the Station is serviced by at least one mode of transportation during rush hours on working days. In the event Landlord determines to permanently discontinue or cease the operation of the Station or the System, or reduce the use of the Station in any material manner, despite such covenant and agreement, then, in addition to any other rights Tenant may have under this Lease, (a) Tenant shall have the right, in its sole discretion, to terminate this Lease and its obligations hereunder as to the Project or any Phase by giving written notice to Landlord within six (6) months after such discontinuance,

Phase ___ of Palmetto Metrorail Station Lease

cessation, or material reduction in use, and the obligations of Tenant to pay Rent under this Lease shall be abated in its entirety or partially with respect to the applicable Phase(s), as of the date of the giving of such notice, and in such event this Lease shall terminate (in whole or with respect to the applicable Phase(s) as applicable) fifteen (15) days following Landlord's receipt of notice of termination; and (b) in the event Tenant does not terminate this Lease as set forth above, Tenant shall become entitled to an adjustment and reduction in Rent on an equitable basis taking into consideration the impact of such discontinuances, cessation or material reduction in the use on the Project, if any.

ARTICLE 4

Development of Land and Construction of Improvements

Section 4.1. **Master Plan/Land Uses**

A. The Master Plan which describes the overall development concept for the entire Development Site is attached hereto as Schedule 4.1 and a made a part hereof.

B. The Tenant shall develop and construct the Project/ Project Phase on the Demised Premises in substantial conformity with the Master Plan as set forth in Schedule 4.1.

C. The Tenant shall construct certain improvements to the Palmetto Station Property (the "Station Improvements"), which are anticipated to include (a) the painting of the Palmetto Station Property, at an approximate cost of \$125,000, (b) the replacement of light fixtures within the Palmetto Station Property to energy efficient light fixtures, at an approximate cost of \$150,000, (c) the construction of a covered walkway from the Parking Garage to the Palmetto Station Property, at an approximate cost of \$250,000, (d) the installation of bicycle racks and enhancements to the drop off and kiss and ride areas, including benches, at an approximate cost of \$100,000, and (e) the addition of upgrades to the plaza area at the base of the Parking Garage, including landscaping, hardscape, fountains, pavers, and canopy area, including landscaping

Phase ___ of Palmetto Metrorail Station Lease

upgrades throughout the Palmetto Station Property, including the entry, at an approximate cost of \$375,000, substantially in conformance with the renderings attached hereto as 4.1C, as same may be modified with Landlord's approval in connection with the Project pursuant to the plan approval process set forth herein. The Station Improvements shall be performed by Tenant at a total approximate cost of \$1,000,000 (the "Station Improvements Budget"). The Station Improvements are also anticipated to include the installation of a bicycle lane connecting the Palmetto Station Property to the NW 74th Avenue bicycle trail (the "Bike Lane"), as more particularly set forth on Schedule 4.1.C. attached hereto, the cost of which is not included in the Station Improvements Budget. In consideration of the Project being a transit-oriented development on County land promoting transit ridership to and from the Palmetto Station Facilities, and subject to the Board of County Commissioners' and the Transportation Planning Organization's review and approval process pursuant to Chapter 33E of the Code of Miami-Dade County, Florida (the "Code"), the County agrees to offset as a contribution in lieu of impact fees against road impact fees that would otherwise be due and payable in amount equal to Tenant's capital contributions to the Bike Lane and other qualifying off-site improvements performed or required to be performed by Tenant.

D. Tenant shall construct certain parking facilities, which shall include (collectively, the "Parking Facilities") (i) the structured parking garage depicted on the Master Plan consisting of a minimum of approximately 1290 parking spaces (the "Parking Garage"), and (ii) the surface parking lot depicted on the Master Plan consisting of a minimum of approximately 50 parking spaces (the "Parking Lot"), substantially in conformance with the renderings attached hereto as Schedule 4.1.D, as same may be modified with Landlord's approval in connection with the Project pursuant to the plan approval process set forth herein. The Parking Facilities shall be constructed by Tenant at no cost to Landlord. For the avoidance of doubt, in the

Phase ___ of Palmetto Metrorail Station Lease

event that the Parking Facilities contain more than 1,340 parking spaces, any such additional spaces shall be Tenant Spaces, and in the event that the Parking Facilities contain less than 1,340 parking spaces, the number of Tenant Spaces shall be reduced by the amount of such shortfall.

E. Tenant and Landlord agree, for themselves and their successors and assigns, to devote the Demised Premises to the uses described on Schedule 4.1.E., which shall include the Community Housing Units and Community Commercial Uses designated on the Master Plan for the Project Phase. The non-profit entity that is the “Tenant” under this Lease shall have a presence at the Demised Premises during the Term from and after the Completion of Construction.

F. The Parties recognize and acknowledge that the manner in which the Demised Premises 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:

- 1) Enhances and promotes the usage of transit systems and facilities;
- 2) Creates strong access links between the Demised Premises and the Station and transit systems;
- 3) Provides a physical connection between the development and the Station; and,
- 4) Creates a (type of project) with a quality of character and operation consistent with that of similar, comparable projects of this nature in Miami-Dade County, Florida in conformity with the Master Plan set forth in Schedule 4.1.

Phase ___ of Palmetto Metrorail Station Lease

G. Tenant shall establish such reasonable rules and regulations governing the use and operation by Sublessees, licensees and any occupants of the Demised Premises and Improvements as Tenant shall deem necessary or desirable in order to assure the level or quality and character of operation of the Demised Premises and Improvements required herein; and Tenant will use reasonable efforts to enforce such rules and regulations.

Section 4.2. **Project Schedule Phased Development**

The Parties have agreed that the development will be developed in Phases as described in the Master Plan for the entire Project as set forth in Schedule 4.1.

The portion of the Development Site leased to Tenant under this Lease is described as Phase ___ in the Master Plan.

Milestones for the Project or Phase ___ of the Project, as applicable, are set forth in Schedule 4.2 (Project Schedule) attached hereto and made a part hereof. The Project Schedule sets forth the following deadlines for the development of the Project, or Phase ___ of the Project (“Milestones”):

- A. Design Completion;
- B. The Scheduled Closing Date for this Lease;
- C. Scheduled Construction Commencement; and
- D. Construction Completion.

The Tenant shall develop and construct the Project or Phase ___ of the Project, as applicable, in substantial conformity with the Master Plan and in accordance with the Project Schedule, as approved by DTPW.

If Completion of Construction for the this Phase of the Project required by this Lease has not occurred on or before the date that is six (6) years following the Effective Date, subject to

Phase ___ of Palmetto Metrorail Station Lease

Unavoidable Delays and the rights of Lenders, then, unless otherwise mutually agreed by the Parties, this Lease shall automatically terminate and all right, title and interest of Tenant in and to the Demised Premises shall automatically revert to Landlord.

Section 4.3. **Miami-Dade County as Landlord**

The following shall apply to the rights and obligations of Landlord in connection with the Tenant's right to develop the Demised Premises and to construct the Improvements:

A. **Development Rights of Land**

In connection with this contemplated development, the Parties agree Landlord will join in such easements, restrictive covenants, easement vacations 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 develop and use the Demised Premises in accordance with the Preliminary Plans and/or the Master Plan and in a manner otherwise permitted hereunder, provided that such joinder by Landlord shall be at no liability, exposure, or 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.

B. **Miami-Dade County's Rights as Sovereign**

It is expressly understood that notwithstanding any provision of this Lease and Miami-Dade County's status as Landlord thereunder:

1) 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

Phase ___ of Palmetto Metrorail Station Lease

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, development and operation of the Improvements provided for in this Lease; and

2) Miami-Dade County shall not by virtue of this Lease be obligated to grant Tenant 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, development and operation of the Project or Phase Improvements provided for in this Lease.

The County does not represent or guarantee, in any manner whatsoever, the suitability of the Demised Premises for the uses contemplated by the Master Plan or that Governmental Approvals or Permits will be issued for the uses contemplated in the Master Plan. The Tenant shall be solely responsible for obtaining all such Governmental Approvals and Permits and for resolving any objections to the proposed uses, regardless of the source of such objections. The County does not guarantee or represent, in any way, that it will provide support or assistance to the Tenant in obtaining Governmental Approvals or Permits or resolving objections to the proposed uses, including but not limited to, objections to such uses by community organizations, community activists, elected County officials or officials charged with issuing such approvals and permits.

Section 4.4. **Conformity of Plans**

Preliminary Plans, Final Design Plans and Construction Plans and all Work by Tenant with respect to the Demised Premises and to Tenant's construction of Improvements thereon shall be in conformity with this Lease, applicable building codes, and all other applicable Laws and Ordinances, including applicable provisions of the Miami-Dade Transit Construction Safety

Phase ___ of Palmetto Metrorail Station Lease

Manual and the Department of Transportation and Public Works Adjacent Construction Manual or their replacements. It should be noted that the Miami-Dade Transit Construction Safety Manual and the Department of Transportation and Public Works Adjacent Construction Manual contain minimum requirements and the County may impose more stringent requirements if the County reasonably determines that more stringent requirements are warranted to adequately protect County facilities and operations.

Section 4.5. **Design Plans; DTPW Review and Approval Process**

Tenant shall have previously complied with terms of this Section 4.5 as a condition precedent under the Development Agreement to Commence Construction and enter this Lease. Accordingly, this Section 4.5 shall be applicable in the event of redevelopment, addition to and/or rebuilding of the Improvements of the Project or Phase required as a result of abnormal site conditions that could not have been reasonably foreseen.

A. Tenant shall submit design and construction documents to DTPW for review, coordination and approval at the different stages of the Project or Phase. For each submittal, Tenant shall submit eight (8) sets of prints with the date noted on each print.

B. At fifteen percent (15%) of the overall design completion of the Project or Phase, Tenant shall submit conceptual site layouts and plans, sections, and elevations to DTPW for review in conformity with applicable building codes, Laws and Ordinances, including applicable provisions of the Miami-Dade Transit Construction Safety Manual and the Department of Transportation and Public Works Adjacent Construction Manual or their replacements.

C. At eighty-five percent (85%) design completion of the Project or Phase, Tenant shall submit drawings, conceptual site layouts and plans, sections, elevations and pertinent documentation to DTPW for review.

Phase ___ of Palmetto Metrorail Station Lease

D. At one hundred percent (100%) design completion of the Project or Phase, Tenant shall submit to DTPW the Final Design Plans. 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, within thirty (30) business 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) business 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. Within thirty (30) business 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, until the same receives final approval by DTPW. DTPW and Tenant shall in good faith attempt to resolve any disputes concerning the Final Design Plans in an expeditious manner.

In the event that the County fails to provide notice to the Tenant of its approval or disapproval of the submittals or to request additional information within the thirty (30) business day period as provided above, the Tenant shall be entitled to an extension of any deadlines directly affected by such delay and such extension shall be considered an Unavoidable Delay. Such deadlines shall be extended only for the same number of days as the County delayed in notifying the Tenant of its approval or disapproval beyond the thirty (30) business day period or such longer extension period as the County may allow provided such extension is provided by the County in writing.

Phase ___ of Palmetto Metrorail Station Lease

F. Upon the approval of the Final Design Plans for the Project or Phase, such design shall be the Construction Plan for the Project or Phase. DTPW's approval shall be in writing and each party shall have a set of plans signed by all Parties as approved. In the event any change occurs after approval of the Final Design Plan for the Project or Phase, then Tenant must resubmit the changed portion of the construction plans for DTPW's reasonable approval.

Tenant shall give Landlord final site and elevation plans for the Project or Phase prior to submittal for the building permits for the Project or Phase. All Construction Plans must be in conformity with the Final Design Plans approved by DTPW and the procedure in this Lease.

Section 4.6. **Construction Plans**

A. Subject to the rights of Leasehold Mortgagees or Mezzanine Financing Sources, Tenant shall assign to Landlord all of Tenant's right, title and interest in and to all construction and design contracts and Final Design Plans and Construction Plans and all Preliminary Plans, final and working plans, the Master Plan, specifications, drawings and construction documentation prepared in connection with this Lease and all intellectual property rights in any of the foregoing, which assignment shall be in a form reasonably satisfactory to Landlord. Moreover, Tenant shall include a provision in each contract with any architect, engineer, general contractor, sub-contractor, design/builder, construction manager that vests DTPW with all right, title and interest to the such Final Design Plans and Construction Plans, all preliminary plans and in such work product, should an Event of Default occur and the affected Leasehold Mortgagee or Mezzanine Financing Source(s) or their successors in interest under any Lease executed pursuant to this Lease, if any, after taking possession or title to Tenant's interest in the Project or Phase, does not elect to construct and complete the Improvements. Such assignment must include an acknowledgement by the architect, engineer, general contractor, sub-contractor design/builder,

Phase ___ of Palmetto Metrorail Station Lease

construction manager that the contract has been assigned to the Landlord and, subject to the rights of Leasehold Mortgagees or Mezzanine Financing Sources, the Parties consent to such assignment and will perform its obligations under such contract if elected by Landlord after the occurrence of an Event of Default but subject to the rights of Leasehold Mortgagees or Mezzanine Financing Sources if all sums due under the contract are paid and that such contracts may not be materially and adversely modified without Landlord's consent.

B. Notwithstanding the foregoing, Landlord shall not exercise any of its rights as assignee unless and until, after the occurrence of an Event of Default, this Lease has been terminated and each Leasehold Mortgagee or Mezzanine Financing Source, or their respective successors, after taking possession or title to Tenant's interest in the Project or Phase, has failed to timely exercise its right to a lease in reversion as provided by Section 17.6 of this Lease.

C. Without limiting Tenant's maintenance obligations under Section 9.3 herein, contemporaneously with Completion of Construction of the Parking Facilities, Tenant shall assign to, or cause Landlord to be added as an express benefited party on, and shall provide Landlord with a copy of, the construction warranties provided by the general contractor or any other contractor for the Parking Facilities together with any and all other assignable warranties or guaranties of workmanship or materials provided to Tenant by any subcontractor, manufacturer, supplier or installer of any element or system in the Parking Facilities (collectively, the "Construction Warranties"). To the extent the Construction Warranties are assigned by Tenant to Landlord, the Construction Warranties shall nevertheless remain jointly enforceable by Tenant and Landlord. All Construction Warranties shall be required to extend for a period of two (2) years following Completion of Construction of the Parking Facilities (the "Construction Warranty Period"); provided, however, if Tenant obtains extended Construction Warranties for any portion

Phase ___ of Palmetto Metrorail Station Lease

of the Parking Facilities from any contractors, subcontractors or manufacturers, then the Construction Warranty Period for the applicable portion of the Parking Facilities shall extend for such time as the contractors', subcontractors' or manufacturers' extended Construction Warranties exist. Landlord will provide the general contractor and any other contractors for the Parking Facilities with access to the relevant property at no charge in order to perform any remedial work pursuant to the Construction Warranties; provided, however, that all such contractors shall use commercially reasonable efforts to mitigate impacts to operations of the Parking Facilities during its repair of defects pursuant to the Construction Warranties and such work shall be in accordance with the construction requirements set forth in the Lease, including, but not limited to, the requirements of Section 1.4 of the Lease,.

Section 4.7. **“As-Built” Plans**

At the completion of the entire Project or Phase, Tenant shall provide to Landlord eight sets of “as-built” construction plans for any portions of the Improvements constructed under this Lease that impact any portion of County facilities or systems as defined herein.

Section 4.8. **Tenant Obligations**

At its sole cost and expense, Tenant shall duly apply for, obtain, and maintain any and all Permits, licenses, easements, property rights and Governmental Approvals necessary prior to, during and after construction. DTPW approval of any Preliminary Plans shall not relieve Tenant of its obligations under law to obtain required Governmental Approvals and Permits from any department of the County or any other governmental authority having jurisdiction over developmental and/or zoning regulations, plat approval and the issuance of building or other Permits and/or approvals and to take such steps, at its sole expense, as are necessary to obtain issuance of such Permits and Governmental Approvals. Landlord agrees to cooperate with Tenant

Phase ___ of Palmetto Metrorail Station Lease

in connection with the obtaining of such Governmental Approvals and Permits. Tenant acknowledges that any approval given by DTPW, as Landlord pursuant to this Article 4, 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 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 Improvements. Platting or replatting of the Demised Premises shall be at the sole cost and expense of the Tenant along with any and all recording fees and taxes associated with the filing of any plat, agreement, lease, lease memorandum, or notice pursuant to this Lease. It should be noted that the County retains jurisdiction for building and zoning approvals, including approval of plat, issuance Permits, building inspections and issuance of certificates of occupancy. The Parking Facilities are subject to the Sustainable Buildings Program provisions in Sections 2.1, 9-71 through 9-95 of the Miami-Dade County Code and Implementing Order 8-8, and Developer shall comply with the same in connection with the development of the Parking Facilities.

Section 4.9. **Application for Development Approvals and Permits**

Tenant shall have previously complied with terms of this Section 4.9 as a condition precedent under the Development Agreement to Commence Construction and enter this Lease. Accordingly, this Section 4.9 shall be applicable in the event of redevelopment, addition to and/or rebuilding of the Improvements. In such event, the Tenant will promptly initiate and diligently pursue at its sole cost and expense all application with any government entity or other third party for any and all Governmental Approvals and Permits that may be required in connection with the

Phase ___ of Palmetto Metrorail Station Lease

redevelopment, rebuilding and/or repair of the Project or Phase. Tenant shall be solely responsible for duly obtaining all final, non-appealable Governmental Approvals and Permits in connection with the redevelopment, rebuilding or repair of the Project or Phase. No extension of any time period contained within the Governmental Approvals and Permits will be deemed to be an extension of any time requirement of this Lease.

Section 4.10. **Construction Costs**

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

Section 4.11. **Commencement of Construction**

Commencement of Construction, subject to Unavoidable Delays and duly requested changes to the Commencement of Construction Date which are approved by the Landlord in writing, shall occur within _____ days of the Effective Date in accordance with the Project Schedule. If Commencement of Construction does not occur within such period of time, subject to Unavoidable Delays and duly requested changes which are approved by the Landlord in writing, it shall be considered to be an Event of Default subject to the provisions of Article 19 of the Lease.

Section 4.12. **Progress of Construction**

Subsequent to the Effective Date of this Lease, Tenant shall submit monthly written reports to DTPW of the progress of Tenant with respect to development and construction of the Project or Phase. Tenant shall also submit a copy of each report to the member of the Board of County Commissioners for the district in which the Demised Premises are located. DTPW reserves the right to change the frequency of reports, from time to time. Construction shall proceed with due diligence and dispatch in accordance with industry standards until Construction Completion and a Certificate of Occupancy is issued.

Phase ___ of Palmetto Metrorail Station Lease

Section 4.13. **Site Conditions**

The County offered to provide certain environmental reports it may have had in its possession to Tenant, however, the County does not make any representation or warranty whatsoever regarding the condition of the site or its suitability for the uses contemplated by this Lease or the contemplated development of the Demised Premises. Tenant acknowledges that Tenant has not relied upon and was not materially induced to enter into this Lease by such reports and was fully responsible for making its own determination regarding the suitability of the property for the uses contemplated in this Lease and the contemplated development of the Demised Premises.

Tenant shall prepare any required environmental reviews pursuant to the requirements of Miami- Dade Department of Regulatory and Economic Resources or any other applicable regulatory agency as they pertain to the Demised Premises. Tenant shall be solely and fully responsible for providing any and all information and paying the cost of any and all studies and analysis required for the completion of these assessments.

Tenant, by executing this Lease, accepts the Demised Premises in its “as-is” condition and represents it has visited the site, is familiar with local conditions under which the construction and development is to be performed and has performed all test borings and subsurface engineering generally required at the site under sound and prudent engineering practices, and has correlated the results of the test borings and subsurface engineering and other available studies and its observations with the requirements of the construction and development of the Improvements. Tenant shall provide the Landlord with a copy of all test results.

Tenant shall not be entitled to any adjustment of Rent payments or of any applicable time frame or deadline under this Lease in the event of any abnormal site conditions unless the site

Phase ___ of Palmetto Metrorail Station Lease

conditions are so unusual that they could not have reasonably been anticipated and/or discovered through a comprehensive due diligence process, and in such event, time periods and the commencement of Annual Rent shall be extended by the reasonable time necessary to accommodate redesign of the Master Plan and lengthened construction schedules resulting from such conditions.

Section 4.14. **Ownership of Improvements**

All Improvements and all material and equipment provided by Tenant or on its behalf which are incorporated into or become a part of the Project or Phase (excepting all County facilities) shall, upon being added thereto or incorporated therein, and the Project or Phase 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.

Section 4.15. **Mutual Covenants of Non-Interference**

Landlord's operations and use of its facilities is paramount. Tenant's development and construction of the Project or Phase and its use and operation of the Demised Premises shall not materially and adversely interfere with Landlord's customary and reasonable operations, unless prior arrangements have been made in writing between Landlord and Tenant. In such event, Tenant shall pay all costs in providing replacement, alteration, relocation and/or alternative services.

Tenant shall be required to notify Landlord a minimum of thirty (30) days in advance of any planned activities to be performed or commissioned by Tenant that may impact County facilities and/or operations. At its sole discretion, Landlord may require that County employees

Phase ___ of Palmetto Metrorail Station Lease

or representatives are present on site to coordinate, oversee, and/or monitor such activities. Tenant shall be responsible to pay all costs incurred by the County in providing such services and shall pay such costs within thirty (30) days of notification by the County. If Tenant fails to allow such County employees or representatives to be on site or pay for same, such activities shall not commence.

Notwithstanding the above, Landlord's use of County facilities shall not materially and adversely interfere with Tenant's development and construction of the Project or Phase and its use and operation of the Demised Premises and the Improvements to be constructed thereon, unless prior arrangements have been made in writing between Landlord and Tenant. In the event of any dispute involving Landlord and Tenant as to the interference by the other party of County's facilities and/or Tenant's development, the County's reasonable determination shall prevail. Landlord may at any time during the term of this Lease, stop or slow down construction by Tenant, but only upon Landlord's reasonable determination that the safety of County facilities, or of the users of such facilities or of any employees, agents, licensees and permittees of Landlord is jeopardized. Any such slowdown or stoppage shall be deemed to be an Unavoidable Delay and shall entitle Tenant to appropriate extensions of time hereunder provided that such safety hazard which caused the slowdown or stoppage is not the result of Tenant's negligence or willful act.

Section 4.16. **Connection to Utilities**

Tenant, at its sole cost and expense, shall install or cause to be installed all necessary connections between the Improvements constructed or erected by it on the 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

Phase ___ of Palmetto Metrorail Station Lease

Demised Premises and for any extension, relocation and/or upgrading of utilities including utilities serving County facilities.

Section 4.17. **Utility Connection Rights**

Landlord hereby grants to Tenant, commencing on the Effective Date of this Lease and continuing during the term thereof, the non-exclusive right to construct utility connections to the Demised Premises subject to the written approval of the Landlord and subject to the right of Landlord to construct above or below grade connections between any land or facilities owned or operated by Landlord or another governmental agency or entity.

Section 4.18. **Art in Public Places**

This Project is subject to and Tenant shall comply with 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 Tenant 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 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. 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>

Phase ___ of Palmetto Metrorail Station Lease

Section 4.19. **Off-site Improvements**

Unless otherwise agreed to by the Parties in writing, any off-site improvements required to be paid or contributed as a result of the development of County facilities shall be paid or contributed by Landlord. Any off-site improvements required to be paid or contributed as a result of Tenant's development of the Demised Premises pursuant to its Final Design Plans shall be paid or contributed by Tenant.

The requirement for the Tenant to pay for or contribute to off-site improvements which are caused by or are a result of Tenant's development shall not prohibit the Tenant from obtaining impact fee credits if permitted by applicable law, and subject to the Board of County Commissioners' and the Transportation Planning Organization's review and approval process pursuant to Chapter 33E of the Code of Miami-Dade County, Florida (the "Code").

Notwithstanding the foregoing, in no event shall Tenant or Development Partner have the right to apply any such credits to any financial benefits to the County which Tenant or Development Partner proposed to contribute to Landlord pursuant to this Lease, any Sublease or the Development Agreement.

Section 4.20. **Signage and Landscaping of Entrances**

Landlord agrees to cooperate with Tenant in the development of plans regarding entrances to the Demised Premises in order to achieve an aesthetic blend of landscaping and signage. All costs of developing such plans shall be paid by Tenant. Any and all signage is subject the requirements, restrictions, and prohibitions of applicable Law and Ordinances law, including but not limited to Article VI of chapter 33 of the Code of Miami-Dade County, Florida (the "Sign Code of Miami-Dade County").

