

DEPARTMENTAL INPUT
CONTRACT/PROJECT MEASURE ANALYSIS AND RECOMMENDATION

☒ New ☐ OTR ☐ Sole Source ☐ Bid Waiver ☐ Emergency Previous Contract/Project No. n/a
Contract
☐ Re-Bid ☐ Other LIVING WAGE APPLIES: ☐ YES ☒ NO
Requisition No./Project No.: RFP-01515 TERM OF CONTRACT 90 YEAR(S) WITH 0 YEAR(S) OTR

Requisition /Project Title: Development of Vizaya Station Property

Description: RFP process to procure a developer to finance and construct a mixed use (commercial/possible residential) complex on County property with a revenue sharing agreement. There will be no County funding contributions for this project. The property has a federal interest.

Issuing Department: DTPW Contact Person: Javier Bustamante Phone: 786-469-5244
Estimate Cost: Revenue Generating GENERAL FEDERAL OTHER
Funding Source: n/a n/a n/a

ANALYSIS

Commodity Codes:	<u>57863</u>	<u>91889</u>	<u>92561</u>		
Contract/Project History of previous purchases three (3) years Check here <input checked="" type="checkbox"/> if this is a new contract/purchase with no previous history.					
	<u>EXISTING</u>	<u>2ND YEAR</u>	<u>3RD YEAR</u>		
Contractor:					
Small Business Enterprise:					
Contract Value:	\$	\$	\$		
Comments:					

Continued on another page (s): ☐ YES ☒ NO

RECOMMENDATIONS

	Set-aside	Sub-contractor goal	Bid preference	Selection factor
SBE				
Basis of recommendation: <div style="border: 1px solid black; height: 30px; width: 100%;"></div>				
Signed: <u>Brian Webster</u>		Date sent to SBD: <u>02/11/2020</u>		
		Date returned to DPM: <div style="border: 1px solid black; height: 20px; width: 150px;"></div>		

Draft

**Joint Development of Property at
Vizcaya Metrorail Station**

Development Agreement

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**Sample Development Agreement for Joint Development of
Property at Vizcaya Metrorail Station**

THIS DEVELOPMENT AGREEMENT, dated as of the ____ day of _____, 20____, 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 _____, having an office and place of business at _____ hereinafter called "Developer", and together with "County" the "Parties").

W I T N E S S E T H:

- 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. County has a material interest in developing the Site to its highest and best use and focusing density around the Vizcaya Metrorail Station and the Metrorail System.
- C. County recognizes the potential for public and private benefit through a joint use development of the Site, in order to promote usage of the Metrorail System and to further economic development in Miami-Dade County.
- D. To facilitate the development of the Site, County issued a Request for Proposal dated _____, 20__ (the "RFP") with respect to the Development Site, as set forth in Schedule 22.18A and made a part hereof.

- E. Based on the Developer's response to the RFP and resulting negotiations in connection therewith, as set forth in Schedule 22.18B and a made a part hereof, County desires to award Developer this Development Agreement ("Agreement") which sets forth the right and obligation to undertake the development of the Site in accordance with the Developer's Development Plan which sets forth the Developer's concept for the entire Development Site as described in Schedule 1.4A and the Developer's Project Schedule as set forth in Schedule 1.4B.
- F. The intent of 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.
- G. 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").
- H. 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).
- I. 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 Development Plan.
- J. 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 (d) the Metrorail Joint Use Policy contained in Resolution R-1443A-81, adopted on September 28, 1981; 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 Development Plan, and upon satisfaction of the Closing Conditions 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.

Section 1.2 Conditions Precedent to Effectiveness of Development Agreement

This Development Agreement 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.

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 for 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. If the Project is developed in Phases, any Lease(s) which becomes effective pursuant to this Development Agreement shall be subject to the terms and conditions of this Development Agreement until a Lease for the Final Phase of the Project becomes effective at which time the Term of this Development Agreement shall expire.

Section 1.4 Development of Project Under Development Plan

The Developer's Development Plan which describes the Developer's concept for the entire Development Site is attached hereto as Schedule 1.4A. The Developer shall develop and construct the Development Site in substantial conformity with the Development Plan and the Project Schedule, attached hereto as Schedule 1.4B as approved by DTPW. The Project Schedule sets forth the following deadlines for the development of the Project, or each Phase of the Project ("Milestones"):

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

Section 1.5 Changes and Alterations to the Development Plan

Developer shall have the right to propose changes to the Development Plan to County, which County may approve in its sole and absolute discretion. However, in no event shall such changes be approved by County unless the following conditions are satisfied:

- A. The method, Project Schedule, plans and specifications for the proposed amended Development 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;
- B. The proposed amended Development Plan does not violate any other provisions of this Agreement;

- C. The proposed amended Development 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;
- D. The proposed amended Development 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.
- E. Notwithstanding the above, if due to site conditions which could not have been reasonably foreseen, the Development Plan must be amended, the Development Plan and Project Schedule shall be amended only to the extent that such amendment is required as a direct result of such site conditions.
- F. Developer obtains all approvals, Permits and authorizations required under applicable Laws and Ordinances prior to Closing on any Lease(s).

Section 1.6 Phased Development Contemplated (if applicable)

The approved Development Plan calls for a phased development approach (“Phased Development”) which shall mean the division of the Project into separate and distinct portions or Phases, 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 Development Plan and the Project Schedule contained in Schedule 1.4, as may be amended in accordance with Section 1.5 above and must be capable of operating independently from all other Phases in compliance with all Laws and Ordinances and building and zoning codes. Each Phase may be developed and constructed through an assignment of a Phase as provided by Article 17; however, all obligations and Milestones under this Agreement will apply to each 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 but shall be contained within a Phase.

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 Parties), 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 Parties will execute and deliver, or have executed and delivered, 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.
- C. At Closing any pre-paid Development Fee covering a period of time after which Closing has occurred shall be credited to the amount of the Initial Rent due under the Lease. Additionally, any remaining Initial Rent and any other amount due to County shall be deducted from the Security Deposit, or if applicable, the portion 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 Lease(s) have been fully negotiated and are in final form (in all material respects) as set forth in Schedule 1.6 and shall not be modified in any material 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 set forth in Schedule 1.6 will require approval of the FTA and the Miami-Dade County Board of County Commissioners.
- 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 may be extended pursuant to Section 3.3 of this 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.

- 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 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”):
 - 1) The performance of studies, inspections, tests, evaluations, remediation, and similar type of work necessary to develop the Project in coordination with DTPW;
 - 2) obtaining insurance as set forth in Article 7;
 - 3) timely satisfying the Closing Conditions as set forth in Section 1.11;
 - 4) timely payment of all the Development Fees, Delayed Closing Fees, if applicable, and any and all other amounts due to County; and

Section 1.10 Right of Entry

- A. Prior to Closing, County hereby grants to Developer, including its officers, employees, contractors, subcontractors, agents, and assigns (collectively, “Developer”) 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 1.8 (A)(1) 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)(1) 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 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 Property unless so accompanied. Should such County escort or representative be necessary or appropriate, as determined by the County in its sole and absolute discretion, Developer shall pay the charges 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 County Tenant. Developer shall not contact any such Tenant directly without County's express written consent.

- H. Developer shall not permit any mechanics lien or any other lien to be filed 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 and license, 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 on the Convertible Property, except as may be required for environmental monitoring and testing purposes and only with the prior written consent of the County.
- L. Developer shall not alter or disturb Convertible Property. 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 the Commencement Date of this Agreement unless 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 shall restore such Convertible Property to substantially the same condition as the Convertible Property existed immediately prior to the Commencement Date of this Agreement.

- N. In any event, if Developer fails to restore the Convertible Property to substantially the same condition as existed immediately prior to the Commencement Date of this Agreement, the County may, at its option 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 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, until each of the events described in this Section 1.10 shall have timely occurred, subject to 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 a portion thereof, to the Developer, Developer shall accept and execute the Lease and take possession of the Development Site, or a portion thereof, and Developers rights as Developer under any ground lease shall become effective in 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. 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 4.5 and shall have received DTPW written approval of such plans;

- 2) Developer shall submit to County a copy of the financing commitment that Developer has received from a recognized lending institution, such as a bank, savings bank, savings and loan, pension fund, insurance company, real estate investment trust or other real estate investment entity, (provided such financing commitment is in full force and effect, and Developer has complied with all material terms and conditions thereof) to finance the cost of construction of the Project or each Phase of the Project, as applicable;
- 3) Developer shall have contacted all appropriate utilities and verified the location, depth and nature of all utilities affecting the Development Site or Project Phase and any borders thereupon;
- 4) Developer shall have delivered to County a fully executed and delivered copy of the construction contract, together with each of the major contractors, and/or a construction management contract together with the architect and engineers engaged to design the Development Site or Project Phase;
- 5) Developer shall have obtained, and caused its general contractors, construction managers, architects, and subcontractors 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 government approvals;
- 7) In coordination with DTPW, Developer shall have platted the entire Development Site, as necessary;
- 8) Developer shall have applied for and obtained all permits, licenses, easements, property rights and approvals necessary for before, during, and after construction of the Project;
- 9) Developer shall have obtained any zoning changes or any other land use planning changes necessary to develop the Project.

- 10) Developer shall have paid all development fees imposed in connection with the development by the County or any other agency of appropriate jurisdiction; and
 - 11) Developer shall have completed good faith negotiations with County to finalize the Lease to be executed at Closing in substantially the form attached hereto as Schedule 1.6.
- B. Developer and County agree that all construction and development plans within the Development Site or such plans for development that may impact any Metrorail or 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 Metrorail System. 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 the Metrorail System or any County facilities. The drawings and calculations shall have sufficient detail to allow DTPW to determine if such activities are likely to impact the Metrorail System or any County facilities and/or operations and the extent of that impact, if any. The drawings and calculations shall include, if applicable, but not be limited to, the following:
- 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;

- 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 Miami-Dade Transit Construction Safety Manual or its replacement, as applicable.
- D. County shall review plans, drawings and calculations within a reasonable period of time; however, such review periods may depend upon the volume, complexity and potential impact on the Metrorail System and operations or any County facilities and operations. County reserves the right at all times to disapprove of plans, drawings and calculations in whole or in part if County, in its sole discretion, determines that any County operations or facilities and/or other public or private facilities or operations 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 the Metrorail System, any County facilities or operations or other public or private facilities or operations the County may require the 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 the presence of County employees or representatives 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 and coordinate such activities. If directed by the County, the Developer must immediately mitigate all such impacts as specified by the County and Developer shall immediately 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, 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 discretion, determines to be potentially hazardous to the Metrorail System or County facilities, operations 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 1.12 Performance and Payment Bonds

A minimum of ten (10) days before Developer commences any construction work related to any portion of the Project or any materials are purchased from a supplier, Developer shall execute and deliver to County and record in the public records of the County, a payment and performance bond equal to the total cost of the work or items purchased in compliance with 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 Developer beneficiaries thereof as joint obligees.