Phase ___ of Palmetto Metrorail Station Lease

Section 4.21. **Designation of Landlord's Representative**

The County Mayor, or such person as subsequently designated by the County Mayor upon notice to Tenant, shall have the power, authority and right, on behalf of the Landlord, in its capacity as Landlord hereunder, and without any further resolution or action of the County Commission, to:

- A. Execute this Lease and all amendments, renewals, or extensions thereof;
- B. 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;
- C. Consent to actions, events, and undertakings by Tenant for which consent is required by Landlord;
- D. Make appointments of individuals or entities required to be appointed or designated by Landlord in this Lease;
- E. Execute non-disturbance agreements and issue estoppel statements as provided elsewhere in this Lease;
- F. Execute any and all documents on behalf of Landlord necessary or convenient to the foregoing approvals, consents, and appointments;
- G. Execute on behalf of Miami-Dade County any and all consents, agreements, easements, applications or other documents, needed to comply with applicable regulatory procedures and secure Permits or other approvals needed to accomplish the construction of any and all improvements in and refurbishments of the Demised Premises, and to amend this Lease to correct any typographical or non-material errors.

Phase ___ of Palmetto Metrorail Station Lease

Notwithstanding the foregoing, or any other provision of this Lease, any authority delegated to the County Mayor or the County Mayor's designee that is not expressly authorized in the resolution adopted by the Board approving the Development Agreement, or otherwise authorized by an ordinance or resolution of the Board or by applicable law, shall be reserved to the Board.

Section 4.22. **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 at appurtenant structures and/or structures or facilities, including but not limited to, construction and maintenance items, not otherwise provided for by this Lease. 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.

Section 4.23. **Community Business Enterprise Program**

Tenant shall comply, and shall cause its contractor, architect/design professionals, and all subcontractors, sub-consultants, subtenants and licensees to comply, with the Landlord's Small Business Enterprise ("SBE") Programs including, without limitation, SBE-Construction, SBE-Architectural and Engineering, SBE-Goods, SBE-Services, Responsible Wages and Benefits Program, the Community Workforce Program, Residents First Training and Employment, and First Source Hiring Programs, as set forth in Sections 10-33.02, 2-10.4.01, 2-8.1.1.1.1, 2-8.1.1.1.2, 2-11.16, 2-1701 and 2-11.17 of the Code of Miami-Dade County, Florida ("Code"), and the Employ Miami-Dade Program Administrative Order No. 3-63. Prior to advertisement and entering into any design or construction contract for the Project or Phase, and in the case of a design or construction management contract, prior to the authorization of any design or construction package, the Tenant shall deliver the proposed contract and design and construction package to the

Phase ___ of Palmetto Metrorail Station Lease

Small Business Division of the Internal Services Department of the Landlord (“SBD”) for a determination and recommendation to the County Mayor of the SBE measures applicable to such design and construction. The County Mayor shall establish the applicable goals upon receipt of the recommendation of SBD (“Applicable Measures”). Tenant shall include the Applicable Measures in design and construction documents, as applicable, and Tenant shall adhere to those the Applicable Measures established by the County in all design and construction activities. Tenant shall incorporate in all design and development contracts the prompt payment provisions contained in the Code with respect to SBE entities. Tenant agrees to include in construction contracts a prohibition against imposing any requirements against SBE entities that are not customary, not otherwise required by law, or which impose a financial burden that intentionally impact SBE entities. Tenant shall require that its contractor(s) shall, at a minimum, use SBD’s hiring clearinghouse, Employ Miami-Dade Register, and Employ Miami-Dade Project – all available through CareerSource to recruit workers to fill needed positions for skilled laborers on the Project or Phase, and any Project or Phase enhancements. Tenant shall comply with the SBE requirements during all phases of construction of the Project or Phase, including in accordance with the SBE requirements package attached hereto as Schedule 4.24, which is incorporated herein by this reference. Tenant shall require its contractor(s) to include Responsible Wages, and Workforce Programs requirements in all subcontractor agreements. Should the Tenant fail to comply with any of the SBE requirements, Tenant shall be obligated to make up such deficit in future phases of construction of the Project or Phase, and/or pay the applicable monetary penalty pursuant to the Code.

Phase ___ of Palmetto Metrorail Station Lease

Section 4.24. **Developers or Co-Developers**

Subject to Section 3.8 above, in the event that an assignee or Sublessee (including Development Partner) is acting as the developer of a Phase, as designated by Tenant, under the terms and conditions of this Lease, then Landlord agrees to cooperate with Tenant and such other developer, assignee or Sublessee for purposes of this Lease; provided that Tenant shall have all rights and obligations granted or retained by Tenant provided to it under the relevant assignments, contracts, or Subleases, so long as same are consistent with the terms of this Lease and Tenant shall receive copies of all correspondence and be notified of and have rights to attend and participate in all meetings or actions involving a third party developer's development. All developers or co-developers shall become registered vendors with the County.

Section 4.25. **Rental Regulatory Agreement**

The Tenant hereby acknowledges and agrees that the Landlord is requiring that affordable housing be a component of the Project, for the Term of this Lease. In furtherance thereof, the Landlord and Tenant agree that all of the residential tenants shall, at all times, meet the income requirements of affordable housing in accordance with Section 420.004, Florida Statutes, and this Lease at the time of entry into the residential occupancy agreement. And, for residential tenants that initially met the requirements but later have household incomes that exceed the amount to qualify for affordable housing, those residential tenants shall be granted no more than a one (1) year period to remain as a resident.

Prior to Completion of Construction, the Tenant will enter into a rental regulatory agreement, or similar document, with the Landlord for the Project, through the Department of Public Housing and Community Development or successor department, for the monitoring of Tenant's compliance with the foregoing requirements and which shall be in conformance with all

Phase ___ of Palmetto Metrorail Station Lease

applicable rules and regulations of the Landlord and this Lease, generally in the form attached hereto as **Schedule 4.26**. The Tenant hereby agrees that the use of any such funding given, loaned, or otherwise provided by the Landlord in connection with the Demised Premises and/or the Project, and the rental regulatory agreement, or similar document, shall be monitored, and may be audited, by the Landlord. Any failure by the Tenant to comply with the terms and conditions of the rental regulatory agreement, or similar document, shall be an Event of Default (cross-default) with respect to this Lease.

ARTICLE 5

Payment of Taxes, Assessments, and Impositions

Section 5.1. **Tenant's Responsibility for Determining Impositions**

Because the Development Site is County-owned property, it is not currently subject to real estate taxes. However, it shall be the responsibility of the Tenant to determine and, to pay any and all taxes, assessments and impositions which may arise in connection with this Lease and placing the development on County-owned land. The County makes no representations or warranties as to the continued availability of any exemption or tax benefit, or to the Tenant's ability to receive any such exemption or benefit.

Section 5.2. **Tenant's Obligations for Impositions**

Tenant shall pay or cause to be paid all Impositions for which Tenant is liable directly to the government authority or entity charged with the collection thereof, prior to their becoming delinquent, which at any time during the term of this Lease have been imposed, or which may become a lien on, the Demised Premises or any part thereof, or any appurtenance thereto, and shall provide Landlord with documentation, on an annual basis and in a form reasonably acceptable to Landlord, confirming Tenant's payment of such Impositions, provided, however, that:

Phase ___ of Palmetto Metrorail Station Lease

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

C. Any Imposition relating to the period prior to the Effective Date shall not be the responsibility and obligation of Tenant.

Tenant shall protect and indemnify Landlord against all losses, expenses and damages, including but limited to attorney's fees, arising from any Impositions upon the Demised Premises in accordance with Article 7.

Landlord hereby covenants and represents that the Demised Premises, prior to the execution of this Lease was not subject to real estate or ad valorem taxations during Landlord's ownership. After execution of this Lease, should the Demised Premises become subject to ad valorem taxation, for any reason, then Tenant shall be responsible for and pay such taxes.

Phase ___ of Palmetto Metrorail Station Lease

Section 5.3. **Contesting Impositions**

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 Sections 5.1 and 5.2 herein, Tenant may postpone or defer payment of such Imposition if:

- A. Landlord is notified of Tenant's intent to contest such Imposition within 30 days after Tenant's actual or constructive notice of such Imposition;
- B. Tenant is in good faith disputing liability therefor or the amount thereof;
- C. Such contest of liability or amount operates as a stay of all sale, entry, foreclosure, or other collection proceedings in regard to such obligations;
- D. 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 Landlord is not subject to any expense or liability;
- E. If required by Landlord, Tenant shall furnish a cash deposit or surety bond in the full amount of Imposition including any costs (including any interest, penalties and counsel fees) liability or damage arising out of such contest within thirty (30) days after Tenant's actual or constructive notice of such Imposition; and
- F. Immediately upon the termination of any such proceedings, Tenant shall pay the amount of such Imposition or part thereof, to the extent held valid 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.

Phase ___ of Palmetto Metrorail Station Lease

Landlord shall not be required to join in any proceedings referred to in this 5.3 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 agrees to participate in such proceedings at Tenant's cost.

Section 5.4. **Special Assessments**

Landlord operating in its official capacity as Miami-Dade County retains all its rights to impose nondiscriminatory special assessments or other public charges and will treat Tenant the same as similarly sized and situated parties.

ARTICLE 6

Surrender

Section 6.1. **Surrender of Demised Premises**

On the last day of the term as may be extended in accordance with this Lease, or upon any earlier termination of this Lease, all right, title, and interest to Tenant Improvements (unless demolished) shall automatically pass to, vest in and belong to the Landlord or its successor in ownership, and Tenant shall surrender and deliver up the Demised Premises to the possession and use of Landlord without delay and, subject to the provisions of Articles 16 and 19 herein, in good condition and repair, reasonable wear and tear, excepted. The Demised Premises and Improvements thereon shall be returned free and clear of all debts, leases, mortgages, liens, encroachments and encumbrances, except as otherwise expressly permitted by this Lease, and all outstanding obligations of Tenant to Landlord under this Lease shall be satisfied by Tenant. Landlord reserves the right to require that Tenant perform environmental studies to assess the property condition prior to the expiration or early termination of the Lease and to remediate any environmental conditions that are in violation of Environmental Laws unless such conditions were caused solely by anyone acting by, through or under the County. The Landlord and Tenant

Phase ___ of Palmetto Metrorail Station Lease

covenant that, to confirm the automatic vesting of title as provided in this paragraph, each will execute and deliver such further assurances and instruments of assignment and conveyance as may be reasonably required by the other for that purpose.

Tenant shall assign, transfer and/or deliver to Landlord, on or before the expiration date of this Lease or such earlier date that this Lease terminates or expires, upon Landlord's request, all property rights, licenses, permits, plans, drawings, warranties, and guaranties then in effect for the Demised Premises.

Tenant hereby waives notice to vacate or quit the Demised Premises and agrees that Landlord shall be entitled to the benefit of any and all provisions of law respecting the summary possession of the Demised Premises from a Tenant holding over to the same extent as if statutory notice had been given. It shall be lawful for the Landlord or its successor in ownership to re-enter and repossess the Demised Premises and Improvements thereon without process of law or Court action. Tenant shall be liable to Landlord for any and all damages which Landlord suffers by reason thereof, and Tenant shall indemnify Landlord against all claims and demands by any succeeding Tenant and for all expenses and attorney's fees for Landlord's enforcement of the terms of Article 6.

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

Where furnished by or at the expense of Tenant or 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 of personal property 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 an Improvement or necessitate changes in or repairs to an Improvement, Tenant shall repair or

Phase ___ of Palmetto Metrorail Station Lease

restore (or cause to be repaired or restored) the Improvement to a condition substantially similar to its condition immediately preceding the removal of such personal property, or pay or cause to be paid to Landlord the reasonable cost of repairing any damage arising from such removal.

Section 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 Improvement, may, at the option of Landlord, be deemed to have been abandoned by Tenant without court action and, unless any interest therein is claimed by a Leasehold Mortgagee or Mezzanine Financing Source, 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. Tenant shall reimburse Landlord for all actual costs associated with the removal and disposal of such personal property.

Section 6.4. **No Claim for Value of Tenant Improvements**

Tenant's Improvements shall be constructed and maintained for Tenant's use and operation. The cost or value of Tenant Improvements shall not be intended to constitute Rent, a license fee or other consideration for the right to occupy the Demised Premises or Improvements thereon.

Tenant shall have no claim against Landlord for the value of Tenant's Improvements following any termination of this Lease, whether at the natural expiration of the term or otherwise, except, with respect to any claims against the County acting in its governmental capacity, including any claims related to a condemnation by County. Moreover, Tenant shall have no claim against Landlord for the value of Improvements during the Term of this Lease as may be extended or

Phase ___ of Palmetto Metrorail Station Lease

amended including but not limited to a claim against Landlord's imposition of Rent pursuant to this Lease.

Section 6.5. **Survival**

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

ARTICLE 7

Insurance and Indemnification

Section 7.1. **Insurance Requirements**

At all times during the Term of this Lease, Tenant at its sole cost and expense shall procure and maintain the insurance specified below. In addition, Tenant shall ensure its general contractor(s), property manager(s), and Sublessee(s) maintain the coverages set forth below. All policies must be executable in the State of Florida. All insurers must maintain an AM Best rating of A- or better, subject to the approval of the County Risk Management Division, and 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. The terms and conditions of all policies may not be less restrictive than those contained in the most recent editions of the policy forms issued by the Insurance Services Office (ISO) or the National Council on Compensation Insurance (NCCI). Said insurance policies shall be primary over any and all insurance available to the Landlord whether purchased or not and shall be non-contributory. The Tenant, and Tenant's general contractor(s) and Sublessee(s) shall be solely responsible for all deductibles contained in their respective policies. All policies procured pursuant to this Section shall be subject to a maximum deductible reasonably acceptable to the Landlord. The Landlord shall be included and an "additional insured" and "loss payee" on all such policies.

Phase ___ of Palmetto Metrorail Station Lease

Section 7.2. **Required Insurance Limits**

A. In the event of redevelopment, rebuilding or repair of the Improvements, Tenant shall maintain insurance during the design process as follows:

- 1) Worker's Compensation Insurance for all employees as required by Florida Statute 440.
- 2) Employer Liability Insurance with limits not less than:
 - a) \$500,000 bodily injury by accident;
 - b) \$500,000 bodily injury by disease; and
 - c) \$500,000 bodily injury by disease, each employee.
- 3) Commercial General Liability Insurance on a comprehensive basis, in an amount not less than \$5,000,000 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.
- 4) 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.
- 5) Tenant shall cause any architects or engineers to maintain architects' and engineers' errors and omissions liability insurance specific to the activities or scope of work such consultant will perform. If coverage is provided on a "claims made" basis, the policy shall provide for the reporting of claims for a period of five (5) years following the completion of all construction activities. The minimum limits acceptable shall be \$1,000,000 per occurrence and \$3,000,000 in the aggregate.

Phase ___ of Palmetto Metrorail Station Lease

6) Pollution Liability Insurance in an amount not less than \$10,000,000 per claim, covering third party claims, remediation expenses, and legal defense expenses arising from on-site and off-site loss, or expense or claim related to the release of hazardous materials and contaminants at the Demised Premises.

B. During construction Tenant shall maintain insurance as follows:

1) Worker's Compensation Insurance for all employees as required by Florida Statute Chapter 440.

2) Employer Liability Insurance with limits not less than:

a) \$500,000 bodily injury by accident;

b) \$500,000 bodily injury by disease; and

c) \$500,000 bodily injury by disease, each employee.

3) Commercial General Liability Insurance on a comprehensive basis, in an amount not less than \$5,000,000 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.

4) 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.

5) Completed Value Builder's Risk Insurance on an "all risk" basis including flood, earthquake, and windstorms and shall include coverage against collapse, those coverages available under the so called installation floater, damage or destruction of any alteration (and to the development and improvements while under construction), machinery, tools, and/or equipment at the construction site, and damage or destruction to materials and supplies to

Phase ___ of Palmetto Metrorail Station Lease

be used or incorporated in the construction that are at or near the Demised Premises in an amount not less than one hundred (100%) percent of the insurable value of the building(s) or structure(s) under construction, and have a deductible no greater than \$25,000 (or, for wind and hail insurance, no greater than five (5%) percent). Policy must clearly indicate that underground structures (if applicable) and materials being installed are covered. The policy shall name the Tenant and Miami-Dade County as their interests may appear.

6) Pollution Liability Insurance in an amount not less than \$10,000,000 per claim, covering third party claims, remediation expenses, and legal defense expenses arising from on-site and off-site loss, or expense or claim related to the release of hazardous materials and contaminants at the Demised Premises.

7) Tenant shall cause any architects or engineers to maintain architects' and engineers' errors and omissions liability insurance specific to the activities or scope of work such consultant will perform. If coverage is provided on a "claims made" basis, the policy shall provide for the reporting of claims for a period of (5) years following the completion of all construction activities. The minimum limits acceptable shall be \$1,000,000 per occurrence and \$3,000,000 in the aggregate.

C. During operation Tenant shall maintain insurance as follows:

1) Worker's Compensation Insurance for all employees as required by Florida Statute 440.

2) Employer Liability Insurance with limits not less than:

a) \$500,000 bodily injury by accident;

b) \$500,000 bodily injury by disease; and

c) \$500,000 bodily injury by disease, each employee.

Phase ___ of Palmetto Metrorail Station Lease

3) Commercial General Liability Insurance on a comprehensive basis, in an amount not less than \$5,000,000 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.

4) 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.

5) 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) (the required policy shall be Cause of Loss—Special Form). Miami-Dade County must be shown as a Loss Payee with respect to this coverage.

6) Pollution Liability Insurance in an amount not less than \$10,000,000 per claim, covering third party claims, remediation expenses, and legal defense expenses arising from on-site and off-site loss, or expense or claim related to the release of hazardous materials and contaminants at the Demised Premises.

7) Business Interruption Insurance after the commencement of operations for the Project or Phase or any portion thereof with coverage utilizing a gross income value with limits equal to no less than twelve (12) months of Tenant’s projected gross income, and which coverage shall contain an extended period of indemnity enforcement which provides that after the physical loss to the Improvements and personal property or losses due to disruption of utility services originating away from the Improvements, the continued loss of income will be insured until such income returns to the same level it was at prior to the loss or the expiration of 24 months from the date that the Improvements are repaired or replaced and operations are

Phase ___ of Palmetto Metrorail Station Lease

resumed, which first occurs first. Landlord and Tenant shall jointly review Tenant's projected gross income annually and the limits of this policy shall be adjusted based on this review.

8) Terrorism and Bioterrorism Insurance so long as the Terrorism Risk Insurance Program Reauthorization Act of 2015 ("TRIPRA") or similar or subsequent statute is in effect, terrorism insurance for "certified" and "non-certified" acts (as such terms are used in TRIPRA or a similar or subsequent statute) in an amount equal to the full replacement cost of the Improvements plus no less than 24 months of business interruption coverage. If TRIPRA or a similar or subsequent statute is not in effect, then the "all risk" property insurance required pursuant to Article 7 of this Lease shall not exclude coverage for acts of terror or similar acts of sabotage unless terrorism insurance is not commercially available, in which case, Tenant shall obtain stand-alone coverage in commercially reasonable amounts.

Whenever, in Landlord's reasonable judgement, good business practices and changing conditions indicate a need for additional liability limits or different types of insurance coverage, Tenant shall, within thirty (30) days after Landlord's written request, obtain such insurance coverage, at Tenant's expense, provided that the requested amounts and types of coverage are customary and available for issuance in the State of Florida and provided that Landlord shall not require any increase in the limits of coverage more than once every three years.

Note: The types and amounts of insurance coverage shown above change depending upon the scope of the actual development.

Section 7.3. **Premiums and Renewals**

Tenant shall pay as the same become due all premiums for all insurance required by this Article. Tenant shall renew or replace each such policy thirty (30) days prior to and deliver to the Landlord evidence of payment of the full premium thereof prior to the expiration of such policy.

Phase ___ of Palmetto Metrorail Station Lease

Section 7.4. **Evidence of Insurance**

A. Prior to the Effective Date of this Lease, and annually thereafter, Tenant shall deliver satisfactory evidence of required insurance to the Landlord. Satisfactory evidence shall be:

- 1) A certificate of insurance for all required coverage; and
- 2) A copy of the declaration page.

B. The Landlord, at its sole option, may request a certified copy of any or all insurance polices required by this Lease, or the applicable portions thereof if insurance is provided through a master insurance program. All insurance policies must specify that they are not subject to cancellation or non-renewal with thirty (30) days' notice provided by the insurer to the Landlord and any Leasehold Mortgagee or Lender. The Tenant will deliver to the Landlord, at thirty (30) days prior to the date of expiration of any insurance policy, a renewal policy replacing any policies expiring during the Term of this Lease, or a certificate thereof, together with evidence that the full premiums have been. All certificates of insurance required herein shall:

- 1) Be in a form acceptable to Landlord;
- 2) Name the types of polices provided;
- 3) State each coverage amount and deductible for each policy;
- 4) Refer specifically to this Lease;
- 5) List Landlord as an additional insured and loss payee;
- 6) Evidence the waiver of subrogation in favor of Landlord as required herein;
- 7) Evidence that coverage shall be primary and non-contributory; and

Phase ___ of Palmetto Metrorail Station Lease

8) That each policy includes a cross liability or severability of interests provision, with no requirement of premium payment by the Landlord.

C. Tenant shall deliver, together with each certificate of insurance, a letter from the agent or broker placing such insurance, certifying to the Landlord that the coverage provided meets the coverage required under this Lease. The official title of the certificate holder is “Miami-Dade County”. Additionally, insured policies for the Landlord shall read “Miami-Dade County” and shall be addressed pursuant to the notice requirements to Landlord in Section 20.1.

Section 7.5. **Effect of Loss or Damage**

Except as provided in Section 16.7 of this Lease, any loss or damage by fire or any other casualty of or to any of the Tenant Improvements or the Demised Premises at any time shall not operate to terminate this Lease or to relieve or discharge Tenant from:

- A. The payment of Rent;
- B. Payment of any money to be treated as Additional Rent in respect thereto; or
- C. From the performance or fulfillment of any of Tenant obligations pursuant to this Lease as the same may become due or payable as provided in this Lease.

No acceptance or approval of any insurance agreement or agreement by the Landlord shall relieve or release or be construed to relieve or release Tenant from any liability, duty, or obligation assumed by, or imposed upon it by the provisions of this Lease.

Section 7.6. **Proof of Loss**

Whenever any Tenant Improvements, or any part thereof, constructed on the Demised Premises shall have been damaged or destroyed, Tenant shall promptly make proof of loss in accordance with the terms of the insurance policies and shall proceed promptly to collect or cause

Phase ___ of Palmetto Metrorail Station Lease

to be collected all valid claims which may have arisen against insurers or others based upon any such damage or destruction.

Section 7.7. **Waiver of Subrogation**

Unless prohibited by law, the insurance coverages required by this Lease shall not allow rights of recovery by subrogation or otherwise (including, without limitation, claims related to deductible or self-insured retention classes, inadequacy of limits of any insurance policy, insolvency of any insurer, limitation or delusion of coverage, against the other party and its respective officers, agents or employees). Such waiver of subrogation shall be expressly stated in each policy of insurance as required herein.

Section 7.8. **Inadequacy of Insurance Proceeds**

Tenant's liability hereunder to timely commence and complete restoration of the damaged or destroyed Tenant Improvements shall be absolute, irrespective of whether the insurance proceeds received, if any, are adequate to pay for restoration.

Section 7.9. **No Landlord Obligation to Provide Insurance**

Tenant acknowledges and agrees that Landlord shall have no obligation to provide any insurance of any type on any Improvements or upon the Demised Premises.

Section 7.10. **Right to Examine**

The County reserves the right, upon reasonable notice, to examine the original or true copies of policies of insurance (including binders, amendments, exclusions, riders and application, or applicable portion of any master insurance policy) to determine the true extent of coverage. The Tenant agrees to permit such inspection and make available such policies or portions thereof at the office of the Landlord.

Phase ___ of Palmetto Metrorail Station Lease

Section 7.11. **Personal Property**

Any personal property of Tenant or others placed in the Demised Premise shall be at the sole risk of the Tenant or the owners thereof, and the Landlord shall not be liable for any loss or damage thereto for any cause.