ARTICLE 2

Definition of Certain Terms

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

- 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 developer to County under a Lease other than Initial Rent, Annual Rent and Delayed Completion Rent. Developer 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. Affiliate shall mean any entity that directly or indirectly controls, is controlled by or is under common control with the designated entity or any officer, director, managing or general partner, or member of such designated entity whether such control is through contract, equity interest, management authority or otherwise.
- E. Agreement shall mean this Development Agreement and all amendments, supplements, addenda or renewals thereof.
- F. 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 may cause the Agreement Year to be a calendar year.
- G. Annual Rent shall mean the rent due under a Lease for the Project/Phase upon Construction Completion or upon the date set forth in the Project Schedule. Developer 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.
- H. Board shall mean the Board of County Commissioners of Miami-Dade County, Florida.

- I. 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.
- J. 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.
- K. 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 at which time the County shall have delivered the Lease to Developer and Developer shall have taken possession of the Leased Property and the Lease provisions shall become effective subject to this Development Agreement.
- L. Closing Date shall mean the actual date Closing occurred for the overall Project or for each Phase of the Project, on a Phase by Phase basis, upon satisfaction of the Closing Conditions.
- M. Code shall mean the Code of Ordinances of Miami-Dade County, as amended from time to time.
- N. Commencement Date shall mean the first day of the month following execution of the Development Agreement by both the County and Developer and deposit of the Security Deposit.

- O. 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 building permit(s) necessary to begin construction for the Project or particular Phase of the Project on which construction is proposed to commence.
- P. 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.
- Q. Construction Plans shall consist of final design plans for particular improvements of the Project or a Phase as approved by Miami-Dade County, the drawings and specifications for which are in the format with sufficient detail as required to obtain building permits for such Improvements and as further described in Section 4.6.
- R. Convertible Property shall mean that portion of the Development Site not encumbered by a Lease.
- S. County 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.
- T. Delayed Closing Fee shall have the meaning ascribed to such term in Section 3.3 herein.

- U. Developer shall mean, on the Commencement Date, _____, a _____ . 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 as described in Article 21.
- V. Developer Default shall have the meaning ascribed to such term in Section 19.1.
- W. Development Fee or Fee shall have the meaning ascribed to such terms in Section 3.2 herein
- X. Development Agreement shall mean this Agreement and all amendments, supplements, addenda or renewals thereof.
- Y. Development Plan shall mean the plan for the entire Development Site as shown in Schedule 1.4A.
- Z. 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 obligation to develop in accordance with the Development 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, to the Metrorail System, any County facilities, any government agency property or facility, or any other entities' or persons' property or facility ; and
 - 2) IT BEING UNDERSTOOD between the parties hereto that no portion of the Metrorail facilities, and/or systems are part of this Agreement or intended to be leased pursuant to this Agreement to Developer and that all portions or areas of Metrorail facilities and/or systems 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.
- AA. Event(s) of Default shall have the meaning ascribed to such term in Article 19 herein.
- BB. Fair Market Value shall be that sum which, considering all of the circumstances, would be arrived at by good faith, fair, arm's-length negotiations between an owner willing to sell and an independent third-party purchaser willing to buy, neither being under any pressure.
- CC. Final Design Plans shall mean the final plans and specifications.
- DD. Financing Agreement shall mean any loan or financing agreement, other than a Leasehold Mortgage, for the financing of the Project/Phase, leasehold interest, Development Site, or Improvements thereon including a mezzanine financing agreement, or preferred equity loan.
- EE. 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 Development Site , Improvements, personal property and the activities conducted thereon or therein.

- FF. 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.
- GG. Including shall always mean as used any time herein “including but not limited to”.
- HH. Initial Rent shall have the meaning ascribed to it in Section 3.5.
- II. Land shall mean the real property described in Schedule 1.1 hereto.
- JJ. 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 Development Site.
- KK. Lease shall have the meaning ascribed to it in the recitals herein.
- LL. Leased Property shall mean that portion of the Development Site subject to a Lease.

- MM. Leasehold Mortgage shall mean a mortgage or mortgages or other similar security agreements given to any Leasehold Mortgagee of any leasehold interest of Developer upon Closing for the sole purpose of providing financing or capital for the Project, 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.
- NN. Leasehold Mortgagee shall mean the recognized lending institution 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 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.
- OO. Lease Year shall mean upon Closing 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 may cause the Lease Year to be a calendar year.
- PP. Lender shall mean, any Leasehold Mortgagee, or recognized lending institution providing financing which is secured by the leasehold interest, the Project/Phase, Improvements, or equity of the entity holding such interest in the leasehold estate of the Project/Phase.
- QQ. Metrorail System shall mean the County's elevated, heavy rail rapid transit system.
- RR. Milestones shall have the meaning as ascribed to such term in Section 1.4 herein.
- SS. 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.
- TT. 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.

- UU. Parties shall mean the County together with the Developer.
- VV. 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.
- WW. Phase or Phases shall have the meaning ascribed to such term(s) in Section 1.5.
- XX. Phased Development shall have the meaning ascribed to such term in Section 1.5.
- YY. Plans and Specifications shall mean the plans and specifications 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, provided the same are approved as provided herein.
- ZZ. Preliminary Plans shall mean plans for the Development Site or a portion thereof, as the case may be, which have been submitted by the Developer to the County.
- AAA. Project shall mean the overall joint development of the Development Site, including all Phases of the Project, if applicable, contemplated by the response by Developer to the Request for Proposal for Joint Development of Property at the Vizcaya Metrorail Station, as such proposed development may be amended and/or revised from time to time (Proposal).
- BBB. 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 based upon the Developer's/Tenant's proposal in response to RFP No. ____, Joint Development of Property at the Vizcaya Metrorail Station, as approved by the County/Landlord and subject to Unavoidable Delays and duly requested changes which are approved by the County/Landlord in writing.

- CCC. Proposal shall have the meaning ascribed to such term in the preceding definition.
- DDD. 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.
- EEE. 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.
- FFF. 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).
- GGG. Scheduled Closing Date- shall mean the date Closing shall occur for the overall Project or for each Phase of the Project, on a Phase by Phase basis, if applicable, upon satisfaction of the Closing Conditions as set forth in the Developer's Project Schedule as may be extended by the payment of a Delayed Closing Fee with County approval.
- HHH. Security Deposit shall have the meaning ascribed to such term in Section 3.1 herein
- III. 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.
- JJJ. 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.

KKK. Intentionally omitted.

LLL. 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 original Developer retains all obligations under such Lease.

MMM. Sublessee shall mean the entity to which a Sublease is granted or its successors or assigns under any such Sublease whereby the original Developer retains all obligations under the Lease.

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

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

PPP. Intentionally Deleted.

QQQ. 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; enemy action; civil disturbance; sabotage; restraint by court or public authority; litigation or administrative challenges by third parties to the execution or performance of this Agreement or the procedures leading to its execution; 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 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.

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 one million dollars (\$1,000,000) (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 and escrow account. If Phased Development is contemplated the amount deposited shall be apportioned among the Phases based upon the approximate square footage contained in each Phase.
- 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.
- C. 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.
- D. If Phased Development is contemplated and prior to Closing the Development Agreement is terminated only as to a specific Project 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) as liquidated damages under the Development Agreement for losses sustained by the County as

a result of such default and not as a penalty. 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.

- E. 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, 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 commencement of this Development Agreement. Subsequent payments shall be due upon the anniversary of the Commencement Date of the Agreement without notice or demand from County. 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 any 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 any 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 a Lease 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 to pay to County, an amount equal to the applicable Initial Rent which would have been due upon the Closing on the Lease in accordance with Schedule 3 and thereafter, plus 10% of the applicable Initial Rent, 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. Under no circumstances shall the Delayed Closing Fee be requested or approved for a period longer than ____ years in the aggregate in lieu of default.

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), Developer shall cease payment of the Development Fee or Delayed Closing Fee, as applicable, and pay to County Initial Rent for the Project or Phase of Project as set forth in Schedule 3. The first payment of Initial Rent shall be due upon or prior to the

actual Closing Date. Subsequent payments shall be due upon the anniversary of the Closing Date without notice or demand from County (collectively, “Initial Rent”).

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, 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, or other amounts are delinquent for concurrent months, subsequent payments will be credited to the delinquent month’s Fee, or amount of the corresponding Delayed Closing Fee that was first in time. Partial payment of any Fee 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 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 Restrictions Enacted After Award

Developer acknowledges that it has performed reasonable due diligence regarding development of the Development Site and that, based upon that due diligence, has proposed to develop the Project in substantially the form described in Schedule 1.4. County and Developer acknowledge that the Development Fee and Delayed Closing Fee established in this Agreement was based on the understanding that Developer would be able to develop the Project as described. If, due solely to Laws and Ordinances enacted subsequent to award of the Agreement, which could not have been foreseen with due diligence, the Developer is not able to build the Project or Phase of the Project as

described, solely as a result of such new Law or Ordinance making the construction of the Project or Phase of the Project impermissible, then in addition to any other rights Developer has hereunder, (a) Developer shall have the right to terminate this Agreement, along with any corresponding Lease, 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) days following the County's receipt of notice of termination; or (b) in the event Developer does not terminate this Development, as set forth above, Developer shall become entitled to an adjustment in Development Fee and Delayed Closing Fee and in the Development Site on an equitable basis taking into consideration the original total space of the Project described Schedule 1.1, as compared with 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. 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 return the property in the condition the property was prior to commencement of the Agreement, free and clear of all encroachments and encumbrances. Any and all outstanding obligations under the Agreement upon termination shall survive the Agreement.

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

The intent of the parties is that the Developer shall equitably share with County profits made in any sale, assignment or transfer of this Agreement or rights to develop the Project or any portion or Phase of the Project, regardless of the method used to accomplish such transfer, which may include, but not be limited to, sale, assignment, financing and refinancing agreements and transfers of stock, partnership interest or equity. As such, in the event that, prior to commencement of construction,

Developer sells, assigns or transfers the rights under this Agreement or the rights to develop the Project, or any portion or Phase of the Project, and as a result thereof Developer retains less than a fifty percent (50%) interest in the Project or such portion or Phase of the Project, then in such event, Developer shall pay County fifty percent (50%) of the amount of any such sale, assignment or transfer. Developer shall pay County's share of the sale, assignment or transfer at the closing of such sale, assignment or 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. The payment for any such sale, assignment, or transfer after Construction Commencement shall be governed by the applicable Lease for the Project or Project Phase.