Section 7.12. **Indemnification and Hold Harmless**

Tenant shall indemnify and hold harmless the County and its officers, employees, agents and instrumentalities from any and all liability, costs, penalties, fines, expenses, losses, business damages or any other damage(s), including but not limited to: (a) any injury to or death of any persons, (b) damage to, destruction of, or loss of any property, vehicles, Improvements, rights, privileges, or business including attorneys' fees and costs of defense through litigation and appeals, which the County or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance or non-performance of this Lease or any Sublease which (a) is or is alleged to be directly or indirectly caused, in whole or in part, by any act, omission, default, or negligence (whether active or passive) by the Tenant or its employees, agents, servants, partners, principals, Sublessees, assigns invitees, contractors or subcontractors or (b) the failure of Tenant or its employees, agents, servants, partners, principals, subtenants, assigns, invitees, contractors or subcontractors to comply with any applicable statutes, ordinances, or other regulations or requirements of any governmental authority in connection with the performance of this Lease or (c) the failure of Tenant or its employees, agents, servants, partners, principals, subtenants, invitees or subcontractors to comply with any other, obligation, covenant, restriction, contract, right, title, obligation, Sublease, assignment or duty in law or in equity in connection with the performance of this agreement, (d) the use or occupancy of the Improvements and Demised

Phase ___ of Palmetto Metrorail Station Lease

Premises or (e) in connection with any Sublease or is a Condition of Rights Granted by Tenant to any Sublessee. Notwithstanding the foregoing, Tenant shall have no indemnification obligation to the extent a loss is caused by the gross negligence, bad faith, or willful misconduct of an indemnitee, or by the failure of an indemnitee to perform its contractual obligations. Tenant shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the County, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. Tenant expressly understands and agrees that any insurance protection required by this Lease or otherwise provided by Tenant shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County or its officers, employees, agents and instrumentalities as herein provided.

It is expressly understood by the Parties and Tenant acknowledges that elevated noise levels and certain particles and sediments result from transit operations and may adversely affect the Demised Premises. Tenant agrees that it will take reasonable measures to minimize any damages that may occur as a result of such elevated noise levels and particles and sediments. Tenant shall hold harmless the County for any costs, losses, injuries or damages resulting from elevated noise levels and particles or sediments caused by transit operations.

Tenant shall hold harmless County and waive and relinquish any legal rights and monetary claims which it might have for full compensation, or damages of any sort (a) as a result of the early termination or expiration of this Lease, (b) the inability of the Tenant to obtain the approvals, permits, and rights necessary and/or (c) the inability of Tenant to develop or construct the Project as intended, including but not limited to, issues related to diminution of value, business damages, special damages, severance damages, loss of profits, removal costs, Subtenant claims, zoning

Phase ___ of Palmetto Metrorail Station Lease

requirements, plans and specifications approvals, design costs, contractor costs, permitting costs, relocation costs, costs of compliance with laws and ordinance, any other direct or indirect costs, and/or Tenant's loss of rights to develop or operate the Demised Premise, (d) Tenant's loss of use or occupancy of the Demised Premises, and/or (e) any such rights, claims or damages flowing from adjacent properties, owned, leased or under a development agreement.

ARTICLE 8

Operation

Section 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 have exclusive control and authority to direct, operate, lease and manage the Demised Premises in accordance with the provisions of this Lease. Tenant is hereby granted the exclusive right to enter into any Sublease, license or similar grant for any part or all of the Improvements and/or Demised Premises, provided that the term of such Subleases, licenses or similar grants are in compliance with the terms and conditions of this Lease and do not extend beyond the expiration date of this Lease. Tenant covenants and agrees to use reasonable efforts to continuously operate the Demised Premises consistent with prudent business practices.

Section 8.2. **Non-Subordination and Non-Interference**

The Parties agree that the rights, title, access and privileges granted under this Lease are subordinate and inferior to all County property rights. Tenant shall not interfere, obstruct, or restrict County or the public of its facilities. County shall at all times have access to its facilities and shall have the right to use and enjoy its property without interruption.

Tenant hereby agrees not to interfere with the free flow of pedestrian or vehicular traffic to and from Public Areas of the Project or Phase and County facilities. Tenant further agrees that,

Phase ___ of Palmetto Metrorail Station Lease

no fence, or any other structure of any kind (except structures which are reasonably necessary for security and safety, as may be specifically permitted or maintained under the provisions of this Lease, and are indicated on approved Construction Plans or otherwise mutually agreed upon in writing) shall be placed, kept, permitted or maintained in such fashion as to materially or adversely interfere with pedestrian or vehicular traffic to and from County facilities. The foregoing shall not prohibit Tenant from closing the Improvements and denying access to the public at such times and in such manner as deemed necessary by Tenant, during:

- A. The development or construction of any portion of the Improvements;
- B. The repair and maintenance of the Demised Premises; or
- C. During the operation of the Demised Premises, provided such closing does

not materially and adversely interfere with the public's reasonable access to County facilities or with Landlord's customary operations, unless Tenant obtains Landlord's prior written consent.

Section 8.3. **Repair and Relocation of Utilities**

Upon Completion of Construction of the Project or Phase, Landlord and Tenant hereby agree to maintain and repair, and each party is given the right to replace, relocate, and remove, as necessary, utility facilities within the Demised Premises required for the operation of the Demised Premises or of County facilities or systems, provided:

- A. Such activity does not materially or adversely interfere with the other party's operations;
- B. All costs of such activities are promptly paid by the party causing such activity to be undertaken;
- C. Each of the utility facilities and the Demised Premises are thereafter restored to their former state;

Phase ___ of Palmetto Metrorail Station Lease

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

E. In the event of any dispute involving any replacement, location, removal, relocation, operation or use of utilities serving County facilities, the County shall prevail.

Landlord agrees to cooperate with Tenant in relocating existing utility lines and facilities, if any, on the Demised Premises which need to be relocated to develop or improve the Project or Phase, including reasonable use of existing easements benefiting the Demised Premises and adjoining rights of way to the Demised Premises, if applicable. Such relocation of existing utilities shall be at the sole expense of the Tenant.

Section 8.4. **Rights to Erect Signs; Revenues Therefrom**

A. Landlord hereby agrees that, to the extent permitted by applicable Law and Ordinances and subject the requirements, restrictions, and prohibitions of Article VI of chapter 33 of the Code of Miami-Dade County, Florida (the “Sign Code of Miami-Dade County”), Tenant shall have the 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. 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 applicable Law and Ordinances, and if such signage conforms to the requirements,

Phase ___ of Palmetto Metrorail Station Lease

restrictions, and prohibitions of the Sign Code of Miami-Dade County, in the area described in subparagraph A above:

- 1) Signs or advertisements identifying the Improvements to the Demised Premises and in particular office, hotel, residential, retail, and commercial uses therein;
- 2) Signs or advertisements offering any portion of the Demised Premises for sale or rent; and
- 3) Signs or advertisements advertising or identifying any product, company, or service operating in the Demised Premises or otherwise related thereto.

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, unless otherwise prohibited by applicable Law and Ordinances, including the requirements, restrictions, and prohibitions of the Sign Code of Miami-Dade County, 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. Unless otherwise prohibited by applicable Law and Ordinances, including the Sign Code of Miami-Dade County, Tenant shall be entitled but not required to rent or collect a fee for the display or erection of signs and advertisements.

Phase ___ of Palmetto Metrorail Station Lease

Section 8.5. **Landlord's Signs Upon Demised Premises**

Signs and informational graphics and displays pertaining to County facilities, operations and services shall be allowed to be placed within the Demised Premises at the sole expense of Landlord and at locations and in sizes mutually agreed upon by Landlord and Tenant.

Section 8.6. **Tenants' Signs in Station**

Subject to the terms of this Lease, Tenant shall be permitted to place directional signs within the Station at the sole expense of Tenant and at locations and in sizes mutually agreed to by Landlord and Tenant.

Section 8.7. **Use of Parking Facilities**

Following completion of construction, the Parking Facilities, including all Tenant Spaces, Station User Spaces and Shared Spaces, shall be dedicated to and operated by Landlord and maintained in accordance with Section 9.3 hereof. The Parking Facilities shall include (i) a minimum of 640 spaces (the "Tenant Spaces") for the exclusive use of Tenant and its Subtenants (including Subtenants of the residential dwelling units and commercial spaces) during the term of the Lease; (ii) approximately 400 spaces ("Station User Spaces"), which shall be made available (at the rates established by DTPW for parking facilities operated by DTPW) exclusively to passengers using the Palmetto Station Facilities at all hours on the lower levels of the Parking Garage; and (iii) an additional 300 spaces (the "Shared Spaces") for the non-exclusive use of (a) Tenant and its Subtenants (including Subtenants of the residential dwelling units and commercial spaces), and (b) to the extent that no Station User Spaces are available, passengers using the Palmetto Station Facilities during business hours and at the rates established by DTPW for parking facilities operated by DTPW; provided, however, that the number of Shared Spaces and Station User Spaces may be adjusted as follows. Throughout the term of this Lease, but not more

Phase ___ of Palmetto Metrorail Station Lease

frequently than once every two years, either Landlord or Tenant may upon written notice to the other request a parking study to be conducted at Tenant's expense to ensure that sufficient spaces are available to meet the needs of Tenant or passengers using the Palmetto Station Facilities, as applicable. In the event such parking study reflects a need for additional Station User Spaces, the number of Shared Spaces made available to Tenant and its Sublessees (including Sublessees of the residential dwelling units and commercial spaces) shall be reduced by the number of additional Station User Spaces required by Landlord to meet the needs of the passengers using the Palmetto Station Facilities. In the event such parking study reflects the underutilization of Station User Spaces by passengers using the Palmetto Station Facilities, and the Tenant desires to use an additional number of Shared Spaces, the number of Shared Spaces may be increased by the amount desired by Tenant, up to the amount of underutilized Station User Spaces. In the event that the number of Shared Spaces is greater than 300, Tenant shall pay the cost for the use of such additional spaces (*i.e.*, the number of Shared Spaces in excess of 300) at the greater of (i) \$540 per space per year or (ii) the rates established by DTPW for parking facilities operated by DTPW. By way of example, if the parking study reflects that only 300 Station User Spaces are required, and Tenant desires to use the remaining 1,040 spaces in the Parking Facilities for Tenant and its Sublessees (*i.e.*, 640 Tenant Spaces and 400 Shared Spaces), then Tenant shall be required to pay to County an amount equal to 100 (*i.e.*, the difference between 300 and 400 Shared Spaces) multiplied by the greater of (i) \$540 per space per year and (ii) the current rate established by DTPW for parking facilities operated by DTPW. Notwithstanding anything to the contrary, in no event shall the number of Shared Spaces available to Tenant and County be fewer than 300 spaces. Users of the parking spaces in the Parking Facilities shall be required to comply with Landlord's established rules and regulations relating to such use, including any rules established by Landlord,

Phase ___ of Palmetto Metrorail Station Lease

in cooperation with Tenant, to identify those users entitled to use the Tenant Spaces and the Shared Spaces. Tenant shall be responsible for ensuring that sufficient Shared Spaces are available during business hours to serve users of the Palmetto Station, and to the extent no Station User Spaces or Shared Spaces remain available to meet the needs of users of the Palmetto Station, Tenant shall be required, at no cost to the County, to tow any residents' vehicles that remain parked in Shared Spaces during business hours.

ARTICLE 9

Repairs and Maintenance of the Premises

Section 9.1. **Tenant Repairs and Maintenance**

Tenant is solely responsibility for all costs and expenses related to the repair and maintenance of the Improvements and Demised Premises. Tenant shall be responsible for the remediation and repair of any damage or impacts to County or private systems, facilities or operations resulting from activities undertaken or authorized by the Tenant. Throughout the term of this Lease, Tenant, at its sole cost and expense, is obligated to and shall keep the Demised Premises and Improvements in good order and condition, safe and secure, subject to ordinary wear and tear, and make all necessary repairs thereto in accordance with the standards of operation and maintenance of first class properties similar to the Project or Phase. The term "repairs" shall include all replacements, renewals, alterations, additions and betterments deemed necessary by Tenant. All repairs made by Tenant shall be at least substantially similar in quality and class to the original work. Tenant shall be responsible for all expenses of every kind or nature arising from the financing, construction, operation and maintenance of all portions and components of the Project or Phase, including but not limited to management, communications services, administration, wages, salaries, security, debt service, accounting, insurance, taxes, and Impositions. Tenant shall keep and maintain all portions of the Demised Premises, Improvements

Phase ___ of Palmetto Metrorail Station Lease

and all connections created by Tenant in a clean and orderly condition, reasonably free of dirt, rubbish, graffiti, and unlawful obstructions. Tenant shall at its sole cost and expense, perform or cause to be performed services which at all time keep the Demised Premises, connections created by Tenant and Improvements thereon, whether partially or fully constructed in a clean, neat, orderly, sanitary and presentable condition. Tenant shall at its sole cost and expense, store, dispose of and remove, or cause to be removed, all trash and refuse which may accumulate or result from its use of the Demised Premises. Tenant shall be responsible for complying at its sole cost with any governmental requirements including construction re-certification of any Tenant Improvement on the Demised Premises. 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 Tenant shall pay to Landlord, as Additional Rent, all reasonable costs and expenses incurred thereof within thirty (30) days notification by Landlord. In no event shall Landlord be responsible or liable for any maintenance or repair of any of Tenant's Improvements, fixtures, equipment, structures, facilities, addition thereto, or personal property.

Except in connection with the construction of the Project or Phase, or redevelopment or reconstruction of the Project or Phase as permitted by this Lease, no excavation of any of the land shall be made, no soil or earth shall be removed from the Demised Premises, and no well of any nature shall be dug, constructed or drilled on the demised Premises, except as may be required for environmental monitoring purposes, without the prior written Consent of the Landlord.

Tenant shall operate and maintain, at its sole cost and expense, all the components of the water, sanitary, sewerage and storm drainage facilities constructed by Tenant as part of the Project or Phase. Once constructed, Tenant shall not make any substantial alterations to these facilities

Phase ___ of Palmetto Metrorail Station Lease

without the advance, written consent of the County and comply with all applicable laws and governmental regulations. Tenant shall be fully responsible for the proper disposal, in accordance with applicable laws and governmental standards, of all debris and industrial waste.

Notwithstanding anything herein to the contrary, following Completion of Construction of the Station Improvements and the Parking Facilities, Tenant shall have no obligation to maintain or repair (i) the Station Improvements or Palmetto Station Facilities; (ii) the Parking Facilities, except to the extent expressly provided in Section 9.3 hereof; (iii) any other portion of the Palmetto Station Property that is not the express responsibility of Tenant under this Section, all of which shall be the responsibility of Landlord as part of and included in Landlord's repair and maintenance obligations under this Lease.

Section 9.2. **Landlord Repairs and Maintenance**

Landlord shall, at its sole cost and expense, except for matters that are the express responsibility of Tenant, keep and maintain in good condition and repair the Palmetto Station Improvements, the Palmetto Station Facilities and the Palmetto Station Property (including, without limitation, the Public Areas) (and its site and any other improvement constructed thereon), and shall maintain said premises in a clean and orderly condition, reasonably free of dirt, rubbish, graffiti and unlawful obstructions ordinary wear and tear, change in county operations, and shall ensure that there is no material or net decrease in the levels of maintenance allocated to the Parking Facilities after the Commencement Date. The term "repairs" includes all replacements, alterations, additions and betterments deemed necessary by Landlord or as required by applicable Laws and Ordinances. All repairs made by Landlord shall be substantially similar in quality and class to the original work. Landlord, except as otherwise provided in this Lease, shall have no obligation with respect to the maintenance and repair of the Demised Premises. In the event Landlord fails to

Phase ___ of Palmetto Metrorail Station Lease

perform any of its maintenance obligations under this Section 9.2 and such failure threatens the safety and/or well-being of the occupants of the Demised Premises, or prevents Tenant from continuing Tenant's use of the Demised Premises as set forth herein, Tenant, at its option, and after Landlord's approval, which shall not be unreasonably withheld, conditioned or delayed, may perform any maintenance or repairs required of Landlord hereunder which have not been performed by Landlord, and Tenant shall be entitled to a credit against the Rent next coming due equal to all of its reasonable costs and expenses in connection therewith. Landlord shall not be required under this Lease to furnish any services, utilities or facilities to the Demised Premises or Improvements thereon.

Section 9.3. **Repair and Maintenance of Parking Facilities**

Tenant shall be responsible for the ordinary day-to-day maintenance and repairs of the Parking Facilities (the "Parking Maintenance"), including parking areas, driveways, sidewalks and approaches, in accordance with Landlord's standards of operation and maintenance set forth on Schedule 9.3, subject to ordinary wear and tear and loss by fire or other casualty. Within ninety (90) days of the beginning of each calendar year following Completion of Construction of the Parking Facilities, Tenant shall submit to Landlord, for Landlord's reasonable review and approval, a budget (the "Parking Maintenance Budget") for all costs and expenses to be incurred by Tenant for Parking Maintenance (the "Parking Maintenance Expenses") and shall be entitled to a credit against the Rent next coming due an amount equal to a portion of the Parking Maintenance Expenses actually incurred by Tenant as set forth in Parking Maintenance Budget for such calendar year in accordance with the following sentence. The portion of the Parking Maintenance Expenses for which Tenant shall be entitled to a credit shall be calculated by dividing (A) the sum of (i) the number Station User Spaces and (ii) fifty percent (50%) of the number of Shared Spaces

Phase ___ of Palmetto Metrorail Station Lease

reasonably estimated by Landlord to be utilized by Landlord that year by (B) the total number of parking spaces in the Parking Facilities. Within thirty (30) days following the expiration or earlier termination of the Term, Landlord shall reimburse Tenant the applicable portion of the Parking Maintenance Expenses incurred by Tenant during the last year of the Term.

For a period of ten (10) years following Completion of Construction of the Parking Facilities, Tenant shall, at its sole cost and expense, be responsible for all repairs and replacements to the structural components of the Parking Facilities and correcting any defects in the construction thereof (the “Structural Maintenance”), subject to ordinary wear and tear and loss by fire or other casualty. Following such ten (10) year period, Landlord shall be responsible for the Structural Maintenance at its sole cost and expense.

ARTICLE 10

Compliance with Laws and Ordinances

Section 10.1. Compliance by Tenant

Throughout the term of this Lease, Tenant, at Tenant’s sole cost and expense, shall promptly comply in all material respects with all applicable Laws and Ordinances. 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 provided there is no cost, liability or other exposure to Landlord.

Section 10.2. Contest by Tenant

Tenant shall have the right, after prior written notice to Landlord, to contest the validity or application of any Law or Ordinance by appropriate legal proceedings diligently conducted in good faith, in the name of Tenant without cost or expense to Landlord, except as may be required in Landlord’s capacity as a party adverse to Tenant in such contest. If counsel is required, the same shall be selected and paid by Tenant, except to the extent that Landlord is an adverse party

Phase ___ of Palmetto Metrorail Station Lease

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 Laws or Ordinances, 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 provided there is no cost, liability, or exposure to Landlord.

Section 10.3. **Public Records Law**

As it relates to this Lease and any subsequent agreements and other documents related to the Project/Phase, Tenant and any of its subsidiaries, pursuant to Section 119.0701, Florida Statutes, shall:

- i) Keep and maintain public records that ordinarily and necessarily would be required by Landlord in order to perform the service;
- ii) Upon request of from Landlord's custodian of public records identified herein, provide the public with access to public records on the same terms and conditions that Landlord would provide the records and at a cost that does not exceed the cost provided in the Florida Public Records Act, Miami-Dade County Administrative Order No. 4-48, or as otherwise provided by law;
- iii) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of this Lease's term and following completion of the work under this Lease if Tenant does not transfer the records to Landlord; and

Phase ___ of Palmetto Metrorail Station Lease

iv) Meet all requirements for retaining public records and transfer to Landlord, at no cost to Landlord, all public records created, received, maintained and/or directly related to the performance of this Lease that are in possession of Tenant upon termination of this Lease. Upon termination of this Lease, Tenant shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to Landlord in a format that is compatible with the information technology systems of Landlord.

For purposes of this section, the term “public records” shall mean all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business of Landlord.

In the event Tenant does not comply with the public records disclosure requirements set forth in Section 119.0701, Florida Statutes, Chapter 119, Florida Statutes, and this section, Landlord shall avail itself of the remedies set forth in this Lease.

IF TENANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO TENANT’S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS LEASE, PLEASE CONTACT DTPW’S CUSTODIAN OF

PUBLIC RECORDS AT:

Miami-Dade County

Miami-Dade [department]

701 N.W. 1st Court, ___ Floor

Miami, Florida 33136

Phase ___ of Palmetto Metrorail Station Lease

Attention: _____

Email: _____

The Tenant shall indemnify Landlord from and against, any and all third party claims, actions, lawsuits, demands, damages, obligations, liabilities, losses, and judgments, including an obligation to pay a third party's attorney's fees incurred in litigation, settlement negotiations, trial, appeal or otherwise, arising out of or related to a claim, action, or lawsuit, against Landlord for its failure to produce documents, information or details regarding Tenant's assertion that records of Tenant are exempt or confidential in response to a public records request. For the purposes of this Lease, "third party" shall mean any person or entity not a party to this Lease.

ARTICLE 11

Changes and Alterations to Improvements by Tenant

Section 11.1. **Tenant's Right to Redevelop**

With Landlord's approval, Tenant shall have the right from time to time during the term of this Lease, at its sole cost and expense, to redevelop the project. Redevelopment shall be defined as any substantial change in the use of any portion of the Demised Premises (which shall not include, for example, the replacement of retail and office tenants in the ordinary course of business), any razing and/or reconstruction of twenty-five percent (25%) or more of the square footage of the existing Project or Phase of the Project, and any expansion or addition to the Project or Phase which increases the square footage of the Project or Phase by twenty-five percent (25%) or more over the square footage of the existing Project or Phase of the Project. Any such Redevelopment shall require the express written consent of the Landlord and shall require an increase in the amount of Annual Rent.

Phase ___ of Palmetto Metrorail Station Lease

Landlord shall have the right, in its reasonable discretion, to decline to approve such plans, to approve the plans as submitted or to require modifications of the plans. Landlord shall promptly review the plans and advise Tenant of its determination. If Landlord approves the plans for Redevelopment, either as initially submitted or, if applicable, with modifications, it shall issue a written approval and Tenant and Landlord shall proceed to establish a new Annual Rent as described in Section 11.3 below.

Notwithstanding the foregoing, the term Redevelopment shall not include any normal and periodic maintenance, repairs, retrofits, upgrades, or renovations to the interior spaces of the existing Project or Phase of the Project that do not materially change the use of the Project or Phase of the Project. The term Redevelopment shall also not include (a) reconstruction or razing required to repair damage to existing structures, including, but not limited to, damage caused by a casualty event, (b) reconstruction or razing required by Laws and Ordinances (such as Miami-Dade County 40-year recertification or the requirements of the Florida Building Code), or (c) reconstruction or razing required for applicable and previously constructed design standards (such as a LEED certification).

Section 11.2. **Conditions Precedent to Redevelopment**

The following provisions shall apply to any the Redevelopment of the Project or Phase:

- A. Tenant shall be current in all obligations under this Lease, including but not limited to payment of all Rent due to Landlord;
- B. The Redevelopment and/or razing shall be in compliance with all applicable provisions of this Lease, including but not limited to, the applicable provisions of Articles 1, 4 and 7;

Phase ___ of Palmetto Metrorail Station Lease

C. Tenant shall have obtained any consents required by any sublessees, mortgagees and entities which have provided financing for the portion of the Project or Phase to be razed or altered by the Redevelopment;

D. Tenant shall have obtained, and caused its general contractors, construction managers, architects, and subcontractors to obtain insurance as required by Landlord and delivered to Landlord certificates evidencing such insurance naming County as an additional insured and loss payee;

E. Prior to razing or any Redevelopment, there shall be an adjustment to Annual Rent, which shall be determined by the method described in Section 11.3 below.

Section 11.3. **Rent Adjustment in Redevelopment**

The Annual Rent to be due to Landlord following any Redevelopment shall be determined as follows:

A. Upon the date mutually agreed to by Tenant and Landlord, each shall, at its own expense, hire an appraiser to determine the fair market value of the Demised Premises and annual fair market rental value of the Demised Premises, as encumbered by the Lease and developed in accordance with the Redevelopment plans approved by the Landlord, and excluding the value of any Improvements. Appraisers hired by the Parties shall be independent, disinterested, reputable appraisers, with an MAI designation, licensed and certified in the State of Florida and having a minimum of ten (10) years of demonstrated expertise in appraising property in Miami-Dade County which is similar to the Demised Premises in its nature and use and in conducting appraisals of a similar nature. Appraisals shall be in compliance with the Uniform Standards of Professional Appraisal Practice (USPAP) and Uniform Appraisal Standards for Federal Land

Phase ___ of Palmetto Metrorail Station Lease

Acquisitions (UASFLA). Each appraiser shall complete the above described appraisals within ninety (90) days.

B. Within ten (10) days of completion of the appraisals each party shall concurrently provide a full copy of the appraisal to the other party. If the annual fair market rental value of the Demised Premises as determined by the two (2) appraisals varies by fifteen percent (15%) or less, then the average of the two annual fair market rental values shall be established as the new Annual Rent.

C. If the annual fair market rental value of the two appraisals varies by more than fifteen percent (15%), then the two appraisers shall appoint a third appraiser with the same qualifications and experience as is required for the first two appraisers to perform a third appraisal, the scope of which shall be the same as the two completed appraisals and which shall be in compliance with the USPAP and UASFLA. The cost of the third appraisal shall be shared equally by the Landlord and Tenant. The third appraisal must be completed within ninety (90) days of the completion of the two initial appraisals. The annual fair market rental value as determined by the third appraisal shall be averaged with the annual fair market rental value as determined by the appraisal closest to that of the third appraisal. The average of the two annual fair market rental values shall be established as the Annual Rent.

D. If either of the Parties disagrees with annual fair market rental value as established by the procedures described in Section 11.3 A or B above, then the Parties shall have a period of sixty (60) days, to mutually agree upon the amount of the new Annual Rent. If the Parties are unable to come to such agreement within the sixty (60) day period, then either party shall have the right to require that the annual fair market rental value be determined through binding arbitration conducted in accordance with the Commercial Arbitration Rules of the

Phase ___ of Palmetto Metrorail Station Lease

American Arbitration Association, or similar successor rules thereto, and applicable Laws and Ordinances. The location of such arbitration shall be Miami-Dade County, Florida. In such event, the Parties shall have a period of thirty (30) days to mutually agree upon an arbitrator who shall be an independent, disinterested, reputable appraiser, with an MAI designation, licensed and certified in the State of Florida and having a minimum of fifteen (15) years of demonstrated expertise in appraising property in Miami-Dade County which is similar to the Demised Premises in its nature and use and in conducting appraisals of a similar nature and who has not participated or contributed in any manner in any of the appraisals previously conducted in accordance with Section 11.3 A and B above, or who is affiliated in any way with those appraisers or the companies in which the initial appraisers have an interest in or are employed by. If the Parties fail to agree upon an arbitrator within the thirty (30) day period, then the two appraisers who were initially hired by Tenant and Landlord shall select an arbitrator meeting the qualifications described above and such selection shall be final. The Parties shall provide to the arbitrator full copies of all appraisals conducted in accordance with Section 11.3 A and/or B above, as applicable, and any related documentation that the arbitrator may reasonably request and shall fully cooperate in the production and discovery of requested documents. Landlord and Tenant shall each be entitled to be represented by counsel at the arbitration and to provide evidence and arguments to the arbitrator.

The Party requesting arbitration shall pay all costs related to the filing of such arbitration and the arbitration itself, including but not limited to, all services provided by the arbitrator. Each Party shall be responsible for all costs incurred in providing information and documents which it has in its possession and all costs which it incurs on its own behalf in the arbitration process, including but not limited to, attorney's and expert's fees and costs incurred in providing evidence and arguments.

Phase ___ of Palmetto Metrorail Station Lease

The arbitrator's determination of the annual fair market rental value of the Demised Premises as encumbered by the Lease and developed in accordance with the Redevelopment plans approved by the Landlord shall be binding upon the Parties in the absence of manifest error or fraud and shall not be subject judicial review.

Section 11.4. **Payment of Rent in Redevelopment**

If the new Annual Rent as established by the appraisal process described in Section 11.3 above is an increase of thirty-five percent (35%) or more over the amount of Annual Rent paid to Landlord in the Lease Year immediately preceding the year in which the appraisal process was completed then Landlord may accept Annual Rent in a lesser amount than the new Annual Rent during razing and/or rebuilding of the Project or Phase for a maximum period of four (4) years ("Redevelopment Period") which shall commence upon the establishment of the new Annual Rent or as mutually agreed to by the Parties, which agreement shall be in writing and executed by both Parties. However, the adjusted Annual Rent due to Landlord during the Redevelopment Period cannot in total be less than 50% of the new Annual Rent, as established by the process described in Section 11.3 above. Additionally, Tenant may be entitled to a reduction in Annual Rent during the Redevelopment Period only if the following deadlines are met:

- A. Commencement of Construction of the Redevelopment must take place within eighteen (18) months of commencement of the establishment of the new Annual Rent;
- B. Tenant must have completed construction of 25% percent of the approved Redevelopment, which has been determined to be _____ square feet, within six (6) months of Commencement of Construction of the Redevelopment; and

Phase ___ of Palmetto Metrorail Station Lease

C. Tenant must have completed construction of 75% percent of the approved Redevelopment, which has been determined to be _____ square feet, within twenty-four (24) months of Commencement of Construction of the Redevelopment.

In the event that Tenant fails to meet any of the above described deadlines, Tenant shall pay to Landlord, retroactively, the difference between the amount of Annual Rent that would have been due to Landlord prior to the establishment of a new Annual Rent, which shall include applicable annual increases as described in Section 3.4 above, and the amount of Rent actually paid, for the period of time that the applicable deadline was not met.

Notwithstanding the above, if the new Annual Rent, as established by the process described in Section 11.3 above, is less than an increase of thirty-five percent (35%) over the amount of Annual Rent due to Landlord in the Lease Year immediately preceding the Redevelopment Period, then Tenant shall continue to pay the amount of Annual Rent due to Landlord prior to the Redevelopment Period which shall include applicable annual increases as described in Section 3.4 of this Lease.

The Redevelopment Period shall terminate upon issuance of a Certificate of Occupancy for the Redevelopment or four (4) years from the date on which the new Annual Rent was established or the date mutually agreed to by the Parties as described above, whichever occurs first, subject to Unavoidable Delays and/or extensions of time approved by the Landlord in writing. Upon termination of the Redevelopment Period, including any extensions thereto due to Unavoidable Delays and/or extensions in time approved by the Landlord in writing, Tenant shall pay the new Annual Rent, which shall be subject to annual adjustments as described in Section 3.4 of this Lease. The first such increase shall be applicable one year from the date on which the new Annual Rent becomes effective. However, Landlord, in its sole and absolute discretion, may provide that such

Phase ___ of Palmetto Metrorail Station Lease

adjustment in Annual Rent shall be effective on first day of the Lease Year immediately following the date upon which the new Annual Rent becomes effective and on subsequent anniversaries of that date. Such determination shall be effective only if provided by Landlord in writing.

All applicable provisions of this Lease, including but not limited to, Articles 1, 4 and 7, shall apply to all Redevelopment activities.

ARTICLE 12

Discharge of Obligations

Section 12.1. **Tenant's Duty**

During the term of this Lease, except for Leasehold Mortgages or as otherwise allowed under this Lease, Tenant shall, to the satisfaction of Landlord, promptly pay all persons furnishing labor or materials with respect to any work by Tenant or Tenant's contractors on or about the Demised Premises and discharge and/or bond off any and all obligations incurred by Tenant which give rise to any liens on the Demised Premises, to the satisfaction of Landlord, it being understood and agreed that Tenant shall have the right to withhold any payment (or to transfer any such lien to a bond in accordance with applicable Florida law) so long as it is in good faith disputing liability therefor or the amount thereof, 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, liability or harm. In the event Tenant withholds any payment as described herein, it shall give written notice to Landlord of such action and the basis therefor.

Pursuant to Section 713.10, Florida Statutes, under no circumstances shall work performed by Tenant or on Tenant's behalf, pursuant to this Lease, whether in the nature of erection,

Phase ___ of Palmetto Metrorail Station Lease

construction, alteration, or repair, result in mechanics or other lien, or tax, against the estate or estates of Landlord by reason of any consent given to Tenant or on Tenant's behalf to improve the Demised Premises. Tenant shall place such contractual provisions in all contracts and subcontracts for Tenant's Improvements assuring the Landlord that no mechanics liens will remain against Landlord's interest in the Demised Premises. Said contracts and subcontracts shall provide, inter alia, the following:

C. That notwithstanding anything in said contracts or subcontracts to the contrary, Tenant's contractors, subcontractors, suppliers and materialman (collectively, "Tenant Contractors") will perform the work and purchase the required materials on the sole credit of the Tenant;

D. Tenant shall not allow any lien for labor or materials to remain against the interest of Landlord in the Demised Premises;

E. That the Tenant Contractors will immediately discharge any such lien filed by any of the Tenant Contractors suppliers, laborers, materialman, or subcontractors; and

F. That the Tenant Contractors will expressly indemnify and hold Landlord harmless from any and all costs and expenses, including attorney's fees, suffered or incurred as a result of such lien undertaken by the Tenant Contractors.

In compliance with Section 713.10, Florida Statutes, Tenant shall file in the official records of Miami-Dade County, either this Lease (as may be amended from time to time), a short form or a memorandum of the lease (as may be amended from time to time), or a notice that expressly contains the specific language in the Lease prohibiting such liability, before the recording of a notice of commencement for Improvements to the Demised Premises and the terms of the lease shall expressly prohibit such liability. Tenant and Landlord agree that such notice, short form or

Phase ___ of Palmetto Metrorail Station Lease

memorandum or lease shall be recorded by Tenant prior to the notice of commencement for Improvements to the Demised Premises. Additionally, upon termination or expiration of the Lease, Tenant and Landlord agree to execute a countersigned notice for the recording by Tenant to evidence that the Lease has been terminated or has expired.

Tenant acknowledges and agrees that the Lease is an agreement solely between Landlord and Tenant, and therefore the limitation of indemnity provisions in Section 725.06, Florida Statutes, as such statute may be amended from time to time, do not apply to this Lease. Accordingly, to the fullest extent permitted by law, the Tenant shall defend, indemnify, and hold harmless the Landlord from any and all liability, losses or damages, including reasonable attorney's fees and costs of defense, which the Landlord may incur as a result of claims demands, suits, causes of action or proceedings of any kind or nature first arising from a lien, charge, or encumbrance or which could result in same against Landlord's interest under Article 12.

Section 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 County property, 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

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

A. Tenant shall occupy the Demised Premises on the Lease Effective Date and thereafter, shall have the right privilege and obligation to continuously operate, maintain and use

Phase ___ of Palmetto Metrorail Station Lease

the Demised Premises and any Improvements thereon. Without limiting the generality or applicability of the foregoing the Demised Premises shall not knowingly be used for the following:

- 1) 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);
- 2) Any purpose which violates the approvals of applicable government authorities;
- 3) Any activity which has the potential to cause waste to the Demised Premises;
- 4) Any activity which is in contravention of the requirements of any insurance policies; or
- 5) Any activity or purpose that violates the provisions of this Lease.

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 federal, 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, use 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

Phase ___ of Palmetto Metrorail Station Lease

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.

Section 13.2. **Dangerous Liquids and Materials**

Tenant shall not knowingly permit its sublessees or other persons or entities 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 maintaining of retail inventories for sale to retail customers of motor oils and similar types of products;
- C. The use of normal cleaning and maintenance liquids and substances and/or other supplies customarily used in comparable buildings, improvements or projects (or any portion thereof); or
- D. Their use in construction of the Improvements on the Demised Premises.

Section 13.3. **Tenant's Duty and Landlord's Right of Enforcement**

Tenant, promptly upon learning of the occurrence of actions prohibited by Section 13.1 and 13.2; shall take reasonable steps to terminate same, including the bringing of a suit in Circuit

Phase ___ of Palmetto Metrorail Station Lease

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 adequate remedies at law. The provisions of this Section shall be deemed automatically included in all Leasehold Mortgages, agreements with Lenders and any other conveyances, transfers and assignments under this Lease, and any Transferee who accepts such Leasehold Mortgage, agreements with Lenders or any other conveyance, transfer or assignment hereunder shall be deemed by such acceptance to adopt, ratify, confirm and consent to the provisions of Sections 13.1, 13.2 and 13.3 and to Landlord's and Miami-Dade County's rights to obtain the injunctive relief specified therein.

Section 13.4. **Compliance with Environmental Law and Remedial Action**

Tenant at Tenant's expense shall, at all times, comply and shall cause its Sublessees to comply, at all times and in all material respects, with all Environmental Laws. Such compliance includes Tenant's obligations, at its expense, to take remedial action when required by applicable law or this Lease and to pay all fines, penalties, interest, and other obligations imposed by any governmental authority. Tenant shall be solely and fully responsible for any environmental remediation of the site, if required.

Tenant shall promptly notify Landlord if:

A. Tenant becomes aware of the presence or release of any hazardous substance at, on, under, within, emanating from or migrating to the Demised Premises which could reasonably be expected to violate in any material respect any Environmental Law or give rise to

Phase ___ of Palmetto Metrorail Station Lease

material liability or obligation to take remedial action or other material obligations under any Environmental Law; or

B. Tenant receives any written notice, claim, demand, request for information or other communication from a governmental authority, or a third party regarding the presence or release of any hazardous substance related to the Demised Premises.

Tenant shall take and complete any remedial action with respect to the Demised Premises in full compliance with all laws and shall, when such remedial action is completed, submit to Landlord written confirmation from the applicable governmental authority that no further remedial action is required to be taken.

In connection with any material remedial action Tenant shall;

C. Promptly submit to Landlord its plan of remedial action and all material modifications thereof;

D. Use an environmental consultant reasonably acceptable to Landlord; and

E. Apprise Landlord on a quarterly basis, or more frequently if requested by Landlord, of the status of such remediation plan.

Section 13.5. **Environmental Indemnification**

Tenant covenants and agrees, at its sole cost and expense, to defend, indemnify and hold harmless the Landlord, its successors, and assigns from and against any and all environmental related claims, brought against the Landlord by any governmental authority or any third party (unless such environmental related claims are solely as a result of actions taken or authorized by Landlord and their respective employees, agents and contractors in violation of any Environmental Law) and shall reimburse Landlord, its successor and assigns for any costs and expenses incurred by Landlord as a result of such claims or actions.

Phase ___ of Palmetto Metrorail Station Lease

Tenant covenants and agrees, at its sole cost and expense to defend, indemnify and hold harmless Landlord against all costs of removal, response, investigation or remediation of any kind and disposal of any hazardous substances as necessary to comply with any Environmental Law, all costs associated with claims for damages to persons, property, or natural resources, and the Landlord attorney's fees, consultant fees, costs and expense incurred in connection therewith.

Section 13.6. **Waste**

Tenant shall not knowingly permit, commit or suffer waste or material impairment of the Improvements or the Demised Premises, or any part thereof provided; however, demolition of existing Improvements on the Demised Premises existing on the date thereof or redevelopment or reconstruction of the Improvements as permitted under this Lease shall not constitute waste.

Section 13.7. **Designation of Improvements by Name**

With the written consent of Landlord, which shall not be unreasonably withheld, Tenant shall have the right and privilege of designating name(s) by which the Improvements, the Project or Phase thereof shall be known.

At Landlord's request Tenant shall provide Landlord copies of fully executed license or franchise agreements by and between the Tenant and the applicable licensor, franchisor, any other party, if any, the terms of which shall grant Tenant or any Sublessee the authority to operate under any such name.

ARTICLE 14

Entry on Premises by Landlord

Section 14.1. **Inspection by Landlord of Demised Premises**

Landlord and its authorized representatives, upon reasonable advance notice and in the presence of a representative of Tenant, shall have the right to enter the Demised Premises at

Phase ___ of Palmetto Metrorail Station Lease

reasonable times during normal business hours for the purpose of inspecting the same to insure itself of compliance with the provisions of this Lease.

Section 14.2. **Limitations on Inspection**

Landlord, in its exercise of the right of entry granted to it in Section 14.1 herein, shall not unreasonably disturb the occupancy of Tenant or Sublessees nor disturb their business activities and, 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

Section 15.1. **Limitation of Liability of Landlord**

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

B. Tenant acknowledges that its use and occupancy of the Demised Premises is at its own risk. Landlord shall not be liable to Tenant or those claiming through Tenant, for any loss or damage which may result from the acts or omissions of any person's use or occupancy of space in any part of the Improvements or Demised Premises or their agents, employees, contractors, subtenants, assigns, or invitees.

C. Except as expressly set forth herein, Tenant shall not be entitled to any adjustment or abatement in Rent as a result of any interruption, stoppage, or changes in any of the services, public or private, provided at the Station.

D. The County shall have the absolute right to develop County owned property at or near the Station in any manner or for any use which in its absolute discretion it deems to be necessary or desirable and Tenant shall have no claim of diminution of value of its leasehold

Phase ___ of Palmetto Metrorail Station Lease

interest in the Demised Premises, any business damages, or any other recourse against the County as a result of any such development or proposed development.

Section 15.2. **Limitation of Liability of Tenant**

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

ARTICLE 16

Damage and Destruction

Section 16.1. **Tenant's Duty to Restore**

Tenant bears all risk of loss due to fire or any other casualty. Subject to Article 11 of this Lease, if, at any time during the term of this Lease, the Demised Premises, Improvements, or any part thereof (which, for the avoidance of doubt, excludes the Station Improvements and the Parking Facilities), shall be damaged or destroyed by fire or other casualty, Tenant, shall at its sole cost and expense, if so requested by Landlord, regardless if insurance proceeds related to such casualty are made available to Tenant for use in connection therewith, shall repair, alter, restore, replace or rebuild to the value, conditions and character which existed immediately prior to such damage or destruction, subject to such changes or alterations as Tenant may elect and are approved by Landlord, 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 written approval, which approval shall not be unreasonably withheld or delayed, it may construct Improvements which are larger or different in design, function or use and which represent a use comparable to the prior use or is compatible with uses of property in the immediate geographical area, to the extent such construction and improvement are performed in accordance with the applicable provisions of Articles 1 and 4 of this Lease and all applicable Laws and Ordinances. Such repairs, alterations, restoration, replacements or rebuilding, including such

Phase ___ of Palmetto Metrorail Station Lease

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”.

Section 16.2. **Landlord’s Duty to Repair and Rebuild Station**

If, at any time during the term of this Lease, the Station (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, Landlord, at its sole cost and expense, if required by Landlord, may repair or rebuild a station for a design, size and capacity meeting its needs at the time of such repair or rebuilding, if any.

Section 16.3. **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 this Lease, including but not limited to, the applicable provisions of the Articles 1, 4 and 11 of this Lease.

Section 16.4. **Loss Payees of Tenant-Maintained Property Insurance**

With respect to all policies of property insurance required to be maintained by Tenant in accordance with Article 7 of 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 Leasehold Mortgagee under a standard mortgage endorsement; provided that the rights of Landlord regarding any Tenant Improvements shall be subject and subordinate to the rights of any Leasehold Mortgagee. Neither Landlord nor any Mortgagee shall unreasonably withhold its

Phase ___ of Palmetto Metrorail Station Lease

consent to a release of 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. In the event that any Rent was outstanding during the period of rebuilding or repair and any insurance proceeds are remaining after completion of rebuilding or repair under this Article, then such proceeds shall be paid first to Landlord up to the amount of the outstanding Rent. If all the insurance proceeds are in fact made available to Tenant and such insurance proceeds received by Tenant or Leasehold Mortgagee are insufficient to pay the entire cost of the Work, Tenant shall supply the amount of such deficiency.

Section 16.5. **Repairs Affecting County Owned Facilities or Demised Premises**

Before beginning any repairs or rebuilding, or letting any contracts in connection therewith, required by any damage to or destruction of the Demised Premises which adversely affects County owned facilities, or any damage to or destruction of County owned facilities which adversely affects the entrance to the Demised Premises, Tenant or Landlord, as the case may be, shall submit for the other's approval (which approval shall not be unreasonably withheld, conditioned or delayed), Construction Plans for such repairs or rebuilding. Any such repairs and rebuilding shall be completed free and clear of liens subject to the provisions of Article 12 herein, except to the extent they are subject to Leasehold Mortgages.

Section 16.6. **Abatement of Rent**

Except as otherwise set forth in this Lease, Tenant may not be entitled to abatement, allowance, reduction, diminution, or suspension of any Rent or other payments due to Landlord under this Lease. Tenant shall carry insurance to provide Rent to Landlord in the event of any fire, flood, or loss due to casualty.

Except as otherwise provided in the Lease, such damage or destruction shall not release Tenant of or from any other obligation imposed upon Tenant under this Lease.

Section 16.7. **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 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 or the last five (5) years of any renewal term and the estimated cost for repair and restoration exceeds an amount equal to twenty-five percent (25%) of the then-current Fair Market Value of the Improvements of the Project or Phase, then Tenant shall have the right to terminate this Lease and its obligations, except those obligations occurring or accruing prior to the date of such termination, hereunder provided that: (a) written notice is given to Landlord within sixty (60) days after such damage or destruction; (b) tenant has insurance coverage which fully covers such damage; (c) all rights to such insurance proceeds are expressly assigned and paid to Landlord along with payment by Tenant of any deductible; (d) no Lender or person claiming through Tenant has a claim upon any insurance proceeds covering the loss; and (e) there are no Sublessees whose leases or agreements have not been validly terminated by reason of such damage or destruction.

No Lender claiming through Tenant shall have a claim upon any insurance proceeds covering such loss within the last five (5) years of the lease term and this provision must be expressly stated in any Leasehold Mortgage(s) and Financing Agreement(s). Additionally, all Sublessees or occupancy agreements shall provide for such agreements to be validly terminated by reason of such damage or destruction.

Alternatively, Tenant and Landlord may mutually agree to demolish the Improvements. In such event the Tenant shall be obligated to complete the demolition at its sole cost and expense and in accordance with the following provisions:

Phase ___ of Palmetto Metrorail Station Lease

A. Tenant shall by written notice to Landlord advise Landlord of the extent of the damage to the Improvements within sixty (60) days of the occurrence of the damage and request Landlord's concurrence to demolish the Improvements;

B. If Landlord is in concurrence, Landlord shall advise Tenant of such concurrence in writing within sixty (60) days of receipt of such request from Tenant; and

C. Within one hundred and twenty (120) days of receiving written concurrence from Landlord, or within a period of time mutually agreed to by the Parties, Tenant shall have completed demolition of the Improvements.

In such event, the demolition of the Improvements shall be performed in a good and workmanlike manner and in compliance with all Laws and the Demised Premises shall be restored to a level, unimproved, vacant state with all debris removed, all excavations filled in.

After demolition is complete and the Demised Premises is returned to a state acceptable to Landlord, Tenant shall surrender the Demised Premises to Landlord free of all liens, claims, encumbrances and this Lease shall terminate.

The obligations of Tenant to pay Rent under this Lease shall be prorated to the date of termination. All property insurance proceeds which exceed the cost of demolition for the damaged Improvements and restoration of the Demised Premises and all business interruption insurance proceeds shall be paid to Landlord and Leasehold Mortgagee as their respective interests may appear, subject to the provisions hereof and of Section 16.4 (which provide that Landlord's rights for any Tenant Improvements are subject and subordinate to the rights of any Leasehold Mortgagees).

This Lease shall terminate forty-five (45) days following the later of Landlord's receipt of notice of casualty or the date that all of the foregoing conditions are met.

Phase ___ of Palmetto Metrorail Station Lease

If the conditions are not met such notice shall be void and Tenant shall rebuild the Improvements and the Lease shall be in full force and effect.

If demolition will extend beyond the termination or expiration date of this Lease as provided above, then this Lease shall be construed to be in the nature of a right of entry upon the Demised Premises for the purpose of demolition of the Improvements thereon and not a lease; however, all terms and conditions of the Lease shall be applicable except Rent shall be abated.

ARTICLE 17

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

Section 17.1. **Right to Transfer Leasehold**

This Lease is granted to Tenant solely to develop the Demised Premises for its subsequent use according to the terms hereof and not for speculation in landholding. Tenant recognizes that, in view of the importance of developing the Project or Phase to promote the general welfare of the community, the Tenant's qualifications and identity are of a particular concern to the community and the Landlord. Accordingly, Tenant acknowledges that it is because of such qualification and identity that the Landlord is entering into this Lease with Tenant and in so doing, the Landlord is further willing to accept and rely on Tenant to faithfully perform all its obligations, undertakings and covenants under this Lease, with the understanding that Tenant shall be entitled to sublease the Demised Premises, in its entirety, to Development Partner or its Affiliate.

Notwithstanding the above, subject to Section 3.8 Tenant and Development Partner shall have the right and privilege to Transfer all or any portion of its rights under this Lease, its rights to Project or Phase, or interest in Tenant (including stock, partnership interest, or any other equity) to such other persons, firms, corporations, general or limited partnerships, unincorporated associations, joint ventures, estates, trusts, any Federal, State, County or Municipal government

Phase ___ of Palmetto Metrorail Station Lease

bureau, department or agency thereof, or any other entities as Tenant and/or Development Partner shall select; however, (a) Tenant shall not be in default under this Lease (and no default remains uncured after the expiration of any applicable cure periods) at the time of such Transfer, without specific written consent from Landlord and (b) Tenant shall obtain written consent of the Landlord, which shall not be unreasonably withheld, conditioned, or delayed, both as to the proposed transfer and the proposed transferee, unless the Transfer is to an Affiliate.