Any transfer occurring after a Lease becomes effective for the Project or any Phase of the Project shall be governed by the provisions of the applicable Lease.

Notwithstanding the foregoing, if Tenant is a joint venture or a consortium or similarly structured entity, within one year of Completion of Construction and issuance of a Certificate of Occupancy for any Phase, Tenant may assign the Phase, one time only, to any one or more member(s) of such joint venture or consortium or similar structured entity without payment to the County. Any additional assignments shall be subject to the above described payment to County.

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.

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 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

Development of Land and Construction of Improvements

Section 4.1 Land Uses

- A. Developer shall use Convertible Property for the uses described in Section 1.9 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 Development Plan., as may be amended in accordance with Section 1.5 above.
- C. Developer shall provide a minimum of 100 conveniently located parking spaces within the Development Site at all times for the exclusive use of the County and Metrorail patrons. The type of parking provided and the location of the parking spaces within the Development Site shall be as mutually agreed to by the Parties in writing.

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 conformity with

the Development Plan, subject to the terms and conditions of this Development Agreement and Subsections A and B below:

A. Development Rights of Land

- 1) 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 Project Development Plan and approved Construction Plans and in a manner otherwise permitted hereunder. If approved or requested by County, any failure to join in such documents and instruments by the Developer and/or by any successor shall be an Event of Default under this Agreement.
- 2) In connection with this contemplated development, the parties agree County 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 Agreement, as may be necessary for Developer to develop and use the Development in accordance with the Development Plan and approved Construction Plans and in a manner otherwise permitted hereunder, 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.

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:

- 1) 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 under 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
- 2) 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.
- 3) 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 development 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 permits, licenses, easements, property rights and government approvals necessary for Project completion and for resolving any objections related thereto and/or to the proposed uses, regardless of the source of such objection. County is under no obligation to join the Developer in applying for, obtaining, or maintaining such rights and approvals, to provide support or assistance to Developer in obtaining approvals or permits, or resolve objections in obtaining

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 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 Development Plan, applicable building and zoning codes, and all other applicable federal, state, county and local laws and regulations, including applicable provisions of the Fire Life Safety Criteria found in the Metrorail Compendium of Design Criteria, Volume 1, Chapter 9 and the Miami-Dade Transit Construction Safety Manual or its replacement. It should be noted that the Miami-Dade Transit Construction Safety Manual 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 requirement of the Development Plan 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 Improvements shall be of first-rate quality and new. If required by County, 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.

Section 4.4 Approval Rights

County facilities and operations are of critical importance to the County. Any alteration, relocation or replacement of County facilities or activities that may impact facilities and/or operations, 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, May 2012 (Exhibit G) or its replacement, 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 facilities, operations, activities, 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 Development Plan and/or components of the Development 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.

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, including applicable provisions of the Metrorail Compendium of Design Criteria. 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 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 Plans in an expeditious manner.
- F. Upon the approval 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 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 Development Plan and the provisions of this Agreement.
- B. Subject to the rights of any Leasehold Mortgagees 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 Design and Construction Plans and all Preliminary Plans, the Development 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 Design and Construction Plans, all preliminary plans and in such work product, should an Event of Default occur and affected Leasehold Mortgagee(s) under any Lease executed pursuant to this Agreement, if any, 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 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, and all sums due under the contracts are paid and that such contracts may not be modified without County's consent. Notwithstanding the foregoing, County shall not exercise any of its rights as assignee unless

and until this Agreement has been terminated and any Leasehold Mortgagee under any Lease executed pursuant to this Agreement has failed to timely exercise its right to a lease in reversion as provided in such Lease with respect to the Project or any Project Phase.

Section 4.8 Developer Obligations

Developer shall be responsible for duly applying for, obtaining, and maintaining all permits, licenses, easements, property rights and approvals necessary prior to, during, and after construction. DTPW approval of any concept plans pursuant to this Article 4 shall not relieve Developer of its obligations under this Agreement and 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 certain permits and approvals, 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, and no such approval shall impose any liability upon DTPW.

Section 4.9 Application for Development Approvals and Permits

Promptly following the Commencement Date 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 land use and/or development orders and permits that may be required in connection with the Project. Developer shall be solely responsible for duly obtaining all final, non-appealable land use and/or development orders 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 the land use and/or development orders and permits.

Section 4.10 Site Conditions

Developer, by executing this Agreement, represents it has 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. Developer shall not be entitled to any adjustment of Development Fee or other payments due to the County as a result of issues related to site conditions. Further, Developer shall not be entitled to an extension 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 and the commencement of any Delayed Closing Fees and/or Delayed Completion Rent under the Agreement or any Lease executed pursuant hereto shall be extended by the reasonable time necessary to accommodate redesign 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](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 contributed by County and any off-site improvements required to be paid or contributed which are caused by or are a result of Developer's development of the Development Site (streets, street widening, street lights, sidewalks, water/sewer infrastructure, landscaping, etc.) shall be paid or contributed by Developer.

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.

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 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, 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 the FTA; and
- H. To amend this Agreement to correct any typographical or non-material errors.

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 structures 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 credit.

Section 4.16 Responsible Wages

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

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 any and all taxes, assessments and impositions which may arise in connection with any Lease 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 for the Project or the Closing of the Lease for the final Phase of the Project, as applicable, pursuant to Section 1.3, this Development Agreement shall terminate and the Lease(s) executed at the Closing(s) pursuant hereto which were previously subject to this Development Agreement shall then be 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 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 an additional insured and loss payee. 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

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 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:

- A. Worker’s Compensation Insurance for all employees of the Developer as required by Florida Statute 440. In addition, the Developer shall obtain Employer’s Liability Insurance with limits not less than: (i) \$500,000 Bodily Injury by Accident, (ii) \$500,000 Bodily Injury or by disease, and (iii) \$500,000 Bodily Injury or by Disease, each employee.
- B. 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.

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

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 policies 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 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 20.2 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.

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.

Section 7.9 Personal Property

Any personal property of Developer or others placed 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. 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 Lease 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 certain particles and sediments and elevated noise levels result from transit operations that 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 and sediments and elevated noise levels. Developer shall hold harmless the County for any costs, losses, injuries or damages resulting from particles or sediments and elevated noise levels caused by the operation of the Metrorail trains and/or 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) 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.

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 its facilities and shall have the right to use and enjoy Convertible Property without interruption. Developer hereby agrees not to interfere with the free flow of pedestrian or vehicular traffic to and from transit 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 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 or private systems, facilities or operations resulting from activities undertaken or authorized by the Developer.

Section 9.2 County Repairs and Maintenance

County shall keep and maintain in good condition and repair the Vizcaya Metrorail Station, and shall maintain said premises in a clean and orderly condition, reasonably free of dirt, rubbish, graffiti and unlawful obstructions ordinary wear and tear, ordinary County operations, Developer's operations, 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. Any services provided to the Development Site or improvements thereon shall be pursuant to the terms of a separate agreement.

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 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. 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 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 (i) 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, (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 725.05, 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 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.

Section 11.2 County's Duty

During the term of this Agreement, County will discharge any and all obligations incurred by County 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.

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 1.8 (A)(1) 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 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;
 - 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 to carry flammable or combustible liquids into or onto the Development Site, and shall prohibit the storage or manufacture 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:

- A. The entry and parking of motor vehicles carrying flammable or combustible liquids solely for the purpose of their own propulsion; or
- B. The use of normal cleaning and maintenance liquids and substances.

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. 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 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 and Remedial Action

- A. Developer at Developer's expense shall comply and shall cause its employees and agents to comply in all material respects at all times, with all environmental related 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 Developer, its employees, agents, and/or contractors actions on Convertible Property.
- 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 related law or give rise to material liability or obligation to take remedial action or other material obligations under any environmental related 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 any remedial action with respect to the Development Site in full compliance with all 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. 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, and shall reimburse County, its successor and assigns, for any costs and expenses incurred by County as a result of such claims or actions.
- 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.

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.

Section 12.8 No Subordination of County's Fee Interest

- A. 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 on the County fee simple interest in the Development Site 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 and authorized representatives inspect any work of Developer or its authorized agents at any time as permitted by this Agreement to ensure 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, 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. 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 incidental or consequential loss or damage whatsoever arising from the rights of County hereunder.
- B. Developer acknowledges that its use and occupancy 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.

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 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.
- B. Notwithstanding Section 15.1 above, subject to Section 3.8, Developer shall have the right and privilege to sell, assign or otherwise 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 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:
- 1) Developer shall not be in default under this Agreement at the time of such sale, assignment, or transfer without specific written consent from County; and
 - 2) Developer shall obtain written consent of the County, both as to the proposed transfer and the proposed transferee.
- C. Any request to County for such release from liability shall be 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 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 local, county, State, and Federal laws and ordinances.

- D. In addition, the proposed transfer must be approved by State, Federal and Local governmental agencies where applicable. Moreover, County reserves the right to withhold approval of the sale, transfer, or assignment, and to condition the release of the Developer from its liability under the Agreement until: (i) the transferee has provided performance bonds and insurance as required under Section 1.5 and Article 7 of this Agreement; (ii) all monetary payments have been paid to satisfaction of County of any kind or nature including but not limited to any outstanding Fee, Rent, obligation, or encumbrance of the original Developer; (iii) all non-monetary obligations under the Agreement or resulting from the use of Development Site or Improvements have been satisfied; (iv) the County receiving outstanding payment of all

expenses, including reasonable attorney's fees and disbursements and court costs incurred in connection with Agreement; (v) completion of construction of the Project or Phase; (vi) that Developer and any transferee shall be jointly and severally liable for any outstanding Fees, Rents, liability, encumbrances, attorney's fees costs or expenses of the original Developer not paid prior to such assignment or any term or condition of the Agreement not yet satisfied until such obligations are relieved to the satisfaction of County; (vii) in the Event of Default, all monetary defaults hereunder have been cured; (xiii) in the Event of Default, all non-monetary defaults susceptible to cure having been remedied and cured; (ix) in the Event of Default, the County receiving payment of all expenses, including reasonable attorney's fees and disbursements and court costs incurred in connection with this Agreement; and/or (x) in the Event of Default, that Developer and any transferee shall be jointly and severally liable for any monetary or non-monetary default not yet satisfied or cured including reasonable attorney's fees and disbursements and court costs, incurred by the County in connection with such Events of Default, until such obligations are satisfied and cured to the satisfaction of County and/or (xii) until satisfaction of any or all Closing Conditions.

Any sale, assignment or 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 sold, assigned or 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 also be delivered to County 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 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 or Lease 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 or Lease pertaining to the assigned portion of the Development Site or Phase, all subject to the provisions 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 or the Lease thereof.
- G. Except as may otherwise be specifically provided in Section 15.1, only upon County's written consent to a transfer shall such transferor shall 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, assignment, or hypothecation 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 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 an assignment 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.

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 shall be 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, when any or all adjacent property owned or leased by Developer are taken by eminent domain proceeds or sold under the threat thereof. 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 the 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, or Project Phase, 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 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 and accrued hereunder 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.

If the partial parcel taken or remaining portion of the Development Site, or Project Phase not so taken is Convertible Property then 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. However, 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 the Developer under this Agreement.

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

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 Development 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 Development 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 and in the Development Site 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 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 such termination of this Agreement as to the partial parcel taken, including any residual interest in the Agreement or any factor or circumstances arising out of or in connection with this Agreement.

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 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 and 25% of any Development Fees already paid to the County would be refunded to the Developer.

In the event the partial parcel taken of the Development Site, or Project Phase taken is 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.

In the event a temporary taking of Leased Property is taken by eminent domain proceedings, the executed Agreement 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 include but not be limited to the following (“Developer Default”):

- A. On the Scheduled Closing Date(s), as may be extended in accordance with the provisions of this Agreement, any Closing Conditions remain unsatisfied;
- B. On the Scheduled Closing Date(s), as may be extended in accordance with the provisions of this Agreement, all Closing Conditions are satisfied and Developer refuses or willfully fails to close on such date(s);
- C. Developer fails proceed with due diligence and dispatch and satisfy its Pre-Closing Responsibilities in accordance with the Project Schedule;

- D. Developer fails to pay any Development Fee, revenues or other monies due and payable pursuant to the provisions of this Agreement;
- E. 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;
- F. 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 10 days;
- G. 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 thirty (30) days after the date of its filing;
- H. The written admission of Developer of its general inability to pay Development fees or its debts and obligations when due;
- I. 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 shall pass to another by operation of law;
- J. Developer becomes a Restricted Entity;
- K. Notwithstanding anything in this Agreement to the contrary, Developer fails to maintain or provide the insurance requirements in all material respects;
- L. Developer conducts any business, the performance of any service, or the sale or marketing of any product or service by Developer on the Development Site which is prohibited by the provisions of this Agreement or law;

- M. It has become evident that a substantial change in Developer's condition, financial or otherwise, has occurred such that County cannot rely upon Developer to faithfully perform all its undertakings and covenants under this Development Agreement and/or to comply with all Federal, State, and Local laws and ordinances;
- N. This Development Agreement is assigned, transferred, pledged or encumbered in any in violation with the provisions of this Agreement or otherwise without the consent of County or if Developer attempts to consummate any transfer without complying with the applicable the provisions governing same in this Agreement; or
- O. Developer fails to keep, observe, or perform any other provision contained in this Development Agreement.

Developer shall have thirty (30) days to cure such 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 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 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), an Event of Default occurs and Developer has failed to cure such Event of Default within such time period set forth in Section 19.1 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 Event of Default, within this additional time period, County shall have the following rights and remedies which are cumulative:
- 1) County shall be entitled to retain the Security Deposit as liquidated damages for the loss of the bargain under this Agreement and not as a penalty; 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 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 an event of Default occurs, Developer shall nevertheless be obligated to continue to pay all Development Fees, Delayed Closing Fee, and all other debts 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 Development Plan then Developer shall surrender the Development Site and the Development Agreement and its right to develop the Project under the Development Plan upon the Development Site shall cease and terminate.

- 2) If Phased Development is contemplated and the Event of Default is applicable to one or more Phase(s) of Convertible Property under this Development Agreement but not to all Phases, then Developer shall surrender the Development Site 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 in which the Event of Default occurred shall cease and terminate without recourse to the County. However, upon the express written consent by the County, the Developer may retain the right to develop the Phase(s) of the Project in which no Event of Default has occurred, 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 Development 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 Development Plan and remain subject to this Development Agreement, unless such Event of Default is also 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 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 Development Plan upon Convertible Property shall cease and terminate.

If a Lease(s) for any Phase(s) of the Project has become effective then the Default provision of the Lease shall be operative.

B. Upon any early termination of a Lease (after a Closing has occurred) as a result of a Developer Default under a Lease, Developer shall surrender the Development Site 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 in which the Default occurred shall cease and terminate without recourse to the County. However, Developer shall retain the right to develop the Phase(s) of the Project in which no Default has occurred subject to the terms and conditions of this Development Agreement, and/or Lease(s), if applicable, in conformity with the Development 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 shall cease and terminate. If a Lease for such Phase of the Project has been executed, then such Lease shall not terminate and such Phase of the Project shall be constructed in conformity with the Development Plan and remain subject to 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 in possession and control of all 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 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 surrender of any Leased Property, such Lease(s) shall also cease and terminate and in which event the Development Site or such portions thereof, shall revert back to the

County free and clear of this Agreement and corresponding Lease(s) and all other property rights created thereunder with the exception of any rights which the County seeks to retain.

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 obligations shall be satisfied by Developer.

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 contamination found at Developer's sole cost and expense.

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 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 construction 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.

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 to be made 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.

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 as follows:

and to such other address and to the attention of such other party as Developer may, from time to 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 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 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.

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 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 21.2 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 21.2 may be relied upon by any prospective assignee, transferee or purchaser of Developer's interest in this Agreement, or any Leasehold Mortgagee 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.

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 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 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 (including Leasehold Mortgagees, Sublessee s as appropriate and applicable), except as may be otherwise provided herein.

Section 20.10 Vizcaya Station Plans

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 Vizcaya Metrorail Station 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.

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

Section 20.72 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 20.83 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 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. Further, the parties agree that the venue shall be in Miami-Dade County.

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 Documents Incorporated and Order of Precedence

County and Developer acknowledge that Miami-Dade County issued a Request for Proposals for Joint Development of Property at the Vizcaya Metrorail Station attached hereto as Schedule 22.18A, that Developer submitted its Proposal in response to that Request for Proposals attached hereto as Schedule 22.18B and that the Request for Proposals and Developer's Proposal was the basis for

award of this Agreement and upon which the County has relied. The Request for Proposals and Developer's Proposal are incorporated herein by this reference. If there is a conflict between or among the provisions of this Agreement, the Request for Proposals and the Proposal, the order of precedence is as follows: (i) the terms of this Agreement; (ii) the Proposal, (iii) the Request for Proposals for Joint Development of Property at the Vizcaya Metrorail Station, RFP No. ____.

Section 20.18 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
(Section 2-8.1.2(b) of the County 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> <p>F. Miami-Dade County Vendor Obligation to County Affidavit
(Section 2-8.1 of the County Code)</p> <p>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)</p> <p>H. Miami-Dade County Family Leave Affidavit (Article V of Chapter 11 of the County Code)</p> <p>I. Miami-Dade County Living Wage Affidavit</p> | <p>(Section 2-8.9 of the County Code)</p> <p>J. Miami-Dade County Domestic Leave and Reporting Affidavit
(Article 8, Section 11A-60 11A-67 of the County Code)</p> <p>K. Subcontracting Practices
(Ordinance 97-35)</p> <p>L. W-9 and 8109 Forms
(as required by the Internal Revenue Service)</p> <p>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:</p> <ul style="list-style-type: none">▪ 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 <p>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.</p> | <p>Miami-Dade Emplo</p> <p>Miami-Dade Disab</p> <p>Miami-Dade Coun</p> |
|---|---|--|

Section 20.19 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 as it pertains to the Request for Proposals solicitation, 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 Agreement voidable.

Section 20.20 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 Agreement.

Section 20.21 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 20.22 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

Miami-Dade County, Florida
RFP No. ____

County and Developer, or as constituting Developer as the agent or representative of the County for any purpose or in any manner whatsoever.

Section 20.23 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 or claims arising hereunder, nor is it intended that any third party shall be a third-party beneficiary of any provisions hereof.

Section 20.24 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.

Section 20.25 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 20.26 Standard or Conduct

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

Section 20.27 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 20.28 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 Constitution of the United States and as may be limited by Section 768.28 of the Florida Statutes.

Section 20.29 County Representatives Not Individually Liable

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

Section 20.30 Independent Private Sector Inspector General Review

In accordance with Section 2-1076 of the Miami-Dade County Code of Ordinances, 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 procurement processes, including but not limited to project

Miami-Dade County, Florida
RFP No. ____

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.
- D. 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 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 Federal and County Regulations

- A. Developer shall comply with the following statutes, rules, regulations and orders to the extent that these are applicable to this Agreement:
- 1) requirements found in 49 CFR Part 26.7 regarding nondiscrimination based on race, color, national origin or sex;
 - 2) 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;
 - 3) the Federal Transit Administration Master Agreement, Section 3, Subparagraphs (a)(1), (a)(2), and (b) thereof relating to conflicts of interests and debarment.
 - 4) Requirements found in Code of Miami-Dade County, Chapter 33C as it pertains to the Rapid Transit System Development Zone.
- 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

Miami-Dade County, Florida
RFP No. ____

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.

- 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 or the County to be in violation of the Act or the Resolution, such violation shall render this Agreement void. 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.

Miami-Dade County, Florida
RFP No. ____

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

COUNTY

ATTEST:
HARVEY RUVIN, CLERK

BY ITS BOARD OF COUNTY COMMISSIONERS

By:_____

By:_____

Miami-Dade County, Florida
RFP No. ____

Signed in the presence of:

DEVELOPER

Print Name: _____

By: _____

Print Name: _____

Signed in the presence of:

By: _____

Print Name: _____

Print Name: _____

Notarizations begin on following page.

Approved as to form and legal sufficiency

Print Name: _____

Miami-Dade County, Florida
RFP No. ____

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

The foregoing instrument was acknowledged before me this ____ day of _____,
2019, 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:

Miami-Dade County, Florida

RFP No. ____

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

The foregoing instrument was acknowledged before me this ____ day of _____,
2019

, 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:

Miami-Dade County, Florida
RFP No. ____

Schedule 1.1

Development Site

DRAFT

Miami-Dade County, Florida
RFP No. ____

Schedule 1.4A

Developer's Development Plan

DRAFT

Miami-Dade County, Florida
RFP No. ____

Schedule 1.4B

Project Schedule

DRAFT

Miami-Dade County, Florida
RFP No. ____

Schedule 1.6

Ground Lease

DRAFT

Miami-Dade County, Florida
RFP No. ____

Schedule 3

Payment of the Security Deposit, Development Fee, and Rent Schedule

DRAFT

Miami-Dade County, Florida
RFP No. ____

Schedule 4.15

Small Business Enterprise Requirements Package

DRAFT

Miami-Dade County, Florida
RFP No. ____

Schedule 4.16

Building Construction Responsible Wages and Benefits Requirements

DRAFT

Miami-Dade County, Florida
RFP No. ____

Schedule 21.1

County's Estoppel Certificate

DRAFT

Miami-Dade County, Florida
RFP No. ____

Schedule 22.18A

Request for Proposals (RFP) No. 945

DRAFT

Miami-Dade County, Florida
RFP No. ____

Schedule 22.18B

Developers Response to Request for Proposals (RFP) No. 945

DRAFT

DRAFT

**Joint Development of Property at the
Vizcaya Metrorail Station**

**Draft
Form of Lease**

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ATTACHMENTS:

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Schedule 3	Rent
Schedule 4.1	Development Plan (Project/Phase Description)
Schedule 4.2	Project Schedule
Schedule 4.23	Landlord's Estoppel Certificate

DRAFT

Sample Lease for Joint Development of Property at the Vizcaya Metrorail Station

THIS AGREEMENT OF LEASE, dated as of the ____ day of _____, 20____, 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 _____, having an office and place of business at _____ hereinafter called "Tenant").