Any request to Landlord for such transfer shall be in writing and shall be accompanied by the following:

- A. An accounting of any and all outstanding and satisfied obligations of Tenant under the Lease;
- B. Copies of the proposed assignment or transfer documents;
- C. The latest audited financial statement of the proposed transferee;
- D. A detailed summary of the proposed transferee's prior experience in managing and operating real estate developments and all current real estate holding(s);
- E. A description of all proposed transferee's past, present, or future bankruptcies, reorganizations, or insolvency proceedings; and
- F. Records of any convictions, indictments, allegations, investigations or any other proceedings for felonies, fraud, or misrepresentation of any principal or officer of the proposed assignee under the law of any foreign or United States jurisdiction.

The transfer documents shall specify the allocation, as applicable, of the Initial Rent and Annual 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 (i) in the case of a not-for-profit transferee, is duly organized not-

Phase ___ of Palmetto Metrorail Station Lease

for-profit corporation dedicated to a similar community purpose and with an equal or better reputation in the community, as the transferor, or (ii) in the case of a for-profit 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 the event that a sale, assignment, or transfer is requested prior to Completion of Construction, the requirements of this paragraph shall also apply. Landlord reserves the right to condition such Transfer of Tenant's interests and the release of Tenant from its liability under this Lease until (a) the transferee has provided performance bonds, if applicable, and insurance as required under Section 1.5 and Article 7 of this Lease, and (b) to require that the assignment is subject to the transferee complying with all applicable provisions of this Lease, including but not limited to, obtaining appropriate financing for the Project or Phase, if applicable, and (c) any and all monetary obligations have been paid to satisfaction of Landlord including but not limited to any outstanding Rent and Additional Rent, and (d) any and all non-monetary obligations under this Lease have been satisfied, and (e) the Landlord receiving any outstanding payment of all costs and expenses, including but not limited to reasonable attorney's fees, disbursements, and court costs incurred in connection with Lease, that are payable to Landlord pursuant to this Lease, and (f) that Tenant and any assignees shall be jointly and severally liable for any outstanding monetary, and/or nonmonetary obligation, and/or costs and expense, and (g) in the event of default, all monetary defaults hereunder have been cured, and (h) in the event of default, all non-monetary defaults susceptible to cure having been remedied and cured, and (i) in the event of default has occurred and is continuing, the Landlord receiving payment of all costs and expenses, including

Phase ___ of Palmetto Metrorail Station Lease

but not limited to reasonable attorney's fees, disbursements, and court costs incurred in connection with the enforcement of this Lease, and (j) in the event of default that is continuing, that Tenant and any assignees shall be jointly and severally liable for any monetary and/or non-monetary default and/or cost and expense. Additionally, Landlord reserves the right to condition such Transfer of Tenant's interests until Completion of Construction of the Project or Phase. Any Transfer of all or any part of Tenant's interest in the Lease and the Demised Premises shall be made expressly subject to the terms, covenants and conditions of this Lease, and such assignee or transferee shall expressly assume all of the obligations of Tenant under this Lease applicable to that portion of the Demised Premises or the Project or Phase being sold, assigned or transferred, and agree to be subject to all conditions and restrictions to which Tenant is subject to. However, nothing in this subsection 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 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 or Project or Phase so transferred, and subject to the terms of the document of assignment or transfer, 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 term of this Lease.

Phase ___ of Palmetto Metrorail Station Lease

Any subsequent assignments shall also be subject to the consent of the Landlord and all provisions of this Lease.

Once a Transfer has been made with respect to any portion of the Demised Premises or Project or Phase, the transferee and Landlord may thereafter modify, amend or change the Lease with respect to such portion of the Demised Premises or Project or Phase, so long as Tenant has been released from all rights and obligations under the Lease pertaining to the assigned portion of the Demised Premises or Project or Phase, all subject to the provisions of the assignment so long as they do not diminish or abrogate the rights of Landlord or Tenant (or anyone claiming through Tenant) as to any other part of the Demised Premises or Phase of the Project, and no such modification, amendment or change shall affect any other part of the Demised Premises or any other Phase of the Project or the Lease thereof.

Except as may otherwise be specifically provided in Section 17.1, only upon Landlord's express written consent to a transfer by any assignor, such transferor shall be released and discharged from any or all of its duties and obligations hereunder which pertain to the portion of the Demised Premises or Project or Phase transferred for the then unexpired term of Lease.

If Tenant is a corporation, limited liability company, unincorporated association, general or limited partnership, or joint venture, the Transfer of (a) any stock of Tenant in the case Tenant is a corporation, (b) partnership interest in Tenant, in the case Tenant is a general or limited partnership, (c) members interest in Tenant, in the case Tenant is a limited liability company, or (d) interest in Tenant, in the case the Tenant is another type of entity, in which 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, shall be deemed a Transfer within the meaning

Phase ___ of Palmetto Metrorail Station Lease

and provisions of this Section. "In the aggregate" shall mean the sum of all stock or other interests transferred over the entire period of this Lease.

Upon demand, Tenant shall pay any charges established by Landlord in accordance with Landlord's established, generally applicable fee schedule in effect at the time a Transfer is requested for Landlord's review and approval, if applicable, of the same; and if no such fee schedule has been established, Tenant shall reimburse Landlord for staff time and expenses actually incurred with respect to Landlord's review and approval, if applicable, in accordance with the rate established by Landlord for similar services or, if no such rate has been established, then the hourly rate calculated by dividing the annual salary of the Landlord's employee performing the service by 2,000.

No Transfer may or shall be made, suffered or created by Tenant, its successors, assigns, or transferees without complying with the terms of Lease and without Landlord's prior approval. Any transfer that violates this Lease shall be null and void and of no force and effect.

Notwithstanding the foregoing, Landlord's prior approval shall not be required for any sale, assignment, or transfer (a) to an Affiliate, or of a non-controlling interest in Development Partner such that Development Partner remains an Affiliate, or (b) by operation of law as a result of death, or (c) to any Lender or Mezzanine Financing Source that results from a foreclosure, a deed or assignment in lieu of foreclosure, or the exercise of any other remedies by any Lender under any Leasehold Mortgage, or any Mezzanine Financing, all of which shall be governed by Sections 17.3 to 17.10 hereof; provided, however, that any subsequent Transfer from a Lender to an assignee of Lender shall require Landlord's prior consent pursuant to this Section, which shall not be unreasonably withheld, conditioned, or delayed.

Phase ___ of Palmetto Metrorail Station Lease

Notwithstanding anything in this Lease to the contrary, the requirement that a qualified non-for-profit corporation perform the foregoing operational obligations of MagicWaste Youth Foundation, Inc., shall apply in any circumstance in which Magic Waste Youth Foundation is not the Tenant.

Section 17.2. **Bifurcation of Lease**

Tenant, at Tenant's option, so long as Tenant is not in default under this Lease after expiration of applicable notice and cure periods, may effectuate a transfer of a portion of its rights hereunder to an Affiliate (or, upon receipt of Landlord's prior written approval of the bifurcation and the transferee that is a non-Affiliate pursuant to Section 17.1 and this Section 17.2, to an entity that is not an Affiliate) through a partial assignment and bifurcation of this Lease from time to time to facilitate the development and operation of the various components of the Project, subject to the terms and conditions hereof; provided, however, this Lease may not be bifurcated into more than four (4) separate leases without the prior consent of the County. Accordingly, if Tenant desires to partially assign and bifurcate this Lease in connection with a transfer of any component of the Project, Tenant shall so notify Landlord of such bifurcation and assignment, as applicable, prior to such bifurcation and transfer and the following provisions shall apply to such bifurcation and transfer:

(a) Tenant, Landlord and the Affiliate or approved transferee (as applicable), shall promptly and, in any event within thirty (30) days following Tenant's request or County's approval (as applicable) enter into, execute and deliver (i) a partial assignment, bifurcation and partial termination of this Lease in substantially the form attached hereto as Schedule 17.2(a)(i), and (ii) a new lease with the Affiliate or approved transferee (as applicable) with respect to the bifurcated

Phase ___ of Palmetto Metrorail Station Lease

component of the Project (each a “Bifurcated Lease”) in substantially the form attached hereto as Schedule 17 .2(a)(ii) (which contains substantially the same terms and conditions of this Lease),

(b) Any Affiliate or approved transferee of Tenant’s interest in this Lease shall be obligated to comply with the terms and provisions of the Bifurcated Lease and shall be subject to the remedies and rights available to the Landlord under the Bifurcated Lease in the event such transferee fails to perform its obligations thereunder.

(c) Upon approval of the allocation by County, which shall not be unreasonably withheld, conditioned, or delayed, each Bifurcated Lease shall specify the allocation of the Initial Rent, Rent and any other payments due and owing under this Lease to be paid to Landlord thereunder, provided that the sum of all Rent allocated under the Bifurcated Leases and this Lease (in the event any portion of the Project is developed under this Lease without bifurcation) shall equal the total Rent required by this Lease; however, during any period of time that Rent is paid or payable under this Lease and Additional Rent is paid under any Bifurcated Lease for all or any portion of the same period of time, Tenant shall be entitled to a credit against Rent due and payable under this Lease equal to the aggregate amount of such Rent, which credit shall be applied to and reduce each installment of Rent coming due under this Lease until fully credited. Except for the rent specifically set forth in this Lease (adjusted as provided in this paragraph) or any payments to Landlord required by Section 3.8, Landlord shall not be entitled to (and shall not impose or attempt to impose) any other rent, consideration or payments from Tenant or any Permitted Transferee or Approved Transferee under or with respect to a Bifurcated Lease. For the avoidance of doubt, Landlord may withhold its approval of a Bifurcated Lease in the event that Landlord reasonably determines that the Bifurcated Lease is not commercially and economically viable as an independent project.

Phase ___ of Palmetto Metrorail Station Lease

(d) The Rent due and payable by Tenant under this Lease shall be adjusted and reduced, on a dollar for dollar basis, by the aggregate amount of Rent due and payable under the Bifurcated Leases. The bifurcation documents executed by the Parties pursuant to Section 17.2(a) shall amend this Lease to confirm such adjustment and reduction in Rent.

(e) Notwithstanding anything contained in this Lease, upon the execution of a Bifurcated Lease:

(i) Tenant shall not be obligated to perform any obligation under this Lease to the extent such obligation pertains to, or is to be performed on, any the portion of the Demised Premises leased pursuant to such Bifurcated Lease, and shall be automatically released from any and all such obligations (including, without limitation, any obligation to (x) pay any rent allocated to such Bifurcated Lease, (y) develop the Phase of the Project governed by the Bifurcated Lease, and (z) maintain insurance for such Phase or portion of the Demised Premises);

(ii) No action or omission of, or default by, a tenant (or anyone acting by, through or under a tenant) under a Bifurcated Lease, including, without limitation, any failure to develop the applicable Phase of the Project, shall in any event constitute or give rise to a default, or any liability of Tenant under this Lease or deprive Tenant of any of its rights under this Lease, including without limitation the right to develop the remainder of the Project on the balance of the Demised Premises in accordance with this Lease; and

(iii) Neither Tenant nor any assignee or successor thereof shall in any event be prohibited from developing any portion of the Project (or be in default hereunder, or have any liability), as a result of any failure of any tenant (or anyone acting by, through or under a tenant) under any Bifurcated Lease to develop the applicable Phase of the Project.

Phase ___ of Palmetto Metrorail Station Lease

Each Bifurcated Lease shall include provisions similar to the above confirming that (1) the tenant under such Bifurcated Lease shall not be obligated to perform any obligation under this Lease or any other Bifurcated Lease, (2) no action or omission of, or default by Tenant under this Lease or any other tenant under any other Bifurcated Lease, shall constitute a default under such Bifurcated Lease, and (3) neither the tenant under such Bifurcated Lease nor any assignee nor successor thereof shall be prohibited from developing the Phase of the Project covered by the Bifurcated Lease as a result of any failure by Tenant under this Lease or any other tenant under any other Bifurcated Lease to develop the portion of the Project located on its portion of the Demised Premises; it being the intention of the Parties that this Lease and each Bifurcated Lease shall not be cross-defaulted in any way.

(f) Each tenant under a Bifurcated Lease shall have the right, subject to any approvals of Landlord required by this Section and the limitations stated in this Section, to (i) further assign the Bifurcated Lease and (ii) enter into subleases, licenses, concession agreements, management agreements, operating agreements and other arrangements for the purpose of implementing any use, operation or activity permitted under this Lease, in accordance with the terms thereof.

Section 17.3. Right to Mortgage Leasehold

Notwithstanding Section 17.1 to the contrary, Tenant shall have the right from time to time, and without prior consent of Landlord, to mortgage or encumber their rights under this Lease, and the leasehold estate, in whole or in part, by Leasehold Mortgage(s). Such Leasehold 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's security for the performance of the terms and conditions of this Lease and to Landlord's fee simple ownership of the Demised Premises. Such secured financing of the Project or Phase shall solely secure debt of

Phase ___ of Palmetto Metrorail Station Lease

Tenant which is directly related to the Project or Phase. The Project or Phase may not be cross-collateralized or cross-defaulted with any other property, project, Phase, Project component or other assets. The Landlord's fee simple title to the Demised Premises, shall not be affected by any Leasehold Mortgage or other Financing Agreement and no Leasehold Mortgage, other Financing Agreement or encumbrance shall extend to or be a lien or encumbrance upon Landlord's interest. Tenant shall provide Landlord with a copy of all such Leasehold Mortgages or other Financing Agreements. The granting of any Leasehold Mortgage(s) against all or part of the leasehold estate in the Demised Premises shall not operate to make the Leasehold Mortgagee thereunder liable for performance of any of the covenants or obligations of Tenant under this Lease, except in the case of a Leasehold Mortgagee which acquires an interest in all or a portion of the leasehold estate and then for its period of interest in the leasehold estate, and including such outstanding obligations accruing prior to the acquisition of such interest in the leasehold estate. The amount of any such Leasehold Mortgage may be increased whether by an additional mortgage or 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 the Project or Phase without the consent of Landlord. Such Leasehold Mortgage(s) shall 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. In the event of such foreclosure, Leasehold Mortgagee shall pay Rent to Landlord and satisfy all other past and present obligations as provided in this Lease.

Phase ___ of Palmetto Metrorail Station Lease

All Leasehold Mortgages and Financing Agreements shall expressly state that the Lender shall not have a claim upon any insurance proceeds covering any loss within the last five (5) years of the lease term.

Notwithstanding any provision in this Lease to the contrary, Tenant and the direct and indirect owners of equity interests in the Tenant shall have the right from time to time, without the prior consent of the Landlord, to pledge or 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, provided however, prior to obtaining Mezzanine Financing from a Mezzanine Financing Source, Tenant shall give notice to Landlord of its intent to obtain Mezzanine Financing from the applicable Mezzanine Financing Source and together with such notice, Tenant shall certify to Landlord that:

- A. That the Mezzanine Financing and the Mezzanine Financing Source meet the definitions of those terms as stated in Article 2 of this Lease; and
- B. Tenant does not have a direct or indirect interest in the applicable Mezzanine Financing Source.

The granting of such pledge or other security shall not operate to make the Mezzanine Financing Source liable for performance of any of the covenants or obligations of Tenant under this Lease. The amount of such Mezzanine Financing may be increased, and such Mezzanine Financing may be modified, amended, restated, replaced, extended, refinanced, consolidated or renewed from time to time, all without the consent of the Landlord. Any transfer of direct or indirect ownership interest in Tenant resulting from the foreclosure of any Mezzanine Financing

Phase ___ of Palmetto Metrorail Station Lease

Source of a pledge of ownership interests in Tenant or other appropriate proceedings in the nature thereof, or any transfer to the purchaser at a foreclosure of such pledge of ownership interests or any conveyance, assignment of transfer in lieu of such foreclosure (including any transfer to the Mezzanine Financing Source, any nominee of the Mezzanine Financing Source or a third party buyer), or any change of control or other transfer of any direct or indirect ownership interest in the 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 the Landlord and shall not constitute a breach of any provision or default under this Lease.

Section 17.4. **Notice to Landlord of Leasehold Mortgage**

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 the Mezzanine Financing Sources under this Lease. For the benefit of any such Lender who shall have become entitled to notice as hereinafter provided in this Article 17, Landlord agrees, subject to all the terms of this Lease, not to accept a voluntary surrender or termination of this Lease at any time while such Leasehold Mortgage(s) shall remain a lien on Tenant's leasehold estate and with respect to Mezzanine Financing, during any period that the Mezzanine Financing Source holds an interest (directly or indirectly) or is secured by a pledge of ownership interests in the Tenant. Tenant shall advise and obtain the written consent of any such Leasehold Mortgagee(s)

Phase ___ of Palmetto Metrorail Station Lease

or Lender(s), including but not limited to, any Mezzanine Financing Source, prior to any modification of this Lease with respect to the Project or Phase subject to such Leasehold Mortgage(s) or Mezzanine Financing, 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 or Mezzanine Financing remains undischarged. The foregoing is not meant to prohibit a sale of the fee to Tenant.

Section 17.5. **Notices to Leasehold Mortgagee(s)**

No notice of default under Section 19.1 or notice of failure to cure a default under Section 19.2 A shall be deemed to have been given by Landlord to Tenant unless and until a copy has been given to each Leasehold Mortgagee and Mezzanine Financing Source who shall have notified Landlord pursuant to Sections 17.1 or 17.3 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 Leasehold Mortgagee or Mezzanine Financing Source of and with any of the terms of this Lease with the same force and effect as though kept, observed or performed by Tenant, provided such act or performance is timely under Sections 17.6 or 19.2, or as otherwise provided by Section 19.3. Nothing contained herein shall be construed as imposing any obligation upon any such Leasehold Mortgagee or Mezzanine Financing Source to so perform or comply on behalf of Tenant, unless such Leasehold Mortgagee or Mezzanine Financing Source becomes the Tenant in accordance with Section 17.6 below.

Section 17.6. **Leasehold in Reversion and Assignment in Lieu of Foreclosure**

Tenant's right to mortgage this Lease and the leasehold estate in whole or in part shall include the right to require a lease in reversion in lieu of foreclosure under such Leasehold Mortgage or Mezzanine Financing, which lease in reversion shall have the same terms and

Phase ___ of Palmetto Metrorail Station Lease

provisions, including expiration date, as this Lease. The Leasehold Mortgagee or Mezzanine Financing Source, in such event, shall have the right to take this Lease by lease in reversion or by assignment in lieu of foreclosure and to sell it either after foreclosure or after taking the assignment or becoming Tenant under the lease in reversion. For the avoidance of doubt, such lease in reversion or assignment in lieu of foreclosure shall not be subject to Section 17.1 or Section 3.8 of this Lease. The Leasehold Mortgagee or Mezzanine Financing Source shall not be liable for Tenant's obligations hereunder until such a time as it becomes the new Tenant, either by lease in reversion, foreclosure or assignment and then shall assume liability and obligations of the Tenant. Landlord's obligation to enter into such new Lease of the Demised Premises with the Leasehold Mortgagee or Mezzanine Financing Source shall be subject to the following conditions which must be met prior to the execution of the new lease:

A. Payment of Rent to Landlord and fulfillment of any other obligation due herein through the term of such new Lease; and/or

B. All monetary defaults or obligations hereunder must have been cured; and/or

C. All non-monetary defaults or obligations susceptible to cure must be remedied and cured; and/or

D. The new Tenant must have promptly commenced with due diligence and good faith to pursue curing said default which cannot be immediately cured accordance with this Lease; and/or

E. The Landlord must have received payment for all costs and expenses, including reasonable attorney's fees, disbursements and court costs, incurred by the Landlord in connection with such Events of Default, the termination of this Lease, and the preparation of the

Phase ___ of Palmetto Metrorail Station Lease

new Lease, together with interest thereon at the highest rate permitted by law, from the due date or the date such costs were incurred by the Landlord, as the case may be, to the date of actual payment from the Leasehold Mortgagee or Mezzanine Financing Source.

The Landlord's delivery of the Demised Premises to the Leasehold Mortgagee or Mezzanine Financing Source pursuant to Section 17.5 shall (a) be made without representation or warranty of any kind or nature whatsoever either express or implied; (b) be taken by the Leasehold Mortgagee or Mezzanine Financing Source as Tenant on an "as is" condition and in its then current condition; and (c) the Leasehold Mortgagee or Mezzanine Financing Source, as new Tenant, at its sole cost and expense, shall be responsible for taking such action as shall be necessary to cancel and discharge the original Lease and to remove the prior Tenant herein.

Section 17.7. **Rights to Sublease and Non-Disturbance to Sublessees**

Tenant and Sublessees upon written notice to Landlord and providing a copy of the Sublease to Landlord shall have the right to enter a Sublease so long as such Sublease is consistent with the terms and conditions of this Lease, 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, unless a release is granted in accordance with Section 17.1. Subject to the foregoing continuing responsibility of Tenant, the obligations of Tenant under this Lease may be performed by any Sublessee (as to the Demised Premises or the Phase or other portion thereof demised to such Sublessee), and Landlord shall accept performance by any such Sublessee as performed by Tenant. Additionally, each Sublease must: (i) be for a use compatible with the standards and requirements set forth in Section 4.1 herein, (ii) not extend beyond the expiration of the term of this Lease, (iii) provide that the sublease may be terminated by Landlord upon the event of a casualty or loss greater than 25% of the Project or Phase within 5

Phase ___ of Palmetto Metrorail Station Lease

years of the expiration of the Lease; and (iv) to the extent such Sublease transfers development or sublandlord obligations (and not, for example, a Sublease with a residential tenant), expressly provide that Sublessee shall be jointly and severally liable for Tenant's duties, obligations and responsibilities under this Lease at least as to the portion of the demised premises to be sublet, except as expressly provided by Section 2.W of this Lease. Landlord agrees to grant Non-Disturbance Agreements for Sublessees which provide that, 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, provided that the following conditions are met:

- A. The Sublease is an arms' length transaction on market terms;
- B. The Sublessee shall be in compliance with the terms and conditions of its Sublease;
- C. The rent payable by such Sublessee shall be at least equal to the then market rental rates;
- D. The Sublessee shall agree to attorn to Landlord; and
- E. The Sublessee shall agree to subordinate its interest 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 or upon the event of a casualty or loss greater than 25% of the Project or Phase within 5 years of the expiration of the Lease where the Improvements will be demolished pursuant to Section 16.7.

Notwithstanding any attornment, Landlord shall not be (a) liable for any previous act or omission of the Tenant hereunder; (b) subject to any offset or defense that shall have accrued to

Phase ___ of Palmetto Metrorail Station Lease

the Sublessee hereunder against said Tenant; or (c) bound by any prepayment of rent or for any security deposit which shall not have been delivered to Landlord. Moreover, in the event of Tenant default of Rent due under this Lease, Sublessee hereunder shall pay all outstanding Rent due under its Sublease to Landlord.

Any and all Subleases with Major Sublessees of the Demised Premises may include lender protection provisions consistent with the provisions of this Lease that benefit Lenders, including other customary lender protections found in comparable ground leases/subleases. A Major Sublessee shall be entitled to the rights and protections given to Sublessees under this Section. Although residential tenants of Workforce Housing Units are Sublessees under this Lease, the recognition and non-disturbance rights of this Section shall not apply to any residential tenants in the project.

Tenant has notified Landlord that Tenant intends to sublease (the “Development Partner Sublease”) the entire Demised Premises to Development Partner. Contemporaneously herewith, Landlord is providing to Development Partner a recognition and non-disturbance agreement in the form attached to this Lease as Schedule 17.7, pursuant to which, among other things, Landlord has agreed to recognize the Development Partner Sublease notwithstanding a termination of this Lease (but subject to the terms and conditions of the immediately preceding paragraph), on the terms and conditions set forth therein. Development Partner shall have the right from time to time to Transfer the Development Partner Sublease and/or all or any portion of its rights under the Development Partner Sublease and further sublease the Demised Premises, and Landlord agrees to grant recognition and non-disturbance agreements in connection with the same as provided above, subject to the terms hereof. Development Partner is a Major Sublessee under this Lease. If this Lease is bifurcated with respect to any portion of the Project pursuant to the terms of Section 17.2,

Phase ___ of Palmetto Metrorail Station Lease

then the Major Sublease may also be bifurcated with respect to such portion of the Project and the terms of this Section 17.7 shall apply with respect to the Major Sublease and any subsequent bifurcated Sublease.

Section 17.8. **Estoppel Certificates from Landlord**

Upon request of Tenant or any Leasehold Mortgagee, Landlord agrees to give such requesting party an estoppel certificate in accordance with Section 22.2 herein.

Section 17.9. **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 may waive and from time to time, upon request, execute and deliver an acknowledgment that it has waived its "landlord's" or other statutory or common law liens securing payment of rent or performance of Tenant's other covenants under this Lease as to such fixtures, equipment or other personalty.