W I T N E S S E T H:

- 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").
- B. Landlord has a material interest in rapidly developing the site to its highest and best use and focusing density around the Vizcaya Metrorail Station (the "Station").
- C. Landlord recognizes the potential for public and private benefit through a joint use development of the Demised Premises, as defined herein, in order to promote usage of transit facilities and to further economic development in Miami-Dade County.
- D. 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 Development Plan.
- E. Tenant has satisfied the conditions required to commence construction and execute this Lease in accordance with the terms of the Development Agreement.
- F. Landlord desires to lease to Tenant, and Tenant desires to lease from Landlord, the Demised Premises, to enable Landlord and Tenant to develop a unified project.

G. 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 (d) the Metrorail Joint Use Policy contained in Resolution R-1443A-81, adopted on September 28, 1981; 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 the Term.

Section 1.2 Term of Lease

- A. The initial term of this Lease shall be ____ years, commencing on the Effective Date with ____ additional renewal term(s) each having a term of ____ years with the final term ending on the date which is ____ years from the Effective Date. The obligation to pay rent shall begin on the Effective Date.
- B. Renewal terms shall be automatic provided that the following conditions are met:
- 1) An adjustment in rent to reflect Fair Market Value (as defined herein) of the property is determined and agreed to by the parties pursuant to this Lease;

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- 2) No event of Default under this Lease exists and remains uncured at the time such option is extended; and
 - 3) Tenant is current on any and all other obligations to Landlord and under the Lease.
- C. The renewal terms shall commence on the day following the expiration of the previous term of this Lease. The terms and conditions of the Lease during the renewal terms shall be the same terms and conditions as are applicable during the initial term of this Lease with the exception that Tenant's Annual Rent obligations during the renewal period shall be determined in accordance with the terms of Section 3.5.
- D. Landlord shall deliver possession of the Demised Premises on the Effective Date at which time Tenant may take possession thereof. Landlord further agrees that prior to the Effective Date, Tenant may enter upon the Demised Premises, in accordance with the terms of the Development Agreement, to perform studies, tests, evaluations and similar type inspections in coordination with Miami-Dade Department of Transportation and Public Works (DTPW).

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 have approved the execution of the Development Agreement, all applicable provisions of the Development Agreement for a Lease to become effective have been met and the first payment of Initial Rent has been paid to Landlord.

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 a recognized institutional Lender such as a bank, savings bank, savings and loan, pension fund, insurance company, real estate investment trust or other real estate investment entity (provided such financing commitment is in full force and effect, and Tenant has complied with

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all material terms and conditions thereof), equal in the aggregate to the total cost of construction of the Project/Phase, to the extent such financing is being obtained, and to the extent no financing is being obtained, proof of the ability to provide the financing by Tenant, in the form of a letter of credit from such recognized institutional lender, or in a form reasonably acceptable to Landlord, equal in the aggregate to the total cost of construction of the Project/Phase;

- 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 Fees; and
- C. Tenant shall have previously complied with terms of this Section 1.4C as a condition precedent under the Development Agreement to Commence Construction and enter this Lease. Accordingly, this Section 1.4C shall be applicable in the event of redevelopment of the Project/Phase and/or rebuilding of the Improvements.
- D. Tenant and Landlord agree that all construction and development plans within the Demised Premises or such plans for development that may impact any County facilities and/or operations whether existing or proposed 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.

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The drawings and calculations shall include, but not be limited to, the following, as required by Landlord in its sole discretion:

- 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;
- 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

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Safety Manual and the Miami-Dade Transit Adjacent Construction Safety Manual or their replacements, as applicable.

Landlord reserves the right at all times to disapprove of 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 and/or to request additional information. If the Landlord, in its sole discretion, determines that activities undertaken or authorized by the Tenant, or planned to be undertaken or authorized by the Tenant, may impact 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 coordination of any payment all costs incurred by the County in providing County employees or representatives 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 immediately mitigate all such impacts as specified by the Landlord and Tenant shall immediately remediate all damage or impacts caused by activities performed or authorized by the Tenant, to the satisfaction of the Landlord, at Tenant's sole expense. If such activities cause disruption or interruption to normal County operations, 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 discretion, determines to be potentially hazardous to County facilities, operations, 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.

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/Phase or any materials are purchased from a supplier, 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/Phase. 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 (Alternate 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/Phase have been paid in full and a Certificate of Occupancy has been issued for the Project/Phase; and
- B. Require that each prime contractor hired by Tenant to perform work and/or make improvements on the Project/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 construction work shall be completed by the contractor or, on its default, its surety shall name the County as an additional obligee and shall meet the specifications set forth below; and

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- C. Require each prime contractor hired by Tenant to perform work and/or make improvements on the Project/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/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:

- E. Obtain a conditional release of lien from each of its prime contractor(s) at the time each progress payment is made;
- F. Obtain an unconditional release of lien from each of its prime contractor(s) within five (5) business days after payment is made; and
- G. 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
 - 2) Appropriate funds for such payment(s) from any cash deposit(s) of 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 Land 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 Land 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.

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 3.15.
- C. Affiliate shall mean any entity that directly or indirectly controls, is controlled by or is under common control with the designated entity or any officer, director, managing or general partner, or member of such designated entity whether such control is through contract, equity interest, management authority or otherwise.
- D. Annual Rent shall have the meaning ascribed to such term in Section 3.2 herein.
- E. Assignment shall have the meaning ascribed to such term in Article 17 herein.
- F. Board shall mean the Board of County Commissioners of Miami-Dade County, Florida.
- G. 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.

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- H. 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.
- I. Closing shall mean the execution and delivery of this Lease, payment 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 at which time the County delivered this Lease to Tenant and Tenant has possession of the Demised Premises and the Lease provisions are effective subject to this Development Agreement.
- J. 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.
- K. Code shall mean the Code of Ordinances of Miami-Dade County, as amended from time to time.
- L. Commencement of Construction, Construction Commencement and "commenced" when used in connection with construction of the Project/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/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 building permit(s) necessary to begin construction for the Project/Phase.
- M. 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,

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payment(s) or compensation in any form, regardless of the designated use or the term applied to such payments or compensation.

N. 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.

O. Construction Plans shall consist of final design plans for particular Improvements as approved by Miami-Dade County, the drawings and specifications for which are in the format with sufficient detail as required to obtain building permits for such improvements and as further described in Section 4.6.

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

Q. Demised Premises shall mean the property described in Schedule 1.1 attached hereto and made a part hereof, leased to Tenant pursuant hereto, which shall be subject to the provisions of this 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 is 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 and occupy the space located in the Public Areas of the Demised Premises which maybe temporarily occupied by patrons using County facilities, County employees and/or representatives, as well as the

transportation of baggage, mail, supplies and materials of such passengers and the County, 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) Tenant shall provide a minimum of 100 parking spaces within the Demised Premises at all times for the exclusive use of the County; and
- 6) County reserves the right to exclude existing or proposed streets and sidewalks from the Demised Premises which provide and accommodate access to and from the Project and County facilities, the System, the Station, bus terminals, stops and shelters, any government agency's property or facility, or any third party(ies)' property or facility.

IT BEING UNDERSTOOD between the parties hereto that no portion of the Metrorail System or County facilities are leased or intended to be leased to Tenant and that all portions of the Metrorail System are expressly 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.

- R. 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 Development Plan.
- S. Development Plan shall mean the development plan for the entire Development Site as set forth in Schedule 4.1.

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- T. 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 Development Plan as set forth in Schedule 4.1.
- U. Effective Date shall mean the first day of the month following the date on which this Lease becomes effective.
- V. Event(s) of Default shall have the meaning ascribed to such term in Article 19 herein.
- W. Fair Market Value shall be that sum which, considering all of the circumstances, would be arrived at by good faith, fair, arm's-length negotiations between an owner willing to sell and an independent third-party purchaser willing to buy, neither being under any pressure.
- X. Final Design Plans shall mean the final plans and specifications.
- Y. Financing Agreement shall mean any loan or financing agreement, other than a Leasehold Mortgage, obtained or entered into for the purpose of financing any portion of the Project, leasehold interest, or Improvements including a mezzanine financing agreement, or preferred equity loan(s).
- Z. 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.
- AA. 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.

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- BB. Including shall always mean "including but not limited to".
- CC. Initial Rent shall have the meaning ascribed to it in Section 3.2.
- DD. Land shall mean the real property described in Schedule 1.1 hereto.
- EE. 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. Thereafter, "Landlord" shall mean the owner at the time in question of Landlord's interest in the Demised Premises.
- FF. 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.
- GG. Lease shall mean this Lease and all attachments, amendments, supplements, addenda or renewals thereof.
- HH. 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.
- II. 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 include any mortgage by which this Lease has been encumbered.

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- JJ. Leasehold Mortgagee shall mean the recognized lending institution meeting the requirements specified in Section 17.2 that is or becomes the holder, mortgagee or beneficiary under a Leasehold Mortgage and the successors or assigns of such holder, mortgagee or beneficiary.
- KK. Lender shall mean any Leasehold Mortgagee or any other recognized lending institution providing financing for the Project or Phase of the Project, leasehold interest or Improvements, including but not limited to, any mezzanine financing source or preferred equity lender.
- LL. Metrorail System or System shall mean the Miami-Dade County elevated mass transit System including, without limitation, all trains, fixed guideways, stations, parking lots and parking structures, drop off/pickup areas, bus terminals, bus stops and shelters, bus bays, maintenance facilities, and all associated facilities and structures required in the operation of the System.
- MM. Milestones shall have the meaning as ascribed to such term in Section 4.2 herein.
- NN. 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.
- OO. 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.
- PP. 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.

Phase ____ of the Vizcaya Metrorail Station Property Lease

- QQ. 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.
- RR. Plans and Specifications shall mean the plans and specifications for all the work in connection with the alteration, construction and reconstruction of the Project/Phase required to be done or performed hereunder and shall include any changes, additions or modifications thereof, provided the same are approved as provided herein.
- SS. Project shall mean the overall joint development, including all Phases of the Project, contemplated by the response by Tenant (Proposal) to the Request for Proposal for Joint Development of Property at the Vizcaya Metrorail Station, as such proposed development may be amended and/or revised from time to time.
- TT. 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 based upon the Developer's/Tenant's proposal in response to RFP No. Joint Development of Property at the Vizcaya Metrorail Station, as approved by the County/Landlord and subject to Unavoidable Delays and duly requested changes which are approved by the County/Landlord in writing.
- UU. Proposal shall have the meaning ascribed to such term in Section 23.17.
- VV. 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 including any connection to the Station but not include common areas in the respective residential, office or the commercial components.
- WW. Redevelopment shall have the meaning ascribed to it in Section 3.6.
- XX. Rent shall collectively mean Initial Rent, Annual Rent and Additional Rent.

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- YY. 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).
- ZZ. Scheduled Closing Date- shall mean the date Closing occurs for the Project/Phase upon satisfaction of the Closing Conditions as set forth in the Development Agreement.
- AAA. 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.
- BBB. 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.
- CCC. 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.
- DDD. 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 but not limited to, a space lease and/or license agreement, and whereby the original Tenant retains all obligations under the Lease.
- EEE. Sublessee shall mean the entity to which a Sublease is granted or its successors or assigns under any such Sublease.

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

GGG. Tenant shall mean, on the Effective Date, _____, a _____.

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

HHH. 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 may 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, within fifteen (15) days after it has become aware of such Unavoidable Delay, gives 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 being of the essence, failure to give notice to the other party of the existence of Unavoidable Delays within the fifteen (15) days of its discovery by a party shall void its entitlement to any extension of time.

III. Vizcaya Metrorail Station shall mean the County-owned property, as described in Schedule 1.1, and all facilities associated with that station.

JJJ. Vizcaya Metrorail Station Facilities shall mean the County-owned and operated facilities of the Vizcaya Metrorail Station including, without limitation, all buses, parking lots and parking structures, drop off/pickup areas, bus stops and shelters, bus bays, streets and sidewalks, maintenance facilities and all associated equipment, infrastructure, and structures required in the operation of the Vizcaya Metrorail Station.

KKK. Intentionally deleted.

LLL. Work to 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.

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 thereon including Impositions

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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 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/Phase or upon the ____ anniversary of the Effective Date, whichever occurs first, and during remaining term of this Lease, Tenant shall pay to Landlord Annual Rent. Subsequent Annual Rent payments shall be payable in advance as set forth in Schedule 3 without notice or demand from Landlord.

Section 3.4 Annual Adjustments to Rent

Following the first full Lease Year, as defined in Article 2 above, and following the full first Lease Year of any renewal term, if applicable, Annual Rent, shall be adjusted annually as follows:

1) Property Value Increase

The Annual Rent then in effect shall be increased by three percent (3%) to account for the average annual increase in property values.

2) Consumer Price Index Adjustment

In addition to the Property Value Increase described above the Annual Rent shall also be adjusted to reflect any increase in the Consumer Price Index for the preceding Lease Year. The adjustment shall be equal to any increase in the Consumer Price Index (“CPI”) published by the U.S. Department of Labor for the following categories: United States, All Urban Consumers, All Items in Miami-Fort Lauderdale-West Palm Beach, FL, all urban consumers, not seasonally adjusted. The base of the index for computation of the increase, if any, shall be the month of the anniversary of the Effective Date or commencement of the calendar year, as determined by the County. If no publication is made for the anniversary month, the base shall be the last preceding month for which publication is made. The index for the month of the anniversary of the Effective Date shall be compared annually to determine the percentage increase and the resulting percentage shall be applied to the Annual Rent to be paid for the ensuing year. Landlord shall advise Tenant, of any increase in the Annual Rent resulting from such computation and the Tenant shall pay the amount of such increase retroactively to the effective date thereof within thirty (30) days of notification by Landlord. If the CPI is discontinued or replaced, or if the items incorporated in the CPI are revised, an equitable adjustment will be made to result in developing a formula to be used to calculate an annual adjustment to reflect any decline in the purchasing power of the Annual Rent.

In the event of Redevelopment of the Project or Phase as defined in Section 3.6 below then the Annual Rent shall be adjusted as described in Section 3.6 or Article 11, as applicable.

Section 3.5 Rent Adjustment in Renewal Terms

The Annual Rent due to Landlord during any renewal term of the Lease shall be adjusted prior to the commencement of the renewal term as described in this section below, however, in no event shall the amount of the Annual Rent established for any renewal term be less than the amount of the Annual Rent, which was due to Landlord in the last year of the preceding Lease term.

- A. Within sixty (60) days after the commencement of the penultimate Lease Year prior to any renewal term Landlord shall give notice to Tenant and Tenant shall give notice to Landlord in writing that it has hired, at its expense an appraiser to determine the fair market value of the Land and fair market rental value of the Land as unimproved and free of the Lease (thereby allowing the Land to be appraised at its highest and best use). 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 Land 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 Acquisitions (UASFLA). Each appraiser shall promptly complete the above described appraisals.
- B. Each party shall concurrently provide a full copy of the appraisal to the other party at a mutually agreed upon date which shall not be less than eighteen (18) months prior to the expiration of the applicable Lease term.

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- C. If the fair market rental value of the Land as determined by the two (2) appraisals varies by less than fifteen percent (15%), then the average of the two fair market rental values shall be established as the Annual Rent for the forthcoming renewal term.
- D. If the 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 fair market rental value as determined by the third appraisal shall be averaged with the fair market rental value as determined by the appraisal closest to that of the third appraisal.
- E. The average of the two fair market rental values shall be established as the Annual Rent for the forthcoming renewal term.
- F. In the event that one of the parties fails to fully comply with the requirement to hire an appraiser within sixty (60) calendar days of the commencement of the penultimate Lease Year prior to any renewal term, the compliant party shall provide written notice to the non-compliant party and allow an additional thirty (30) calendar days from the receipt of such notice for the non-compliant party to hire an appraiser with the above described qualifications and to provide notice to the compliant party of same. Failure to hire an appraiser and notify the compliant party within the thirty (30) day notice period will waive such right of the non-compliant party to hire an appraiser pursuant to this section of the Lease. If the non-compliant party fails to hire an appraiser and to provide notice of such hiring within thirty (30) calendar days following receipt of such notice, then the party which has complied shall have the right to hire an appraiser meeting the requirements described in A above and to proceed to determine the new

Annual Rent with that appraisal as if it had been performed by the non-compliant party. The compliant party shall notify the non-compliant party within thirty (30) calendar days of exercising its right to hire an appraiser pursuant to this section of the Lease.

- G. In the event that, under the appraisal procedures described above, the new Annual Rent established thereby is an increase of thirty-five percent (35%) or more over the Annual Rent due to Landlord in the Lease Year immediately preceding the appraisals, Tenant may elect prior to the expiration of the then applicable term of the Lease, to either pay the new Annual Rent upon commencement of the renewal term or to expand the existing Project/Phase or to redevelop as described below.

Section 3.6 Expansion or Redevelopment of Project/Phase

In the event that Tenant elects to expand, redevelop, or significantly alter or change the scope or land use of the Demised Premises (hereinafter "Redevelopment"), Tenant shall, prior to expiration of the existing Lease term, submit to Landlord preliminary plans for the Project/Phase Redevelopment and reasonable and supportable projections of income anticipated to be generated by the Redevelopment. The proposed Redevelopment must be reasonably expected to generate income to Tenant which will support the new Annual Rent as determined by the appraisal procedure described in Section 3.5 above.

If Landlord agrees to the expansion or redevelopment, the following shall apply:

- A. Tenant shall comply with all provisions of the Lease, including but not limited to, Articles 1 and 4.
- B. Completion of Construction as evidenced by a Certificate of Occupancy must occur no later than five (5) years from the commencement of the applicable renewal term, subject to Unavoidable Delays.

Phase ____ of the Vizcaya Metrorail Station Property Lease

C. If the new Annual Rent as established by the procedure described in Section 3.5 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 the expansion or redevelopment of the Project/Phase for a maximum period of four (4) years ("Redevelopment Period"). However, the adjusted Rent due to Landlord during the Redevelopment Period cannot in total be less than 50% of the new Annual Rent (as established by the appraisal process) that would be due to Landlord over the Redevelopment Period and the total amount of Rent due to Landlord over the entire Lease renewal term shall not be less than 130% of the amount of Annual Rent due for the Lease Year preceding the Redevelopment Period multiplied by the number of years in the renewal term.

Additionally, Tenant may be entitled to a reduction in the new Annual Rent during the Redevelopment Period only if the following deadlines are met:

- 1) Commencement of Construction of the expansion or redevelopment must take place within eighteen (18) months of commencement of the applicable renewal term;
- 2) Tenant must have completed _____ square feet (which is 25% percent of the entire Project/Phase proposed) of the expansion or redevelopment prior to the end of the second Lease Year in the applicable renewal term; and
- 3) Tenant must have completed _____ square feet (which is 75% percent of the entire Project/Phase proposed) of the expansion or redevelopment prior to the end of the third Lease Year in the applicable renewal term.

In the event that Tenant fails to meet any of the above described deadlines, Tenant shall pay to Landlord, retroactively, the difference between the new Annual Rent and the amount of Rent actually paid, for the period of time that the applicable deadline was not met.

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In the Lease Year following the Redevelopment Period, Tenant shall pay the new Annual Rent as established by the appraisal process which shall be subject to annual adjustments as described in Section 3.4 of this Lease.

Notwithstanding the above, if the new Annual Rent as established by the procedure described in A through G of Section 3.5 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 year in which the appraisal process was completed then, upon commencement of the renewal term, Tenant shall pay to Landlord the new Annual Rent which shall be subject to annual adjustments as described in Section 3.4 of this Lease.

Section 3.7 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 3.8 Restrictions Enacted After Award

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 Development 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/Phase

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as described. If, due solely to Laws and Ordinances enacted subsequent to award of the Lease, the Tenant is not able to build the Project/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 shall 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/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, shall 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 3.9 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. It is the intent of the parties that any benefits accruing to Tenant as a result of any sale, assignment or transfer of any interest of the Tenant be shared with Landlord, regardless of the method used to accomplish such transfer, which may include, but not be limited to, sale, assignment, financing and refinancing agreements and transfers of stock, partnership interest or equity. Accordingly, in the event that, prior to the Completion of Construction of the Project/Phase, Tenant sells, assigns or transfers all or any portion of the Project/Phase, its leasehold interest, or ownership interest in Tenant (including stock, partnership interest, or any other equity) and as a result thereof Tenant retains less than a fifty percent (50%)

interest in such portion of the Project/Phase, its leasehold interest, or ownership in Tenant, Tenant shall pay Landlord fifty percent (50%) of the proceeds of such sale, assignment or transfer less a proportionate share of the hard costs expended by Tenant for Improvements for such portion of the Project/Phase, which costs must be verifiable and documented in a form acceptable to Landlord. Tenant shall pay Landlord's share of the proceeds at the closing of such sale, assignment, transfer.