Section 17.10. **No Subordination or Mortgaging of Landlord's Fee Title**

Notwithstanding any provision in this Lease or any other agreement entered into by Miami-Dade County, in its capacity as Landlord or otherwise, no Leasehold Mortgagee or Lender may impose any lien or encumbrance upon the Landlord's fee simple interest in the Demised Premises, and there shall be no subordination of Landlord's fee simple interest in the Demised Premises to any lien or encumbrance, including, but not limited to the lien of any Leasehold Mortgage or Lender financing. Landlord shall not be required to join in any mortgage or other financing. Landlord's reversionary interest in the Demised Premises, the Improvements thereon and in this Lease shall be superior and prior to any loans, mortgages, deeds of trust, other leases, liens and

Phase ___ of Palmetto Metrorail Station Lease

encumbrances that may hereinafter be placed on the Demised Premises or the leasehold interest or any part thereof or the interest therein, by, against or as a result of the acts of Tenant or any entity deriving any interest therein.

Nothing contained in this Lease, or any action or inaction by Landlord, shall be deemed or construed to mean that Landlord has granted to Tenant any right, power or permission to do any act or to make any agreement which may create, give rise to or be the foundation for any right, title, interest, lien, charge or any encumbrance upon the estate of the Landlord in the Demised Premises.

Section 17.11. 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 Section 24.1 arising under and through Landlord, but no others.

Phase ___ of Palmetto Metrorail Station Lease

Section 17.12. **Lease Termination and New Lease**

(a) In addition to any rights any Lender may have by virtue of Article 19 herein, if this Lease shall terminate prior to the expiration of its term and Lender was not first provided with notice and an opportunity to cure prior to such termination (whether pursuant to an automatic termination pursuant to the terms of this Lease, the rejection of this Lease in a bankruptcy or insolvency proceeding or otherwise), Landlord shall give written notification thereof to each Lender, and Landlord shall, upon written request of the applicable Lender (with Landlord to follow the request of any Leasehold Mortgagee prior to Mezzanine Financing Sources) to Landlord given within sixty (60) days following such termination, enter into a new lease of the Demised Premises with the Leasehold Mortgagee (or its nominee) or Tenant (as owned or controlled by the Mezzanine Financing Source), as tenant, for the remainder of the Term of this Lease, on the same terms and conditions, and with the same priority over any encumbrances created at any time by Landlord, its successors and assigns, which Tenant has or had by virtue of this Lease. Landlord's obligation to enter into such new lease of the Demised Premises with Leasehold Mortgagee or Tenant (as owned or controlling by the Mezzanine Financing Source) shall be conditioned upon, on the date the new lease executed, (i) Landlord receiving payment of all Rent due hereunder through the date of such new lease, (ii) all other monetary defaults hereunder having been cured, (iii) all non-monetary defaults susceptible to cure having been cured or Leasehold Mortgagee or Tenant (as owned or controlled by the Mezzanine Financing Source), as applicable, as tenant, proceeding promptly with such cure and pursuing such cure to completion with reasonable diligence, and (iv) Landlord receiving all reasonable expenses, costs and fees, including attorneys' fees, incurred by Landlord in preparing for the termination of this Lease and in acquiring possession of the Demised Premises, and in the preparation of such new lease. Such new lease

Phase ___ of Palmetto Metrorail Station Lease

shall have priority over encumbrances created by Landlord by virtue of the notice created by this Lease to any transferee of Landlord or any person receiving an encumbrance from Landlord, which priority shall be self-operative and shall not require any future act by Landlord. Any new lease hereunder shall contain the same clauses subject to which the demise of the Demised Premises hereunder is made, and shall be at the Rent and other payments for the Demised Premises due Landlord and upon all of the terms as are herein contained.

(b) Nothing herein contained shall be deemed to impose any obligation on the part of Landlord to deliver physical possession of the Demised Premises to the Leasehold Mortgagee (or 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 the Leasehold Mortgagee, cooperate in the prosecution of judicial proceedings to evict the then defaulting Tenant or any other occupants of the Demised Premises.

(c) If, upon the termination of this Lease, Tenant, but for such termination, would have been entitled to receive any credit or other amount pursuant to the provisions of this Lease, then Landlord agrees that the same shall be paid to the tenant under a new lease, 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.

(d) The provisions of this Section 17.12 shall survive any termination of this Lease. Leasehold Mortgagees and Mezzanine Financing Sources shall be deemed to be third party beneficiaries of this Section.

ARTICLE 18

Eminent Domain

Section 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 Improvements, plus the value of Tenant’s interest in the unexpired term of the leasehold estate created pursuant to this Lease (subject to Landlord’s reversionary interests in same), and in no event shall Tenant be entitled to compensation for any fee interest in the Demised Premises. 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 Demised Premises, subject to the Lease, and as if vacant and assuming no Improvements existed on the Demised Premises, at the time of Taking and its portion of any reversionary interests in the Lease, Demised Premises. 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.

Section 18.2. Proceeds of Taking

In the event following any such Taking as aforesaid, this Lease is terminated, or in the event following a Taking of less than the whole of the Demised Premises this Lease is terminated

Phase ___ of Palmetto Metrorail Station Lease

as provided for in Section 18.3 herein, the proceeds of any such Taking (whole or partial) shall be distributed as described in Section 18.1. If the value of the respective interests of Landlord and Tenant shall be determined according to the foregoing provisions of this Section 18 in the eminent domain 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. Leasehold Mortgagees and other Lenders shall be entitled to participate in any proceedings in connection with a Taking, and to receive directly from the taking authority any sums to which they are found to be entitled.

Section 18.3. **Partial Taking; Termination of Lease**

If, in the event of a Taking of less than the entire Demised Premises, the remaining portion of the Demised Premises not so taken cannot be adequately restored, repaired or reconstructed 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 and approval by 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 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

Phase ___ of Palmetto Metrorail Station Lease

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 amongst the Parties 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 the Lease was terminated). The fair market value specified in the preceding sentence shall be limited to the fair market value of the Improvements and the value of Tenant's interest in the unexpired term of the leasehold estate created pursuant to this Lease (subject to Landlord's reversionary interests in same), and in no event shall such value include any fee simple interest in the Demised Premises. All appraisal costs shall be split equally between the Landlord and Tenant. If Landlord fails to purchase, the remainder (Improvements and Tenant's interest in the unexpired term of the leasehold estate) may be sold.

Section 18.4. **Partial Taking; Continuation of Lease**

If following a partial Taking this Lease is not terminated as hereinabove provided then, this Lease shall terminate as to the portion of the Demised Premises taken in such condemnation proceedings; and, as to that portion of the Demised Premises not taken, Tenant shall proceed at its own cost and expense either to make an adequate restoration, repair or reconstruction or to rebuild a new Improvement upon the Demised Premises affected by the Taking. In such event, Tenant's share of the award shall be determined in accordance with Section 18.1 herein. Such award to Tenant shall be used by Tenant for its reconstruction, repair or rebuilding. If the part of the award so paid to Tenant is insufficient to pay for such restoration, repair or reconstruction, Tenant shall

Phase ___ of Palmetto Metrorail Station Lease

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 materialmen's liens and shall at all times save Landlord free and harmless from any and all such liens. In such event, if Tenant elects not to terminate this Lease and to reconstruct, repair or rebuild, then the Annual Rent shall be partially adjusted based upon the portion of the Demised Premises taken in such condemnation proceedings. In the event, the partial Taking results in making it impossible or unfeasible to reconstruct, restore, repair or rebuild the Improvements on the Demised Premises Tenant's share of the award shall be determined in accordance with Section 18.1 herein.

Section 18.5. **Temporary Taking**

If the whole or any part of the Demised Premises or of Tenant's interest under this Lease be taken or condemned by any competent authority for its or their temporary use or occupancy not exceeding five (5) years, 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 condemning 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 the 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. Tenant covenants that, upon the termination of any such period of temporary

Phase ___ of Palmetto Metrorail Station Lease

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.

Section 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 Article 16 herein shall control; or
- B. Terminating the Lease, in which event the provisions of Article 16 herein shall control.

Section 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.

Phase ___ of Palmetto Metrorail Station Lease

Section 18.8. **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 Section 18.7) to the Internal Revenue Service for purposes of determining whether property has been voluntarily converted within the meaning of the Internal Revenue Code.

Section 18.9. **Condemnation of Fee Interest**

Notwithstanding anything in Article 18 to the contrary, Landlord hereby covenants and agrees with Tenant that (a) it will not agree to any Taking by any party without the consent of Tenant which may be withheld in Tenant's sole direction, (b) it will contest such Taking, and (c) 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

Section 19.1. **Events of Default of Tenant**

Events of Default of Tenant shall be the following:

- A. Tenant fails to pay any Rent, revenues or other monies due and payable to Landlord under this Lease in accordance with the provisions of this Lease;
- B. Tenant fails to keep, observe, or perform any of the terms, obligations, or deadlines contained in this Lease, excepting the obligation to pay Rents, revenues or other monies due Landlord;
- C. The sale of Tenant's interest in the Demised Premises under attachment, execution, or similar process or Tenant is adjudication as bankrupt or insolvent under any

Phase ___ of Palmetto Metrorail Station Lease

bankruptcy or insolvency law or an order for relief is entered against Tenant under the Federal Bankruptcy Code and such adjudication or order is not vacated within ninety (90) days;

D. The commencement of a case under the Federal Bankruptcy Code by or against Tenant or any guarantor of Tenants obligations hereunder, or the filing of a voluntary or involuntary petition proposing the adjudication of Tenant or any such guarantor with its creditors, unless withdrawn or dismissed within ninety (90) days after the date of its filing;

E. The written admission of Tenant of its general inability to pay Rent or its other debts when due;

F. The appointment of a receiver or trustee of an assignment for the benefit of Tenant's creditors, or if in any other manner, Tenant's interest in this Lease shall pass to another person or entity by operation of law;

G. Abandonment of the Demised Premises by Tenant (by reason other than force majeure, fire or other casualty) at any time following delivery of possession of the Demised Premises to Tenant.

Abandonment of the Demised Premises shall mean:

1) Prior to the Completion of Construction, the cessation of all construction activities for a period exceeding sixty (60) days in the absence of an Unavoidable Delay or delay in construction agreed to and approved by Landlord in writing;

2) After Completion of Construction, for a period exceeding thirty (30) days the cessation of operational activities by Tenant, including but not limited to, maintenance of the Demised Premises and Improvements and enforcement of reasonable and customary rules applicable to subtenants;

Phase ___ of Palmetto Metrorail Station Lease

H. Tenant and all individuals having or obtaining any interest (legal, equitable, beneficial or otherwise) in the Tenant or in this Lease (other than subcontractors, materialmen, suppliers, laborers or lenders) is or becomes a Restricted Entity as herein defined;

I. Tenant fails to maintain or provide the insurance requirements of this Lease in all material respects;

J. Tenant conducts on the Demised Premises any business, the performance of any service, or the sale or marketing of any product or service by Tenant which is prohibited by this Lease or law for a period of thirty (30) days after receipt of notice thereof from the Landlord;

K. If any of Tenant's interest in this Lease is assigned, subleased, transferred, mortgaged, pledged or encumbered in any manner in violation of the provisions of this Lease or if Tenant attempts to consummate any transfer without complying the provisions of this Lease;

L. Tenant fails to comply with Section 1.5 Performance and Payment Bonds, or fails to proceed with construction of the Project or Phase within ___ days of the Effective Date of this Lease, subject to Unavoidable Delays and duly requested changes which are approved by the Landlord in writing in accordance with the Project Schedule;

M. Tenant does not proceed with completing construction and obtaining a Certificate of Occupancy with due diligence and dispatch in a commercially reasonable manner and in compliance with the provisions of this Lease;

N. Tenant fails to timely complete construction and obtain a Certificate of Occupancy in accordance with the provisions of this Lease; or

O. Tenant fails to secure and/or retain adequate financing to complete the construction of the Project or Phase.

Phase ___ of Palmetto Metrorail Station Lease

P. Tenant fails to discharge or contest any Imposition as provided in Section 5.2 of this Lease within 90 days of actual or constructive notice of said Imposition; or any sale, entry, foreclosure or collection proceeding, execution on any judgement, or any other affirmative attempt is made to enforce such obligation upon the Demised Premises, whichever occurs first.

Q. Tenant fails to comply with the Project Schedule as set forth in Schedule 4.2.

If an Event of Default of Tenant shall occur Landlord shall give written notice to Tenant and to any Leasehold Mortgagee and Lender, who has notified Landlord in accordance with Sections 17.1 or 17.3 and Tenant shall have thirty (30) days to cure such default (unless a different cure period is specified above) after written notice thereof from Landlord setting forth with reasonable specificity the nature of the alleged breach, or in the case of such default which cannot with due diligence and in good faith be cured within thirty (30) days, Tenant shall have thirty (30) days to proceed to pursue curing said default to completion within such reasonable period of time as approved by the Landlord.

Section 19.2. Failure to Cure Default by Tenant

A. If an Event of Default of Tenant shall occur and Tenant has failed to cure or proceeded to pursue curing such Event of Default as set forth in Section 19.1 above, then Landlord shall give written notice to Tenant and to any Leasehold Mortgagee and Lender, who has notified Landlord in accordance with Sections 17.1 or 17.3, stating that this Lease and the term hereby are demised shall expire and terminate on the date specified in such notice, which shall be at least thirty (30) days after the giving of such notice, during which time Tenant and/or the Leasehold Mortgagee(s) and/or any Lender(s) shall have the right to cure such default, and upon

Phase ___ of Palmetto Metrorail Station Lease

the date specified in such notice if the Event of Default has not been cured, then, subject, however, to the provisions of Section 17.4 herein, this Lease and the term hereby demised and all rights of Tenant and Leasehold Mortgagee(s) and Lender(s) under this Lease, shall expire and terminate.

B. If an Event of Default of Tenant shall occur and the rights of Leasehold Mortgagees and Lenders shall not have been fully exercised as provided within this Lease, then Landlord, at any time after the periods for exercise of rights as set forth under Section 17.4, 19.1, and 19.2 herein shall have the following rights and remedies which are cumulative:

1) 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 Section 15.2), costs and expenses arising from Tenant's committing an Event of Default hereunder and to recover all such damages, costs and expenses, including reasonable attorneys' fees at both trial and appellate levels; and

2) 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

3) 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; and

4) To commence an action for eviction immediately upon the failure to cure such event of Default against Tenant (including any Lender) from the Improvements and Demised Premises; and

5) With or without judicial process, enter the Demised Premises and take possession of any and all goods, inventory, equipment, fixtures and all other

Phase ___ of Palmetto Metrorail Station Lease

personal property of Tenant, which is or may be put in the Demised Premises during the Term, whether exempt or not from sale under execution or attachment and Landlord may sell all or any part thereof at public or private sale, with costs to be paid by Tenant; and

6) Draw upon and apply or retain the whole or part or any part of the letter of credit, if any, for the payment of any sum as to which Tenant is in default, or that Landlord may expend or be required to expend by reason of Tenant's default on the letter of credit. No draw upon any part of letter of credit by Landlord shall be deemed to be a waiver of any other right or remedies available to Landlord under this Lease;

C. In the event this Lease is terminated by Landlord pursuant to this Section, Tenant shall remain liable for any and all Rent and damages which may be due or sustained prior to such termination and all reasonable costs, fees and expenses including, reasonable attorney's fees incurred by Landlord in pursuit of its remedies hereunder; and

D. Upon demand Tenant shall pay Landlord an amount equal to the Rent required by the foregoing paragraph which, but for the termination of this Lease, would have become due during the remainder of the Term, including applicable late fees, which shall be payable in one lump sum on demand and may be subject to late fees in accordance with Section 3.6 of this Lease, until paid; and

E. Nothing contained in this Lease shall limit or prejudice the right of Landlord to prove for and obtain, in proceedings for the termination of the Lease, including by reason of bankruptcy or insolvency, an amount equal to the maximum allowed by any statute or rule of law; and

Phase ___ of Palmetto Metrorail Station Lease

F. The above described rights shall be reserved to Landlord regardless of the manner in which the Tenant, Leasehold Mortgagee, Lender, or any such successor, has acquired an interest in the leasehold estate.

G. If an event of Default occurs, Tenant shall nevertheless be obligated to continue to pay all Rent and otherwise comply with all conditions and obligations under this Lease.

Section 19.3. Lender/Sublessee Right to Cure Tenant Default

(a) For so long as a 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, in a Major Sublessee, then notwithstanding the time allowed for Tenant to cure an Event of Default under Section 19.2, Lender shall have the right, but not the obligation, for an additional period of thirty (30) days following expiration of Tenant's cure periods under Section 19.2, 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 any provisions of this Lease to the contrary, no Event of Default by Tenant will be deemed to exist as to a Mortgagee (and Landlord shall not be permitted to terminate this Lease due to an Event of Default of Tenant) as long as such Mortgagee, in good faith, either promptly (i) commences to cure such Event of Default and prosecute the same to completion in accordance with clause (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 be cured by Mortgagee (e.g.,

Phase ___ of Palmetto Metrorail Station Lease

Tenant bankruptcy or breach of covenants that are personal to Tenant), files a complaint for foreclosure and thereafter prosecute the foreclosure action in good faith and with reasonable diligence, subject to any stays, moratoria 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 are pending, all of the other obligations of Tenant under this Lease, to the extent they are susceptible of being performed by Mortgagee (e.g., the payment of Rent), are being duly performed.

(c) Notwithstanding any provisions of this Lease to the contrary, no Event of Default by Tenant will be deemed to exist as to a secured Mezzanine Financing Source (and Landlord shall not be permitted to terminate this Lease due to an Event of Default of Tenant) as long as such Mezzanine Financing Source, in good faith, either (i) promptly commences to cure such Event of Default and prosecute the same to completion in accordance with clause (a) above, or (ii) if the nature of any non-monetary Event of Default is such that control and possession of or title to the ownership interests in Tenant is reasonably necessary to cure the Event of Default, or the Event of Default is of the type that cannot be cured by the Mezzanine Financing Source (e.g., Tenant bankruptcy or breach of covenants that are personal to Tenant), takes all reasonable steps necessary to foreclose the pledge of such ownership interests and prosecutes such action in good faith and with reasonable diligence, subject to any stays, moratoria or injunctions applicable thereto, and as promptly as practicable after obtaining control and 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 such action

Phase ___ of Palmetto Metrorail Station Lease

is being taken, all of the other obligations of Tenant under this Lease, to the extent they are susceptible of being performed by the Mezzanine Financing Source (e.g., the payment of Rent), are being duly performed.

(d) Any penalties, interest and late payment fees 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, Major Sublessee or Mezzanine Financing Source who has commenced and is proceeding to cure any such Events of Default until the expiration of the applicable cure, grace or other periods provided to the Mortgagee, Major Sublessee or Mezzanine Financing Source to cure such Events of Default in this Article or elsewhere in this Lease.

Section 19.4. **Surrender of Demised Premises**

Upon any expiration or termination in accordance with the terms and conditions of this Lease, Tenant and all Sublessees shall quit and peacefully surrender the Demised Premises and Improvements thereon, to Landlord, free and clear of all encumbrances and encroachments, except as provided under any non-disturbance agreement provided by Landlord to any Sublessee.

Upon any expiration or termination of this Lease, all rights and interest of Tenant in and to the Demised Premised and Improvements thereon shall cease and terminate, and the Landlord, in addition to any other rights and remedies it may have, shall retain all sums paid to Landlord by Tenant under the Lease.

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 such surrender of the Demised Premises.

Phase ___ of Palmetto Metrorail Station Lease

Section 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.

Section 19.6. **Events of Default of Landlord**

The provisions of Section 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.

Section 19.7. **Failure to Cure Default by Landlord**

If an Event of Default of Landlord shall occur, Tenant, at any time after the period set forth in Section 19.6, shall have the following rights and remedies which are cumulative:

A. In addition to any and all other remedies, in law or in equity, that Tenant may have against Landlord, Tenant shall be entitled to sue Landlord for all damages (as limited by Section 15.1 and Section 23.29), costs and expenses arising from Landlord’s committing an Event of Default hereunder and to recover all such damages, costs and expenses, including reasonable attorneys’ fees at both trial and appellate levels.

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

Phase ___ of Palmetto Metrorail Station Lease

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

Section 19.8. **Holdover**

If Tenant shall be in possession of the Demised Premises after expiration or early termination of the Lease, the Tenant under this Lease shall become a tenancy at sufferance, on a month to month basis, terminable by either party upon notice thereof, receipt of which shall occur no later than thirty (30) days prior to termination, and shall be subject all terms and conditions contained in this Lease as though the term has been extended from month to month (“Holdover Period”). Such holding over shall not be deemed to operate as a renewal or extension of this Lease and nothing herein shall be interpreted to permit Tenant to retain possession of the Demised Premises after the expiration or termination of this Lease. Moreover, such hold over shall not be deemed a waiver of any Landlord rights and remedies under this Lease, law or equity.

Section 19.9. **Holdover Rent**

Notwithstanding the provisions of Section 19.9 to the contrary, Tenant covenants to pay to Landlord, as Rent two (2) times the monthly installment of the Annual Rent which was due to Landlord during the month immediately preceding the expiration or termination of the Lease for each month during the Holdover Period.

ARTICLE 20

Notices

Section 20.1. **Addresses**

All notices, demands or requests by Landlord to Tenant shall be deemed to have been properly served or given, if addressed to Tenant as follows:

Phase ___ of Palmetto Metrorail Station Lease

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, Major Sublessee 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 Sections 17.1 and 17.3 above.

All notices, demands or requests by Tenant or by a Leasehold Mortgagee to Landlord shall be deemed to have been properly served or given if addressed to Miami-Dade Department of Transportation and Public Works, Director, 701 N.W. 1st Court, 17th Floor, Miami, Florida, 33136 and to Miami-Dade Department of Transportation and Public Works, Chief of Right-of-Way, Utilities and Joint Development, 701 N.W. 1st Court, 15th 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 and any then existing Leasehold Mortgagee, Major Sublessee and Mezzanine Financing Source.

Section 20.2. **Method of Transmitting Notice**

All such notices, demands or requests (a "Notice") shall be sent by: (a) United States registered or certified mail, return receipt requested, (b) hand delivery, (c) nationally recognized overnight courier, or (d) 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

Phase ___ of Palmetto Metrorail Station Lease

be deemed served or given on (a) the date received, (b) the date delivery of such Notice was refused or unclaimed, or (c) the date noted on the return receipt or delivery receipt as the date delivery thereof was determined impossible to accomplish because of an unnoticed change of address.

ARTICLE 21

Quiet Enjoyment

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

Section 22.1. **Tenant Certificates**

Tenant agrees at any time and from time to time, upon not less than twenty (20) days' prior written notice by Landlord, to execute, acknowledge and deliver to Landlord a statement in writing setting forth the rents, payments and other monies then payable under the Lease, if then known; certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that the Lease is in full force and effect as modified and stating the modification), and the dates to which the rents, payments and other monies have been paid, and stating (to the best of Tenant's knowledge) whether or not Landlord is in default in keeping, observing or performing any of the terms of this Lease; and, if in default, specifying each such default (limited to those defaults of which Tenant has knowledge). It is intended that any such statement delivered pursuant to this Section 22.1 may be relied upon by Landlord or any prospective assignee,

Phase ___ of Palmetto Metrorail Station Lease

transferee or purchaser of the fee, but reliance on such certificate shall not extend to any default of Landlord as to which Tenant has no actual knowledge.

Section 22.2. **Landlord Certificates**

Landlord agrees at any time and from time to time, upon not less than twenty (20) days' prior written notice by Tenant or by a Leasehold Mortgagee, to furnish a statement in writing, in substantially the form attached hereto as Schedule 22.2 setting forth the Rents, payments and other monies then payable under the Lease, if then known; certifying that this Lease is unmodified and in full force and effect (or if there shall have been modifications that the Lease is in full force and effect as modified and stating the modifications) and the dates to which rents, payments and other monies have been paid; stating whether or not to the best of Landlord's knowledge, Tenant is in default in keeping, observing and performing any of the terms of this Lease, and, if Tenant shall be in default, specifying each such default of which Landlord may have knowledge. It is intended that any such statement delivered pursuant to this Section 22.2 may be relied upon by any prospective assignee, transferee or purchaser of Tenant's interest in this Lease, or any Leasehold Mortgagee or any assignee thereof, but reliance on such certificate may not extend to any default of Tenant as to which Landlord has no actual knowledge. Upon demand, Tenant shall pay any charges established by Landlord in accordance with Landlord's established, generally applicable fee schedule in effect at the time a Certificate is requested for Landlord's provision of the same; and if no such fee schedule has been established, Tenant shall reimburse Landlord for staff time and expenses actually incurred in accordance with the rate established by Landlord for similar services, or, if no such rate has been established, then the hourly rate calculated by dividing the annual salary of the Landlord's employee performing the service by 2,000.