In the event that such transfer occurs after Completion of Construction, Tenant shall pay ten percent (10%) of the of the proceeds of such transaction to Landlord. Tenant shall pay Landlord's share of the proceeds at the closing of such sale, assignment, transfer.

The payments to Landlord under this section shall be in addition to and with no offsets for any other rents or payments to which Landlord is entitled under any other provisions of this Lease.

Notwithstanding the forgoing, if Tenant is a joint venture or a consortium or similarly structured entity, within one (1) year of Completion of Construction and issuance of a Certificate of Occupancy for any Phase, Tenant may assign the Phase, one time only, to any one or more member(s) of such joint venture or consortium or similarly structured entity without payment to Landlord. Any additional assignments shall be subject to the above described payment to Landlord.

Section 3.10 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 3.11 No Subordination of Rent

The Rent payable to Landlord hereunder shall not, in any event, 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 other Tenant obligation and Landlord shall at all times have a first priority right to payment of Rent.

ARTICLE 4

Development of Land and Construction of Improvements

Section 4.1 Development Plan/Land Uses

- A. The Development Plan which describes the overall development concept for the entire Development Site is attached hereto as Schedule 4.1 and is made a part hereof.
- B. The Tenant shall develop and construct the Project/ Project Phase on the Demised Premises in substantial conformity with the Development Plan as set forth in Schedule 4.1.
- C. 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 facilities;
 - 2) Creates strong access links between the Demised Premises and transit facilities;
 - 3) Provides a physical connection between the development and the Vizcaya Metrorail 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 Development Plan set forth in Schedule 4.1.
- D. 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 deems 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 (if applicable)

A phased development approach has been proposed by Tenant and approved by Landlord to develop the entire Development Site offered for development in Request for Proposals No. ____, Joint Development of Property at the Vizcaya Metrorail Station, in Phases in accordance with the Development 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 Development Plan as set forth in Schedule 4.1.

Milestones for the Project or Phase ____ of the Project, as applicable, are set forth in Schedule 4.2 (Project Schedule) 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 Development Plan and in accordance with the Project Schedule, as approved by 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 Agreement, as may be necessary for Tenant to develop and use the Demised Premises in accordance with the Preliminary Plans and/or Proposal and in a manner otherwise permitted hereunder, provided that such joinder by Landlord shall not be at any 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 not be estopped from withholding or refusing to issue any approvals of applications for building or zoning; from exercising its planning or regulatory duties and authority; and from requiring development under present or future Laws and Ordinances of whatever nature applicable to the design, construction, 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/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 Proposal or that development approvals or permits will be issued for the uses contemplated in the Proposal. The Tenant shall be solely responsible for obtaining all such 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 development 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 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 federal, state, county and local laws and regulations, including applicable provisions of the Miami-Dade Transit Construction Safety Manual and the Miami-Dade Transit Adjacent Construction Safety Manual or their replacements. It should be noted that the construction manuals 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 of the Project/Phase and/or rebuilding of the Improvements.

- A. Tenant shall submit design and construction documents to DTPW for review, coordination and approval at the different stages of the Project/Phase. For each submittal, Tenant shall submit eight (8) sets of prints with the date noted on each print.

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- B. At fifteen percent (15%) of the overall design completion of the Project/Phase, Tenant shall submit conceptual site layouts and plans, sections, and elevations to DTPW for review in conformity with applicable building codes, federal, state, county and local laws and regulations, including applicable provisions of the Miami-Dade Transit Construction Safety Manual or its replacement.
- C. At eighty-five percent (85%) design completion of the Project/Phase, Tenant shall submit drawings, conceptual site layouts and plans, sections, elevations and pertinent documentation to DTPW for review.
- D. At one hundred percent (100%) design completion of the Project/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 Plans in an expeditious manner.

F. Upon the approval of the Final Design Plans for the Project/Phase, such design shall be the construction plan for the Project/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/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/Phase prior to submittal for the building permits for the Project/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

Subject to the rights of Leasehold Mortgagees, Tenant shall assign to Landlord all of Tenant's right, title and interest in and to all construction and design contracts and Design and Construction Plans and all preliminary, final and working plans, the Development 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, Developer shall include a provision in each contract with any architect, engineer, general contractor, sub-contractor, design/builder, construction manager that vests the Landlord with all right, title and interest to the such Design and Construction Plans, all preliminary plans and in such work product, should an event of default occur and the affected Leasehold Mortgagee under any Lease executed pursuant to this Agreement, if any, does not elect to construct and compete the improvements. Such assignment must include an acknowledgement by the architect, engineer, general contractor, sub-contractor design/builder, construction manager that the contract has been assigned to the Landlord and, subject to the rights of Leasehold Mortgagees, the parties consent to such assignment and will perform its obligations under such contract if all sums

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due under the contract are paid and that such contracts may not be modified without Landlord's consent.

Notwithstanding the foregoing, Landlord shall not exercise any of its rights as assignee unless and until this Lease has been terminated and each Leasehold Mortgagee has failed to timely exercise its right to a lease in reversion as provided by Section 17.5 of this Lease.

Section 4.7 "As-Built" Plans

At the completion of the entire Project/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 approvals necessary prior to, during and after construction. DTPW approval of any plans shall not relieve Tenant of its obligations under 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 obtain issuance of such Permits and approvals. Landlord agrees to cooperate with Tenant in connection with the obtaining of such approvals and Permits. Tenant acknowledges that any approval given by DTPW, as Landlord pursuant to this Article 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 such approval shall not impose any liability upon DTPW. Tenant shall include a provision in each Leasehold Mortgage which will vest Landlord 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 re-platting 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 of building permits, building inspections and issuance of certificates of occupancy. Tenant shall provide a minimum of 100 parking spaces within the Demised Premises at all times for the exclusive use of the County and transit patrons.

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 of the Project/Phase and repair 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 land use and/or development orders and permits that may be required in connection with the redevelopment, rebuilding and/or repair of the Project/Phase. Tenant shall be solely responsible for duly obtaining all final, non-appealable land use and/or development orders and permits in connection with the redevelopment, rebuilding or repair of the Project/Phase. Any extension of any time period contained within the land use and/or development orders and permits will not 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.

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 may 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/Phase. 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.

Section 4.13 Station Plans

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

Section 4.14 Site Conditions

Tenant acknowledges that, County offered to provide certain environmental reports it may have had in its possession to Tenant, 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 and the

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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 for the 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 payments, financial benefits and/or adjustment of Rent payments as a result of issues related to site conditions. Further, Tenant shall not be entitled to an extension of any applicable time frame or deadline under this Lease in the event that any abnormal site conditions are found to exist unless the site 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 and lengthened construction schedules resulting from such conditions.

Section 4.15 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/Phase (excepting all County facilities) shall, upon being added thereto or incorporated therein, and the Project/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 4.16 Mutual Covenants of Non-Interference

Landlord's operations and use of its facilities is paramount. Tenant's development and construction of the Project/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 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 shall make reasonable efforts to avoid interference with Tenant's development and construction of the Project/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 operations and Tenant's development, the County 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, its operations, the public or of the users of such facilities or of any employees, agents, licensees and permittees of Landlord is jeopardized. Any such slowdown or stoppage may be deemed to be an Unavoidable Delay and may 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 4.17 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, communications equipment and other utilities, whether or not owned by Landlord. Tenant shall pay for the additional cost, if any, of locating and installing new facilities for sewer, water, electrical, and other utilities as needed to service the Demised Premises and for any extension, relocation and/or upgrading of utilities including utilities serving County facilities.

Section 4.18 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 4.19 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 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>

Section 4.20 Off-site Improvements

Unless otherwise agreed to by the Parties, 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 (e.g., streets, streetlights, sidewalks, utility infrastructure, landscaping, etc.) shall be paid or contributed by Tenant.

Section 4.21 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.

Section 4.22 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.

Section 4.23 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 4.25 Responsible Wages

The Tenant acknowledges and agrees that it is required to pay to all workers Responsible Wages, in accordance with Section 2-11.16 of the Code. Tenant shall complete the Fair Wage Affidavit and comply with the requirements of Schedule 4.25 “Building Construction Responsible Wages and Benefits Requirements”.

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, provided, however, that:

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- 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 accrues 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.

An event of default occurs if (a) Tenant fails to discharge or contest any Imposition as provided herein within 90 day of actual or constructive notice of said Imposition; or (b) 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.

Tenant shall protect and indemnify Landlord against all loses, 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 Land, 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 Land become subject to ad valorem taxation, for any reason, then Tenant shall be responsible for and pay such taxes.

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 Section 5.1 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.

Landlord shall not be required to join in any proceedings referred to in this Section 5.2 unless the provisions of any law, rule or regulation at the time in effect 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 Demolition Account

A minimum of five (5) years prior to the expiration of this Lease, or as otherwise may be reasonable, Landlord shall notify Tenant if the Improvements are to remain at the expiration of the Lease or be demolished by Tenant upon the Lease termination. If Landlord notifies Tenant that the Improvements, or any portion thereof, are to be demolished for any reason under this Lease, a Demolition Account shall be established by Tenant and used to pay for Tenant's obligations to demolish the Improvements, or applicable portion thereof, upon expiration, or early termination of this Lease and in any other event under this Lease in which the Improvements, or applicable portion thereof, are to be demolished. Landlord, in its sole and absolute discretion, shall determine the

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Improvements to be demolished and/or removed and the extent of such demolition and/or removal which may include the removal of utilities and/or infrastructure including the underground portion of Improvements, utilities and/or infrastructure. Upon such termination, 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, or applicable portion thereof, and not a Lease; however, all terms and conditions shall be applicable except Rent shall be abated. Tenant shall maintain the Improvements until they are demolished in accordance with the requirements herein.

Within thirty (30) days after delivery of the notice that the Improvement, or applicable portion thereof, are to be demolished at the expiration of the Lease, Tenant shall secure bids from three (3) licensed contractors for the demolition of the Improvements. Tenant shall, on the first day of the month following the month in which Landlord gives Tenant notice of its election to have the Improvements demolished, establish a trust account to cover the Tenant's demolition obligations and commence making periodic payments into such account as mutually agreed to by Tenant and Landlord which by the expiration of the Lease shall equal the average of the three (3) bids for the demolition plus 10% (or greater if circumstances reasonably dictate that the cost may exceed the average of the three bids) to cover the costs of Tenant's demolition and Tenant shall have selected the contractor for demolition. Tenant shall apply the funds in such trust account towards Tenant's demolition obligations, except to the extent insurance proceeds are to be applied to such costs in accordance with this Lease. The actual amount of the funds in such trust account shall not limit Tenant's obligation to demolish the Improvements, or applicable portion thereof, nor Tenant's obligation to pay for the entire cost of such demolition.