ARTICLE 23

Construction of Terms and Miscellaneous

Section 23.1. **Severability**

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

Section 23.2. **Captions**

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

Section 23.3. **Recording**

A Memorandum of this Lease, 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. Any recording in the public records or any other filing in connection with this Lease shall be at the sole cost of Tenant.

Section 23.4. **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.

Phase ___ of Palmetto Metrorail Station Lease

Section 23.5. **Consents**

Whenever in this Lease the consent or approval of Landlord or Tenant is required, such consent:

- A. Shall not be unreasonably or arbitrarily withheld, conditioned, or delayed unless specifically provided to the contrary, and shall not require a fee from the party requesting same;
- B. Shall not be effective unless it is in writing; and
- C. Shall apply only to the specific act or transaction so approved or consented to and shall not relieve Tenant or Landlord, as applicable, of the obligation of obtaining the other's prior written consent or approval to any future similar act or transaction.

Section 23.6. **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.

Phase ___ of Palmetto Metrorail Station Lease

No reference to any specific right or remedy shall preclude either party from exercising any other right or remedy or from taking any action to which it may otherwise be entitled at law or in equity.

Section 23.7. **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.

Section 23.8. **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.

The provisions, definitions, terms, conditions and/or exclusions contained in Subleases or any agreements between the Tenant and its Sublessees and/or any third party shall have no effect upon any of the provisions, terms and/or conditions of this Lease.

Phase ___ of Palmetto Metrorail Station Lease

Section 23.9. **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 as appropriate and applicable), except as may be otherwise provided herein.

Section 23.10. **Holidays and Counting Days**

It is hereby agreed and declared that whenever the day on which a payment due under the terms of this Lease, or the last day on which a response is due to a notice, or the last day of a cure period, falls on a day which is a legal holiday in Miami-Dade County, Florida, or on a Saturday or Sunday, such due date or cure period expiration date shall be postponed to the next following business day. Any mention in this Lease to a period of days for performance shall mean calendar days.

Section 23.11. **Schedules**

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

Section 23.12. **Brokers**

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

Section 23.13. **Protest Payments**

If at any time a dispute shall arise as to any amount or sum of money to be paid by Tenant to Landlord under the provisions of this Lease, in addition to the rights set forth in Article 19 herein, Tenant shall have the right to make payment “under protest” and such payment shall not be regarded as a voluntary payment, and there shall survive the right on the part of Tenant to seek

Phase ___ of Palmetto Metrorail Station Lease

the recovery of such sum, and if it should be adjudged that there was no legal obligation on Tenant to pay such sum or any part thereof, Tenant shall be entitled to recover such sum or so much thereof as it was not legally required to pay under the provisions of this Lease; and if at any time a dispute shall arise between the parties hereto as to any work to be performed by either of them under the provisions of this Lease, the party against whom the obligation to perform the work is asserted may perform such work and pay the cost thereof “under protest” and the performance of such work shall in no event be regarded as a voluntary performance and there shall survive the right upon the part of said Tenant and/or Landlord to seek the recovery of the cost of such work, and if it shall be adjudged that there was no legal obligation on the part of said Tenant and/or Landlord to perform the same or any part thereof, said Tenant and/or Landlord shall be entitled to recover the cost of such work or the cost of so much thereof as Tenant or Landlord was not legally required to perform under the provisions of this Lease.

Section 23.14. **Radon**

In accordance with Florida law, the following disclosure is hereby made:

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

Section 23.15. **Energy-Efficiency Rating Disclosure**

In accordance with Florida law, the following disclosure is hereby made:

Tenant may have the property’s energy efficiency rating determined. Tenant acknowledges that it has obtained a copy of The Florida Building Energy-Efficiency Rating System Brochure as provided by the State of Florida Department of Community Affairs.

Phase ___ of Palmetto Metrorail Station Lease

Section 23.16. **Governing Law**

This Lease shall be governed by and construed in accordance with the laws of the State of Florida. Any dispute arising under, in connection with or related to this Lease or related to any matter which is the subject of this Lease shall be subject to the exclusive jurisdiction of the state and/or federal courts located in Miami-Dade County, Florida.

Section 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.

Section 23.18. **Vendor Registration and Forms**

The Tenant, Development Partner, and Major Sublessees shall be a registered vendor with the County for the duration of the Lease. In becoming a Registered Vendor with Miami-Dade County, the Tenant confirms its knowledge of and commitment to comply with the following:

- A. Miami-Dade County Ownership Disclosure Affidavit (Section 2-8.1 of the County Code)
- B. Miami-Dade County Employment Disclosure Affidavit (Section 2.8-1(d)(2) of the County Code)
- C. Miami-Dade Employment Drug-free Workplace Certification (Section 2-8.1.2(b) of the County Code)
- D. Miami-Dade Disability and Nondiscrimination Affidavit (Section 2-8.1.5 of the County Code)
- E. Miami-Dade County Debarment Disclosure Affidavit (Section 10.38 of the County Code)

Phase ___ of Palmetto Metrorail Station Lease

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

G. Miami-Dade Code of Business Ethics Affidavit (Section 2-8.1(i) and 2-11(b)(1) of the County Code through (6) and (9) of the County Code and Section 2-11.1(c) of the County Code)

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

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

J. Miami-Dade County Domestic Leave and Reporting Affidavit (Article 8, Section 11A-60 11A-67 of the County Code)

K. Subcontracting Practices (Ordinance 97-35)

L. W-9 and 8109 Forms (as required by the Internal Revenue Service)

M. 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:

- 1) Identification of individual account records
- 2) To make payments for goods and services provided to

Miami-Dade County

Phase ___ of Palmetto Metrorail Station Lease

3) Tax reporting purposes

4) To provide a unique identifier in the vendor database that may be used for searching and sorting departmental records

N. 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.

Section 23.19. **Conflict of Interest**

Section 2-11.1(d) of Miami-Dade County Code, as amended, requires any County employee or any member of the employee's immediate family who has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County that is competing or applying for any such agreement, must first request a conflict of interest opinion from the County's Ethics Commission prior to their immediate family member entering into any agreement or transacting any business through a firm, corporation, partnership or business entity in which the employee or any member of the employees immediate family has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County and that any such contract, agreement or business engagement entered in violation of this subsection, as amended, shall render this Lease voidable.

Section 23.20. **Time is of the Essence**

Time shall be deemed of the essence on the part of the Parties in performing all of the terms and conditions of this Lease.

Phase ___ of Palmetto Metrorail Station Lease

Section 23.21. **No Tax Abatement or Other Public Subsidies to Tenant**

This Lease shall not, in and of itself, entitle Tenant to any tax abatement, tax rebate, or public funding, nor shall this Lease prohibit Tenant from seeking or receiving any tax abatement, tax rebate, public funding or public financing from any government entity.

Section 23.22. **No Partnership or Joint Venture**

It is mutually understood and agreed that nothing contained in this Lease is intended or shall be construed in any manner or under any circumstances whatsoever as creating or establishing the relationship of co-partners, or creating or establishing the relationship of a joint venture between the Landlord and Tenant, or as constituting Tenant as the agent or representative of the Landlord for any purpose or in any manner whatsoever.

Section 23.23. **Autonomy and Third-Party Beneficiaries**

The Parties agree that this Lease recognizes the autonomy of the Parties and stipulates and implies no affiliation between the Parties. It is expressly understood and intended that the Tenant is not an agent, employee, servant or instrumentality of the County.

All persons engaged in any of the work, services, duties and obligations performed pursuant to this Lease shall at all times, and in all places, be subject to the Tenant's sole direction, supervision, and control. The Tenant shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the Tenant's relationship and the relationship of its employees to the County shall be that of an independent contractor and not as employees, servants, or agents of the County.

The Tenant does not have the power or authority to bind the County in any promise, agreement or representation other than specifically provided for in this Lease.

Phase ___ of Palmetto Metrorail Station Lease

Nothing in this Lease shall be construed for the benefit, intended or otherwise, of any third party.

Nothing in this Lease shall be construed as creating any right of a third party to enforce any provision of this Lease.

Section 23.24. **Amendments**

No Amendments to this Lease shall be binding on either Party unless in writing and signed by both parties and approved by the Miami-Dade County Board of Commissioners.

Section 23.25. **No Liability for Approvals or Inspections**

Except as may be otherwise expressly provided herein, no approval to be made by Landlord in its capacity as Landlord under this Lease or by Miami-Dade County in its governmental capacity, shall render County Miami-Dade County liable for its failure to discover any defects or nonconformance with any law or government regulation.

Section 23.26. **Standard of Conduct**

The implied covenant of good faith and fair dealings under Florida law is expressly adopted.

Section 23.27. **No Option**

The submission of this Lease for examination does not constitute a reservation or option for the Demised Premises, and this Lease shall become effective only upon execution and delivery thereof by the parties.

Section 23.28. **No Waiver of Sovereign Immunity**

No provision of this Lease, or of any other agreement related to this Lease or the Demised Premises and Improvements thereon, whether read separately or in conjunction with any other provision, shall be intended, deemed, interpreted, or construed to waive the sovereign immunity

Phase ___ of Palmetto Metrorail Station Lease

of the County, as such immunity is guaranteed by the Eleventh Amendment to the Constitution of the United States and as may be limited by Section 768.28 of the Florida Statutes.

Section 23.29. **Landlord Representatives Not Individually Liable**

No member, official, elected representative or employee of the Landlord shall be personally liable to Tenant or any successor in interest in the event of any default or breach of Landlord.

ARTICLE 24

Representations and Warranties

Section 24.1. **Landlord's Representations and Warranties**

Landlord hereby represents and warrants to Tenant that:

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

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

C. Throughout the term of this Lease, Landlord will endeavor to continue service to and from the Station on a daily basis. The parties acknowledge that service disruptions occasionally occur 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

Phase ___ of Palmetto Metrorail Station Lease

foregoing sentence shall not apply during the period of repair and rebuilding done in accordance with Section 16.2.

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

Section 24.2. **Tenant's Representations and Warranties**

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

ARTICLE 25

Federal and County Regulations

Tenant shall comply with all of the following statutes, rules, regulations and orders to the extent that these are applicable to this Lease:

- 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, 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. The Federal Transit Administration Master Agreement, Section 3, Subparagraphs (a)(1), (a)(2), and (b) thereof relating to conflicts of interests and debarment;
- D. Tenant agrees to not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, national origin, sex, pregnancy, age,

Phase ___ of Palmetto Metrorail Station Lease

disability, marital status, familial status, sexual orientation, gender identity or gender expression, status as victim of domestic violence, dating violence or stalking, or veteran status, and on housing related contracts the source of income, and will take affirmative action to ensure that employees and applicants are afforded equal employment opportunities without discrimination. Such action shall be taken with reference to, but not limited to: recruitment, employment, termination, rates of pay or other forms of compensation, and selection for training or retraining, including apprenticeship and on the job training; and

Phase ___ of Palmetto Metrorail Station Lease

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

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

LANDLORD

ATTEST:
HARVEY RUVIN, CLERK

**BY ITS BOARD
OF COUNTY COMMISSIONERS**

By: _____

By: _____

Phase ___ of Palmetto Metrorail Station Lease

Signed in the presence of:

TENANT

Print Name: _____

By: _____
Title: _____

Print Name: _____

Signed in the presence of:

Print Name: _____

By: _____
Title: _____

Print Name: _____

Notarizations begin on following page

Approved as to form and legal sufficiency
Print Name: _____

Phase ___ of Palmetto Metrorail Station Lease

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

The foregoing instrument was acknowledged before me this ___ day of _____,
2022, by _____, _____.

Personally Known _____ OR Produced Identification _____.

Type of Identification Produced:

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

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

The foregoing instrument was acknowledged before me this ___ day of _____,
2022, by _____, _____.

Personally Known _____ OR Produced Identification _____.

Type of Identification Produced:

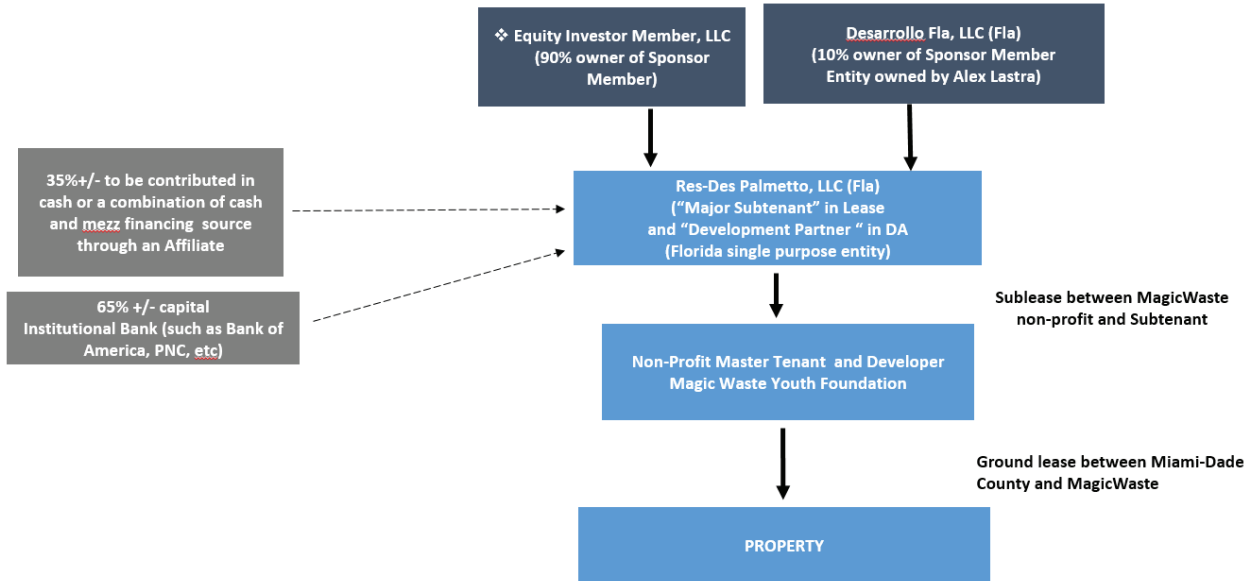
Print or Stamp Name: _____
Notary Public, State of Florida at Large
Commission No.: _____
My Commission Expires: _____

Schedule 1.1

Real Property Description

Schedule 2DD

Ownership Structure of Development Partner



❖ Denotes placeholder names - companies have not been formed

Palmetto Metrorail Station Development Agreement

Schedule 3

Payment of the Security Deposit, Development Fee, and Rent Schedule

Palmetto Metrorail Station Development Agreement

Schedule 4.16

Building Construction Responsible Wages and Benefits Requirements

Implementing Order



Implementing Order No.: 3-24

Title: RESPONSIBLE WAGES AND BENEFITS FOR COUNTY CONSTRUCTION CONTRACTS

Ordered: 5/1/2018

Effective: 5/11/2018

AUTHORITY:

Section 4.02 of the Miami-Dade County Home Rule Amendment and Charter and Section 2-11.16 of the Code of Miami-Dade County.

SUPERSEDES:

This Implementing Order (IO) supersedes IO 3-24, ordered January 21, 2010 and effective January 31, 2010.

POLICY:

It is the policy of Miami-Dade County that in order to be a responsible bidder for a competitively bid construction contract in excess of one hundred thousand dollars (\$100,000) a bidder must pay laborers and mechanics performing work on the project no less than the hourly rates specified in accordance with Section 2-11.16 of the Code of Miami-Dade County. It is also the policy of Miami-Dade County that in all leases of County-owned land which provide for privately funded construction improvements thereon whose construction costs are greater than or equal to \$1 million dollars, any portion of which are financed by any federal, state or local governmental entity or by bonds issued by such entities, including the Industrial Development Authority (IDA), shall include the requirements of this IO, including requiring the lessee to require any contractor constructing such improvements to pay responsible wages as provided under Sec. 2-11.16 to the same extent as if such improvements were County construction. A lessee must pay the County the monitoring fee(s) for the project.

In those cases where the lessee(s) and their contractor(s) agree to pay responsible wages throughout the construction phase of the agreement, an irrevocable letter of credit or escrow amount equal to 20% of the construction cost will not be required, rather the processes noted herein for County construction projects will be applicable, including payment of monitoring fees by the lessee.

PURPOSE:

This IO implements the responsible bidder ordinance and establishes an administrative procedure for resolution of complaints regarding underpayment of required hourly wages, as well as failure to comply with requirements of lessees on County-owned land involving privately funded construction. The Small Business Development (SBD) Division of the Internal Services Department is responsible for implementing this IO.

EXCEPTION:

This IO does not apply to County construction contracts less than or equal to one hundred thousand dollars (\$100,000) or blanket County contracts designed to consolidate an

indeterminate number of individual smaller construction contracts, repair or alteration activities which may be needed over a fixed period of time, provided the overall blanket contract ceiling does not exceed five hundred thousand dollars (\$500,000) and further provided that no individual work order issued under such blanket contract shall exceed twenty five thousand dollars (\$25,000) per craft. Furthermore, this IO shall not apply to those privately funded projects on County-owned land for construction or alteration of public buildings or public works which are financed solely through private sources, without one dollar (\$1) or more of financing provided through any federal, state, county or local government entity or bond sources including IDA bonds or similar type bond funding.

The foregoing notwithstanding, those leases of County-owned land providing for privately funded construction or alteration of public buildings or public works whose construction costs are greater than or equal to \$1 million dollars, any portion of which are financed with the use of IDA and have also received other State and/or local financed incentives based on job creation shall not be required to provide for payment of responsible wages for such construction. The lease shall however provide that in the event such a lessee does not fulfill the job creation requirements of the public financing or incentive, such lessee shall pay the County an additional lease payment of up to 20% of the construction cost of the improvements. The amount of such additional lease payment will depend on the percentage of the job creation requirements met as noted in the lease agreement with Miami-Dade County. Said additional lease payment shall be paid to Miami-Dade County for deposit in SBD's Compliance Trust Fund to support monitoring services for enforcement of this Ordinance (99-158).

DEFINITIONS:

The following definitions, as well as additional terms necessary for the understanding of this IO, shall apply:

- A. Administrative hearing officer means a person designated by the County Mayor to hold administrative hearings on complaints of practices prohibited by this IO.
- B. Complaint means any written charge alleging a practice prohibited by this IO.
- C. Compliance officer means the Director of SBD or his or her designee to review compliance with Ordinances 90-143, 99-158 and this IO.
- D. Contract means an agreement covered by this IO proposed by the County or Public Health Trust staff, or approved by the County Commission or Public Health Trust for construction, or proposed by the tenant or lessee for construction of privately funded improvements on County-owned land.
- E. Contractor means any individual, corporation, partnership or other legal entity that directly or indirectly (e.g.; through an affiliate) submits offer for or is awarded, or reasonably may be expected to submit offers for or be awarded, a County contract or contracts with a lessee of County-owned land, for privately funded construction of improvements under such lease which is subject to the requirements of this IO.
- F. Contracting officer means the person assigned under a County construction contract, usually a department director or the department director of the department administering a lease of County-owned land, or his or her designee, who has primary responsibility to manage and enforce same.

- G. Construction means the building, maintaining, renovating, retrofitting, rehabilitation, painting, and decorating, altering, or repairing of a public improvement or a privately funded improvement on County-owned land. Additionally, the construction of privately and publicly funded projects on County-owned land shall include the initial installation of certain types of construction related services such as landscaping, demolition, hauling, rental and operation of heavy construction equipment, etc.
- H. Debar means to exclude a contractor, its individual officers, its shareholders with significant interests, its qualifying agent or its affiliated businesses from County contracting and subcontracting for a specified period of time.
- I. Lessee in this IO means a lessee of County-owned land under a lease which provides for privately funded construction of improvements on such land which are subject to the requirements of this IO.
- J. Negotiated contract means a local area non-discriminatory written agreement between labor union organizations, which represent employees, and contractors.
- K. Responsible bidder means a bidder who provides documented proof in its bid that for each classification, craft or type of employee necessary to perform the County construction work will be paid no less than the overall hourly rates set forth in the contract specifications.
- L. Wages and benefits schedule means the basic hourly wage rate of pay and benefits contained in the local area non-discriminatory negotiated contracts between organizations which represent employees and contractors.
- M. SBD means the Division of Small

RESPONSIBILITY OF DEPARTMENTS LEASING COUNTY-OWNED LAND FOR CONSTRUCTION OF PRIVATELY FUNDED IMPROVEMENTS THEREON

- A. Any department that negotiates the lease of County-owned land on which privately funded improvements (subject to the requirements of this IO) will be constructed shall include provisions in such lease requiring all workers and mechanics performing such construction be paid responsible wages to the same extent as if the construction were being performed under contract with the County under Sec. 2-11.16, providing for the lessee to pay County SBD monitoring fees and any additional lease payments for failure to fulfill any job creation requirements provided herein. Such lease shall further provide that the lessee shall include the requirements of Sec. 2-11.16 and this IO in the contract for construction of such improvements, including the right of the compliance monitor and contracting officer to access the contractor's records to monitor payment of responsible wages and enforce same, and shall provide that the lessee shall be responsible to the County for payment of all fines, penalties and backwages found due. Lessees of County-owned land of privately funded development projects subject to the requirements of Sec. 2-11.16 of the Code and this IO, shall:
 - 1. Provide that laborers and mechanics performing work on such construction, shall be paid no less than the overall hourly rates that would be required of responsible bidders under Sec. 2-11.16 of the Miami-Dade County Code as if such construction

were being competitively bid and funded by the County. Specifications for all such construction shall be furnished to the County prior to the issuance of notice to proceed for privately funded projects in order that the County may specify the hourly rates applicable thereto in accordance with the procedures provided in Section 2-11.16. All negotiated contracts (and subcontracts) entered into for construction of improvements hereunder shall contain the requirements of this Article, the provisions provided in subsections (i) through (viii) of subsection (b) of Section 2-11.16, and shall provide such negotiated contracts (and subcontracts) are subject to monitoring and enforcement of the obligation to pay no less than the specified overall per hour wage rates by the County as provided in Section 2-11.16. The wage rates shall be determined by the applicable calendar year in effect at the time the construction contract is entered into. Thereafter, the specifications shall provide that the overall per hour rate to be paid for work performed under the contract during each subsequent calendar year shall be the overall per hour rate in effect as of January 1st, of the year in which the work is performed.

2. Provide for payment to the County of monitoring fees for monitoring payment of responsible wages on such construction. These fees will be based on the schedule of fees approved by the BCC at the annual budget hearing for County construction projects. Said fees will be paid to SBD on a quarterly basis.
- B. Any department that negotiates the lease of County-owned land which provides for construction of improvements thereon whose construction costs are equal to or greater than \$1 million, any portion of which are financed with the use of IDA financing and have also received other State and /or local incentives based on job creation does not have to provide for payment of responsible wages for such construction. Such leases however, shall provide that the lessee will either:
- a. Maintain in escrow an initial amount equal to 20% of the construction costs of the privately funded improvements; or
 - b. Maintain an irrevocable letter of credit equal initially to 20% of said construction costs. The lessee under such lease will provide the County with the irrevocable letter of credit or escrow amount prior to receiving the notice to proceed for construction of such improvements and shall be kept in place as provided herein until all jobs required to be created in return for public financing or other incentives received by the lessee have been satisfied. The escrow funds or irrevocable letter of credit will be returned to the lessee after all of the required jobs have been created to the County's satisfaction. In the event jobs are not created by the time designated in the lease agreement between the lessee and Miami-Dade County, the escrow funds shall revert to Miami-Dade County, for deposit in SBD's Compliance Trust Fund to support monitoring services required by Sec. 2-11.16 of the Code. In the case of an irrevocable letter of credit, the County shall draw on such letter of credit if the incentives are not met in an amount equal to the penalty imposed. The penalty of up to 20% will be assessed based on the percentage of the job creation requirement met. The job creation commitment will be monitored by the Office of Community and Economic Development (OCED). OCED will require a yearly status report from the lessee as to compliance with the job creation requirement and will conduct a yearly site visit to confirm the lessee's report. This yearly status report will be provided to the BCC by OCED. The amount in the escrow account or that is covered by the irrevocable letter of credit may be reduced as the jobs are phased in. Penalties for

non-compliance for those leases that include job creation requirements will be deposited in SBD's Compliance Trust Fund. The proceeds from penalties will be used to defray compliance monitoring costs.

RESPONSIBILITY OF COMPLIANCE OFFICER:

The County Manager or his or her designee as the compliance officer shall, in cooperation with other agencies of the County government which are affected by the provisions of Section 2-11.16 of the Code of Miami-Dade County, be jointly responsible for implementing this section of the Code. Primary responsibilities of the compliance officer include the following:

- A. Prepare, update and disseminate general conditions or other material for supplementing the bid specifications (including wages and benefits schedules) for inclusion with applicable specification and contract documents;
- B. Prepare and update contract provisions pertaining to Section 2-11.16 of the Code of Miami-Dade County;
- C. Provide an overview of the monitoring process; and
- D. Administer investigation of complaints and assessment of penalties.

In addition, the compliance officer will be responsible for performing other appropriate duties and tasks as necessary to assure the proper management of this program and the required coordination with the Office of the County Manager and with other offices, departments and agencies of the County government and the Public Health Trust.

RESPONSIBILITY OF CONTRACTING OFFICER:

The contracting officer for each agency of County government issuing competitively bid County construction contracts or administering a lease of County-owned land on which privately funded construction subject to Section 2-11.16 of the Code and this IO, in cooperation with the compliance officer, shall:

- A. Insert the appropriate notifications to bidders, lessees and contractors, and the applicable wages and benefits schedule in bid specifications, leases or contracts. The specifications for such contracts shall:
 - 1. Include a sum certain in dollars and cents as an initial overall per hour wage rate for each craft or type of employee in accordance with this IO;
 - 2. Mandate the contractor to whom the contract is awarded, and any of its subcontractors performing any of the contract work, pay not less than the specified overall per hour rate adjusted over the term of the contract as provided in subsection (i) of the County Code 2-11.16 or applicable Davis-Bacon Act rate, whichever rate is greater;
 - 3. Provide that the contractor, and any of its subcontractors, may fulfill the obligation to pay such specified overall per hour rate by payment to the employee of the hourly wage rate listed in the negotiated contracts (or, if applicable, under subsection (i) of the County Code 2-11.16, the "basic hourly rate of pay" as defined in 29 CFR 5.24 contained in the Secretary of Labor's wage determination for such crafts or type of employee plus either: (i) payment on the employees behalf of the cost (on a hourly

basis) of the hospitalization, medical, pension and life insurance benefits specified for such crafts or type of employee; or (ii) payment to the employee (in addition to the listed hourly wage rate, or “basic hourly rate of pay if applicable) of an amount equal to the hospitalization, medical, pension and life insurance benefits (on an hourly basis) contractors are required to provide under the negotiated contracts (or, if applicable, under the subsection (i) of the County Code 2-11.16, an amount equal to the fringe benefit payments on an hourly basis for hospitalization, medical, pension and life insurance benefits contained in the Secretary of Labor’s wage determination) for such craft or type of employee. Payments to employees shall be counted towards fulfillment of the above obligation only to the extent that such payments are made by check or money order;

4. Provide that the contractor, and any of its subcontractors shall post in a visible place on the site where such contract work is performed (1) the schedule of the specified overall per hour rate and benefits for each applicable classification specified by such negotiated contracts; (2) the amount of liquidated damages for any failure to pay such specified overall per hour rate and benefits, and (3) the name and address of the responsible official in Miami-Dade County to whom complaints should be given;
5. Provide that the County may withhold from the County contractor or require the lessee to withhold from the lessee’s contractor so much of accrued payments as may be considered necessary to pay employees of the contractor or any subcontractor under them for the performance of the contract work, the difference between the overall per hour and benefits required to be paid by the contractor to the employees on the work and the amounts received by such employee and where violations have been found, the contractor or their agents shall not be entitled to refunds of the amount withheld;
6. Require the contractor and each subcontractor to keep, or cause to be kept, accurate written records signed under oath as true and correct showing:
 - a. the names, Social Security numbers, and craft classifications of all employees performing work on said contract;
 - b. the hours and fractions of hours for every type of work performed by each employee;
 - c. the combined dollar amount of all wages, any contributions to benefit plans, and payment made to each employee of the overall per hour rate required by this Section and further require the contractor to submit to the County;
 - d. a list of all subcontractors and the names and social security numbers of all employees thereof who performed work each day on the contract, and further require each subcontractor to also submit to the County; and
 - e. a list of names and Social Security numbers of its employees who performed work each day on the contract.
7. Provide that no contractor or subcontractors may terminate an employee performing work on the contract and/or retaliate against an employee for filing a complaint regarding payment of required overall per hour rates.

- B. Assure that contractors have provided the required fair wage affidavit certifications and have posted the required wage and complaint information at the job site(s).
- C. Perform periodic examinations of contractor and subcontractor payroll records.
- D. Perform the necessary worksite inspections and worker interviews to assure that employees are being paid the proper wages according to those classifications. In addition, contracting officers will be responsible for performing other appropriate duties and tasks as necessary to assure the proper administration of this program and the required coordination with lessees, contractors, subcontractors and workers on County construction sites.

RESPONSIBILITY OF BIDDER:

Bidders bidding on competitively bid construction contracts subject to the requirements of Section 2-11.16 of the Code and this IO, shall:

Provide documented proof in their bids that the various classes of laborers and mechanics will be paid no less than the specified combined overall hourly wage rates and benefits as set forth in the contract specifications.

RESPONSIBILITY OF SUCCESSFUL AWARDEE:

The successful awardee and any subcontractor(s) under them of a competitively bid construction contract or privately funded contract on County-owned land subject to the requirements of Section 2-11.16 of the Code and this IO, shall:

- A. Pay their employees not less than the specified combined hourly wage rates and benefits applicable to the employee classification in which such employees are working on the project. Such payment obligations may be fulfilled by payment of wages, contributions to employees' benefit plans, payments made by check or money order, or any combinations thereof;
- B. Post in a visible place on the worksite (1) the schedule of the specified combined overall hourly wage rate and benefits for each applicable classification specified by the negotiated contract; (2) the amount of liquidated damages for any failure to pay such rates; (3) the name and address of the responsible County official to whom complaints of practices prohibited by this IO should be given; (4) make information available to the County on any and all wage and benefits documentation and information for review by the County including, but not limited to, canceled checks, bank statements and sufficient information to determine the cost of the plan for each employee in terms of actual benefits to the employee;
- C. Keep or cause to be kept, accurate written records signed under oath as true and correct showing the names, Social Security numbers, and craft classifications of all employees performing work on the contract, the combined dollar amount of all wages, any cost of contributions to benefits plans and any cash payments paid to each employee;
- D. Submit to the County a list of all subcontractors and the names and Social Security numbers of all employees thereof who performed work each day on the contract;

- E. Refrain from terminating, or otherwise retaliating, against an employee performing work on the contract even though a complaint of practices prohibited by this IO has been filed by the employee; and
- F. Allow compliance officer ready access to documents and employees for interviews without interference.

PROCEDURES FOR DETERMINING OVERALL HOURLY WAGE RATES AND CLASSIFICATION OF EMPLOYEES:

The compliance officer will make necessary arrangements to obtain the required data on employee classifications and combined overall hourly wage rates and benefits therefore. This procedure shall include the following steps:

- A. Request current and updated copies of local area non-discriminatory negotiated contracts between organizations which represent employees and contractors;
- B. The specifications for each competitively bid County contract in excess of one hundred thousand dollars (\$100,000) shall specify a combined per hour wage rate and benefits to be paid to each craft or type of employee necessary to perform the contract work. In ascertaining the initial and overall rate to be paid, the minimum standard shall be the base rate dollar amount on an hourly basis of the wages, plus hospitalization, medical, pension and life insurance benefits for such classification under contracts in effect as of January 1st of the calendar year in which the bid is advertised. If a particular classification of employee is not listed in such contracts, in ascertaining the rate to be paid those employees, the minimum standard shall be the combined overall dollar amount on an hourly basis on the "basic hourly rate of pay" (as defined in 29 CFR 5.24) and of the fringe benefits payments for hospitalization, medical, pension and life insurance benefits for such classification under the Secretary of Labor's wage determination (made pursuant to the provisions of the Davis-Bacon Act) in effect for Miami-Dade County, Florida, as of January 1st of the calendar year in which the proposed bid is expected to be advertised;
- C. The foregoing and the provision of Section 2-11.16(e) notwithstanding, where not otherwise precluded by state or federal law, the overall per hour rate shall be the higher rate under this Section 2-11.16 or the rate of wages to be paid under the requirements of the Davis-Bacon Act; provided, further, that the overall per hour rate shall not be the higher rate if the federal government requires the County, as a condition of receiving federal funds for a project, to pay no more than the wages as determined by the U.S. Department of Labor under the Davis-Bacon Act on County construction contracts;
- D. Request an affidavit for each agreement in (A) above that specifies the overall hourly wage rate and benefits contribution (medical, hospitalization, life insurance and pension payments) for each classification, craft or type of employee necessary to perform the County construction work, such affidavit to be sworn to and subscribed before a Notary Public by an authorized representative of the employee's organization;
- E. Maintain and make accessible files of these agreements and affidavits to the compliance and contract officers;

- F. Organize and reproduce this data to provide a sum certain (minimum standard) of the combined overall dollar amount on an hourly basis of the wages and of the medical, hospitalization, life insurance and pension benefit contribution rates for such classifications under contracts; and
- G. Distribute copies of the wages and benefits schedules to County departments and the Public Health Trust.

PROCEDURES FOR UPDATING FORM CONTRACT PROVISIONS:

The compliance officer will draft general contract provisions, as necessary, to supplement the contracts prepared by the County departments and the Public Health Trust. This procedure shall include the following steps:

- A. Define clearly the reason for the proposed general contract provision in writing;
- B. Draft the proposed general contract provisions for review by interested and affected parties;
- C. Submit proposed general contract provisions to the Office of the County Attorney for review and approval as to form and legal sufficiency; and
- D. Distribute copies of approved general contract provisions for insertion into County contracts.

PROCEDURES FOR COORDINATION OF MONITORING PROCESS:

The compliance officer will oversee the monitoring process. This procedure shall include the following steps:

- A. Define clearly the problems or issues related to the monitoring process in writing based on experience with the implementation of Section 2-11.16 of the Code of Miami-Dade County;
- B. Draft the document to include the IO provisions which appropriately address the problem or issue;
- C. Submit the proposed material (guides, forms, policies, procedures or regulations) to interested and affected parties involved;
- D. Distribute copies of this material for implementation purposes;
- E. Require that the lessee provide an irrevocable letter of credit submitted to the County Finance Department, or a deposit into a County escrow account equal to 20% of the construction costs of improvements and/or alterations prior to issuance of notice to proceed and impose sanctions on contractors and/or subcontractors in the event of non-compliance with the incentive requirements of the agreement between the lessee and the County;
- F. Impose sanctions on contractors and/or subcontractors in the event of non-compliance with Section 2-11.16 of the Code of Miami-Dade County.; and

- G. Impose sanctions as noted in the lease agreement with Miami-Dade County on lessees and their contractor(s) in the event of non-compliance with Section 2-11.16 of the Code of Miami-Dade County and the requirements of the agreement with Miami-Dade County by seizing the funds held in escrow or collecting upon the letter of credit.

PROCEDURES FOR NOTIFICATION AND DOCUMENTS:

The contracting officer responsible for the construction contracts will insert appropriate notices of applicable standard wages and benefits schedules in bid specifications, contracts, or leases (U.S. Department of Labor, Memorandum 130). This procedure shall include the following steps:

- A. Notify the compliance officer of approved construction projects subject to the provisions of Section 2-11.16 of the Code of Miami-Dade County and this IO prior to advertising for bids and provide the compliance officer with a copy of the specifications and contract documents (Project Manual);
- B. Send copy of advertisement for bids to the compliance officer when the project is to be advertised;
- C. Notify the compliance officer of scheduled Prebid, PreWork or Pre-Construction Conferences;
- D. Notify the compliance officer when contracts have been awarded;
- E. Provide the compliance officer with notices to proceed; and
- F. Consult the compliance officer where there is a discrepancy as to a trade classification to determine the actual classification as to the scope of work required.

PROCEDURE FOR INSPECTING CONSTRUCTION WORKSITE(S):

The contracting officer responsible for construction contracts and privately funded construction of improvements on County-owned land, in cooperation with the Compliance Officer, shall inspect the worksite(s) of these projects. This procedure shall include the following steps:

- A. Inspect the construction site to determine if the required data (notice/wages and benefits schedules) have been posted by the prime contractor and/or subcontractors, and that the required data are located in a visible place;
- B. Prepare an inspection report of the construction worksite and, if discrepancies are noted, notify in writing the prime contractor and/or subcontractor to take appropriate corrective action;
- C. Maintain a file of worksite inspection reports and corrective action; and
- D. Submit a summary report of worksite inspections to the compliance officer on a monthly basis and provide copies of inspection reports.

PROCEDURES FOR INTERVIEWING WORKERS:

The contracting officer responsible for County construction contracts and privately funded construction of improvements on County-owned land, in cooperation with the compliance officer, will interview workers employed at these projects. This procedure shall include the following steps:

- A. Interview workers on the job site to determine if:
 - 1. they are working in appropriate trade or worker classifications; and
 - 2. they are being paid appropriate specified combined overall hourly wage rates and benefits for trade or worker classification.
- B. Prepare a report for each worker interviewed on the job site, and, if discrepancies are noted, notify in writing the prime contractor and/or subcontractor to take corrective action;
- C. Maintain files of worker interview reports and corrective action measures; and
- D. Submit a summary report of worker interviews to the compliance officer on a monthly basis and provide copies of interview reports.

In no instance shall a contractor and/or subcontractor retaliate in any way to employees who file complaints regarding violations of Section 2-11.16 of the Code of Miami-Dade County.

PROCEDURES FOR EXAMINING PAYROLL RECORDS:

The contracting officer responsible for construction contracts and privately funded construction improvements on County-owned land, in cooperation with the compliance officer, shall receive and examine the payroll records for these projects. This procedure shall include the following:

- A. Review payroll records of the contractor and/or subcontractor to determine if persons performing work on applicable County construction projects or privately funded projects on County-owned land are being paid specified combined overall hourly wage rates and benefits by the contractor and/or subcontractor as set forth in the specifications and contract documents;
- B. Prepare a wage analysis, and, if discrepancies are noted, notify in writing the, lessee, contractor and/or subcontractor to take corrective action;
- C. Maintain a file of payroll analyses and corrective action measures; and
- D. Submit a summary report for payroll records to the compliance officer on a monthly basis with copies of certified payroll records.

PROCEDURES FOR RESOLUTION OF COMPLAINTS OF PRACTICES PROHIBITED BY THIS IO:

The compliance officer will administer the complaint process. This procedure shall include the following steps:

- A. Review complaints, supporting material and conduct investigation(s); SBD may conduct investigations of compliance with the requirements of this section and issue written notices to a contractor (or subcontractor under the contractor) when it determines based on such investigations that the contractor (or subcontractor under the contractor) has not complied herewith;
- B. The subcontractor shall respond in writing to the notice of noncompliance;

- C. Coordinate the examination of appropriate records and analyze the information obtained from the investigation with the contracting officer responsible for managing the construction contract; Based on the response, SBD may determine to rescind the notice of noncompliance or to conduct a compliance meeting with the affected contractor or subcontractor at which any additional evidence may be presented;
- D. Coordinate, mediate and encourage resolution of the complaint between the contracting officer, the contractor and/or subcontractor, and the complainant; SBD shall make a written compliance determination following any Compliance Meeting. A determination that the contractor or subcontractor has not complied with the requirements of this Section shall state the basis therefore and shall advise the contractor or subcontractor of its right to file a written request with the County Manager within 30 calendar days to reschedule an administrative hearing before a hearing officer to appeal the determination as provided below;
- E. Maintain a file of complaints and any resolution thereof; A contractor or subcontractor who fails to respond to a notice of noncompliance, fails to attend a Compliance Meeting, or who does not timely request an administrative hearing from an adverse compliance determination made by SBD after a Compliance Meeting shall be deemed not have complied with the requirements of this IO as stated in the notice of determination of noncompliance and, in the case of underpayment of the required overall per hour rate, an amount sufficient to pay any underpayment shall be withheld from contract proceeds and remitted to the employee and the contractor or subcontractor shall be fined the applicable penalty for such underpayment as provided under Penalties and Sanctions for County Contracts of this IO. A contractor or subcontractor who does not make the required payment of the underpaid wages or who does not pay any fine imposed hereunder shall not be deemed responsible to perform subsequent County construction contracts and shall be ineligible to be awarded such contracts for so long as the identified underpayment or any penalties imposed therefore remain outstanding, not to exceed three years;
- F. Request the County Manager or his or her designee to appoint an administrative hearing officer within ten (10) days of the time at which other means to resolve the complaint have been exhausted (See D) and set a time for an administrative hearing; and
- G. Coordinate the imposition of any penalties including, but not limited to, withholding of current accrued payments, liquidated damages, and/or debarment which may be imposed by the County Manager or his or her designee.

PROCEDURES FOR ADMINISTRATIVE HEARING:

The procedure for administrative hearings shall include the following steps:

- A. Upon timely receipt of a request for an administrative hearing before a hearing officer to appeal a determination of non-compliance, Professional Support Services Division will schedule a hearing date.
- B. Professional Support Services Division shall serve upon the contractor (or subcontractor) and/or lessee a notice of hearing together with a copy of SBD's determination of non-compliance within five (5) working days of the appointment of the administrative hearing officer. Such notice shall include:

1. A copy of the written complaint, including reasons and causes for the proposed administrative hearing outlining alleged prohibited practices upon which it is based;
 2. Which administrative penalties are being considered;
 3. That an administrative hearing shall be conducted before an administrative hearing officer on a date and time not to exceed twenty (20) days after service of the notice. The notice shall also advise the contractor that they may be represented by an attorney, may present documentary evidence and verbal testimony, and may cross-examine or rebut evidence and testimony presented against them; and
 4. A description of the effect of the issuance of the notice of the proposed administrative hearing and the potential effect(s) of this administrative hearing.
- C. The compliance officer shall, with the assistance of the contracting officer, present evidence and arguments to the administrative hearing officer.
- D. No later than seven (7) calendar days prior to the scheduled hearing date, the contractor and/or lessee must furnish the compliance officer a list of the defenses the contractor intends to present at the administrative hearing. If the contractor and/or lessee fails to submit the list, in writing, at least forty-eight hours prior to the administrative hearing, or fails to seek an extension of time within which to do so, the contractor and/or lessee shall be deemed to have waived the opportunity to be heard at the administrative hearing. The administrative hearing officer shall have the right to grant or deny an extension of time, and the decision may only be reviewed upon an abuse of discretion.
- E. Hearsay evidence shall be admissible at the administrative hearing, but shall not form the sole basis for initiating an administrative hearing procedure or form the sole basis of any determination of penalties. The administrative hearing shall be transcribed, taped or otherwise recorded by a court reporter, at the election of the administrative hearing officer and at the expense of the County. Copies of the hearing tape or transcript shall be furnished at the expense and request of the requesting party.

QUALIFICATIONS OF HEARING OFFICERS:

- A. Administrative hearing officers shall be residents of Miami-Dade County who possess outstanding reputations for civic pride, interest, integrity, responsibility, and business or professional ability. Appointments shall be made by the County Manager or his or her designee. Qualifications for administrative hearing officers should include retired judges who are licensed and admitted to practice law in the State of Florida, or arbitrators or mediators certified by the Eleventh Judicial Circuit or State Bar Association. Appointees should become acquainted with the relevant Implementing Order and Ordinance governing the particular violation(s) to be heard. Additional qualifications include, but are not limited to, experience in equal opportunity, anti-discrimination, contracting, procurement, bonding or financial services activities. Such appointments shall be submitted to the Clerk of the Board of County Commissioners for ratification by the Clerk. The Clerk shall submit an annual report to the Board on the number of women who have served as administrative hearing officers.

- B. The County Mayor or his or her designee shall appoint as many administrative hearing officers as are deemed necessary. Every effort will be made to ensure that the appointment of hearing officers reflect the diversity of the demographics of Miami-Dade County. Appointments shall be made for a term of one (1) year. Any administrative hearing officers may be reappointed at the discretion of the County Mayor, subject to ratification by the Clerk of the Board of County Commissioners. There shall be no limit on the number of reappointments that may be given to any individual administrative hearing officers ; provided, however, that a determination as to reappointment must be made for each administrative hearing officers at the end of his or her one-year term. The County Mayor shall have the authority to remove administrative hearing officers at any time. Appointments to fill a vacancy shall be for the remainder of the unexpired term.
- C. Administrative hearing officers shall not be County employees but shall be compensated at a rate to be determined by IO.
- D. The Dade County Attorney's Office shall serve as general counsel to the administrative hearing officers.

PENALTIES AND SANCTIONS FOR COUNTY CONTRACTS:

The County Manager or his or her designee will administer the penalty and sanction process. This procedure shall include the following steps:

- A. Upon completion of the administrative hearing, the administrative hearing officers shall submit written findings and recommendations together with a transcript of the administrative hearing to the County Mayor or his or her designee within fifteen (15) days. If the determination of the County Mayor or his/her designee is that the contractor or subcontractor failed to comply and that such failure was pervasive, the Mayor may order that the contract work be suspended or terminated, and that the non-complying contractor or subcontractor and the principal owners and/or qualifying agent thereof be prohibited from bidding on or otherwise participating in County construction contracts for a period not to exceed three (3) years. In addition, in the case of underpayment of the required overall per hour rate, an amount sufficient to pay any underpayment shall be withheld from contract proceeds and remitted to the affected employees and the contractor or subcontractor shall be fined the penalties provided below.
- B. If the determination of the County Mayor or his or her designee is that the contractor or subcontractor failed to comply and that such failure was limited to isolated instances and was not pervasive, the County Mayor may, in the case of underpayment of the required overall per hour rate, order an amount equal to the amount of such underpayment be withheld from the contractor and remitted to the employee(s) and also fine the contractor or subcontractor for such noncompliance as follows: for the first underpayment, a penalty in an amount equal to 10% of the amount thereof; for the second underpayment, a penalty in an amount equal to 20% thereof; for the third and successive underpayments, a penalty in an amount equal to 30% thereof. A fourth violation and finding of noncompliance, shall constitute a default of the subject contract and may be cause for suspension or termination in accordance with the contract's terms and debarment in accordance with the debarment procedures of the County. Monies received from payment of penalties imposed hereunder shall be deposited in a separate account and shall be utilized solely to defray SBD's costs of administering Section 2-11.16 of the Code of Miami-Dade County.

- C. If the required payment is not made within thirty (30) days of the administrative hearing or final resolution of any appeal there from, the non-complying contractor or subcontractor and the principal owner(s) and qualifying agent(s) thereof shall be prohibited from bidding on or otherwise participating in County construction contracts for a period not to exceed three (3) years.

This Implementing Order is hereby submitted to the Board of County Commissioners of Miami-Dade County, Florida.

County Mayor

Palmetto Metrorail Station Development Agreement

Schedule 19.2

County's Estoppel Certificate

Schedule 19.2

County's Estoppel Certificate

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

[Address to Relying Party]

_____, 20____

Re: Joint Development Agreement of Palmetto Station Property, dated _____, 20__ (the "Agreement"), by and between Miami-Dade County, Florida, acting by and through the Department of Transportation and Public Works (together hereinafter "County") and MagicWaste Youth Foundation, Inc. ("Developer")

Ladies and Gentlemen:

The County has been advised that [_____] (the "Relying Party") intends to _____ [make a loan] [acquire _____] [sublease _____] [lease _____] [take any assignment of _____] (the "Transaction") in connection with the Project and/or the Improvements described in the Agreement, and that, in connection with the Transaction, the Relying Party will act in material reliance upon this Estoppel Certificate from the County.

The County hereby certifies, represents, warrants, acknowledges, and agrees as follows:

1. A true, complete, and correct copy of the Agreement is attached to this Estoppel Certificate as Exhibit A. There have been no amendments, modifications, extensions, renewals, or replacements of the Agreement (except as expressed hereunder or attached hereto).
2. Other than those contained in writing in the Agreement and in the Lease, the Developer has made no representations, warranties, or covenants to or in favor of the County with respect to the Project.
3. The Agreement is in full force and effect. The County has no knowledge of any set offs, claims, or defenses to the enforcement of the Agreement or the Developer's rights thereunder (except as expressed hereunder or attached hereto).
4. To the County's knowledge, (i) there is no Event of Default by the Developer or the County; (ii) neither the Developer nor the County is in breach under the Agreement, and (iii) no event has occurred or conditions exists which, with the giving of notice or passage of time, or both, could result in an Event of Default or breach under the Agreement by either party (except as expressed hereunder or attached hereto).
5. As of [date], no amounts or sums are due from the Developer to the County.

6. As of the date hereof, the Fees and Rent is as specified in the Agreement except as follows: _____ [insert “none” if not applicable].

7. The County has no knowledge of any present condition or event that may give rise to a violation of any federal, state, county, or municipal law, regulation, ordinance, statute, rule, order or directive applicable to the Agreement or the Project (except as expressed hereunder or attached hereto).

8. The undersigned is properly authorized to execute this Estoppel Certificate and the Relying Party has the right to rely on this Estoppel Certificate.

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

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

By: _____
Deputy Mayor