Within one hundred and twenty (120) days of the expiration of the Lease, Tenant shall have completed demolition and removal of the Improvements, or applicable portion thereof, restored the Demised Premises, or applicable portion affected by the demolition and removal, to a level,

unimproved, vacant state with all debris removed, all excavations filled in, free of any hazardous material and contamination and free of all liens, claims, encumbrances and this Lease. Tenant shall adequately secure the site during such demolition Work. All amounts in such demolition trust account not expended upon complete satisfaction of the foregoing shall be property of Tenant. Tenant's demolition and removal of the Improvements shall be performed in a good and workmanlike manner and in compliance with all Laws and Ordinances.

Section 6.2 Surrender of Demised Premises

If not demolished in accordance with Section 6.1 above, 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 and all outstanding obligations 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 completely remove any hazardous materials or contamination found. The Landlord and Tenant 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.

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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 6.3 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 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 6.4 Rights to Personal Property After Termination or Surrender

Any personal property of Tenant which remains 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, 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 costs associated with the removal and disposal of such personal property.

Section 6.5 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 not 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 amended including but not limited to a claim against Landlord's imposition of Rent pursuant to this Lease.

Section 6.6 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.

Section 7.2 Required Insurance Limits.

A. In the event of redevelopment, rebuilding or repair of the Improvements, the following insurance shall be maintained during the design process:

- 1) Worker’s Compensation Insurance for all employees of the Selected Proposer 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.
- 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 insurance shall be maintained as follows:

- 1) Worker's Compensation Insurance for all employees of the Tenant 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) 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 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. 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 insurance shall be maintained as follows:

- 1) Worker’s Compensation Insurance for all employees of the Selected Proposer 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) 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/Phase or any portion thereof with coverage utilizing a gross income value with limits equal to no less than twenty-four (24) 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 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 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 may 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 Tenant evidence of payment of the full premium thereof prior to the expiration of such policy.

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 policies 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 policies 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
 - 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.

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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.

Any acceptance or approval of any insurance agreement or agreement by the Landlord shall not relieve or release or be constructed 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 are 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 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.

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,

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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 Premises or (e) in connection with any Sublease, is a Condition of Rights Granted by Tenant to any Sublessee. 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 and Tenant acknowledges that elevated noise levels and certain particles and sediments result from transit operations that 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

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any costs, losses, injuries or damages resulting from elevated noise levels and particles or sediments caused by the operation of the Metrorail trains and/or Metrorail 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 as a result of the early termination or expiration of this Lease, and/or (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 those related to (a) diminution of value, business damages, special damages, severance damages, loss of profits, and/or (b) removal costs, Subtenant claims, zoning requirements, plans and specifications, design costs, contractor costs, permitting costs, relocation costs, costs of compliance with laws and ordinance, any other direct or indirect costs, and/or (c) 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 is free to perform and exercise its rights under this Lease and have 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 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/Phase and County facilities. Tenant 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 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 does 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/Phase, Landlord and Tenant hereby agree to maintain and repair, and each party is given the right to replace, relocate, and remove, as necessary,

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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;
- 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/Phase, including reasonable use of existing easements benefiting the Land and adjoining rights of way to the Land, 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 law, Tenant has 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.

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- B. The following types of signs and advertising may be allowed, to the extent allowed by law, 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 may remove any signs which, from time to time, may have become obsolete, unfit for use or which are no longer useful, necessary or profitable in the conduct of Tenant's business, or in the occupancy and enjoyment of the Demised Premises by Tenant, or any Sublessees.
- D. As used in this Lease, "sign(s)" shall be deemed to include any display of characters, letters, illustrations, logos or any ornamentation designed or used as an advertisement or to indicate direction, irrespective of whether the same be temporary or permanent, electrical, illuminated, stationary or otherwise.
- E. Tenant is entitled but not required to rent or collect a fee for the display or erection of signs and advertisements.

Section 8.5 Landlord's Signs Upon Demised Premises

Signs, 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 may place directional signs within the Vizcaya Metrorail Station at the sole expense of Tenant and at locations and in sizes mutually agreed to by Landlord and Tenant.

ARTICLE 9

Repairs and Maintenance of the Premises

Section 9.1 Tenant Repairs and Maintenance

Tenant is solely responsible 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 Developer. 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 and make all necessary repairs thereto in accordance with the standards of operation and maintenance of first class properties similar to the Project/Phase. The term "repairs" includes 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/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 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

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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.

Landlord shall not 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/Phase, or redevelopment or reconstruction of the Project/Phase as permitted by this lease, no excavation of any of the land may be made, no soil or earth may be removed from the Demised Premises, and no well of any nature may 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/Phase.

Once constructed, Tenant shall not make any substantial alterations to these facilities 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.

Section 9.2 Landlord Repairs and Maintenance

Landlord shall keep and maintain in good condition and repair the Vizcaya Metrorail Station, (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 loss by fire or other casualty excepted. The term "repairs" includes all replacements, alterations, additions and betterments deemed necessary by Landlord. 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. Landlord shall not be required under this Lease to furnish any services, utilities or facilities to the Demised Premises or Improvements thereon. Any such services provided to the Demised Premises or Improvements thereon shall be pursuant to the terms of a separate agreement with the public or private entity providing such services.

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 with all applicable Laws and Ordinances. To the extent that Tenant's compliance requires 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. Landlord hereby agrees to execute and deliver any necessary papers, affidavits, forms or other such documents necessary for Tenant to confirm or acquire status to contest the validity or application of any Law or Ordinance, which instrument shall be subject to the reasonable approval of counsel for Landlord, which approval shall not be unreasonably withheld or delayed. Landlord shall not be required to join in any such contest unless its joinder is required for a contest to be valid provided there is no cost, liability, or exposure to Landlord.

ARTICLE 11

Changes and Alterations to Improvements by Tenant

In addition to the rights and obligations as provided in Section 3.5, Rent Adjustment in Renewal Terms, Tenant, with Landlord's approval, shall have the right at any time and from time to time during the term of this Lease, at its sole cost and expense, to expand, rebuild, redevelop, alter and/or reconstruct the Improvements ("Redevelopment") and to raze the existing Improvements provided any such razing is preliminary to and in connection with the approved Redevelopment and provided further that unless waived by Landlord:

- A. The method, schedule, plans and specifications for such razing and/or Redevelopment are submitted to Landlord for its reasonable approval, which shall be issued in writing, at least one hundred eighty (180) days prior to the commencement of any razing;
- B. The Redevelopment or razing does not violate any other provisions of this Lease;
- C. The Redevelopment or razing does 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 Landlord;
- D. There shall be an adjustment in Annual Rent prior to Redevelopment or razing using the appraisal process described in Section 3.5 with the exception that the appraisal process shall

commence upon Tenant's request for approval of the Redevelopment and be completed prior to issuance of approval of the Redevelopment by Landlord. Landlord shall have the right, at its sole and absolute discretion, to disapprove any request for Redevelopment if the adjustment in Annual Rent results in less than a 30% increase in Annual Rent;

- E. Notwithstanding any other provision of this Lease, in the case of any Redevelopment or razing not arising out of Tenant's duty to restore under Article 16, or as provided in Section 3.5, Rent Adjustment in Renewal Terms, Tenant shall pay Landlord for each Lease Year during the period of such rebuilding, alteration, reconstruction or razing, which period may not exceed two (2) years, the average annual Rents payable to Landlord under this Lease during the three (3) Lease Years immediately preceding commencement of such Redevelopment or razing, prorated based on the proportion of the Demised Premises being rebuilt, altered, reconstructed or razed;
- F. Tenant obtains all approvals, Permits and authorizations required under applicable Ordinances and Laws;
- G. The applicable provisions of Articles 1 and 4 of this Lease shall apply to any Redevelopment or razing of Improvements; and
- H. None of the foregoing provisions are intended to apply to any normal and periodic maintenance, operation, and repair of the Improvements, or any non-material alterations made to the Improvements.

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, 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 liens of any type will be asserted against Landlord's

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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. That no lien for labor or materials will be filed or claimed by Tenant Contractors 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 this Lease prohibiting such liability. Tenant and Landlord agree that such notice, short form or 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 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; or
- 4) Any activity or purpose that violates the provisions of this Lease.

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- B. No covenant, agreement, lease, Sublease, Leasehold Mortgage, conveyance or other instrument may 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. 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.
- C. Except as otherwise specified, Tenant may use the Demised Premises for any lawful purpose or use authorized by this Lease and allowed under the Ordinance establishing the zoning for the Demised Premises (provided Tenant otherwise complies with the terms and conditions hereof). Tenant shall not knowingly suffer any act to be done or any condition to exist in or on the Demised Premises or any part thereof or any article to be brought thereon, which may be dangerous, unless safeguarded as required by law, or which may make void or voidable any insurance then in force with respect thereto.

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; 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 immediate steps to terminate same, including the bringing of a suit in Circuit Court, if necessary, but not the taking or defending of any appeal therefrom. In the event Tenant does not promptly take steps to terminate a prohibited action, Landlord or Miami-Dade County may seek appropriate injunctive relief against the party or parties actually engaged in the prohibited action in the Circuit Court of Miami-Dade County without being required to prove or establish that Landlord or Miami-Dade County have adequate remedies at law. The provisions of this Section shall be deemed automatically included in all Leasehold Mortgages and any other conveyances, transfers and assignments under this Lease, and any Transferee who accepts such Leasehold Mortgage or any other conveyance, transfer or assignment hereunder shall be deemed by such acceptance to adopt, ratify, confirm and consent to the provisions of 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 comply and shall cause its Sublessees to comply in all material respects at all times, with all environmental related 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 related law or give rise to material liability or obligation to take remedial action or other material obligations under any environmental related 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, and shall reimburse Landlord, its successor and assigns for any costs and expenses incurred by Landlord as a result of such claims or actions.

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 do 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) of the Improvements.

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 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 notice and in the presence of a representative of Tenant, shall have the right to enter the Demised Premises at reasonable times during normal business hours for the purpose of inspecting the same to insure itself of compliance with the provisions of this Lease.

Section 14.2 Limitations on Inspection

Landlord, in its exercise of the right of entry granted to it in Section 14.1 herein, shall 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. Tenant shall not be entitled to any adjustment or abatement in Rent as a result of any interruption, stoppage, or changes in any transit service.
- D. The County shall have the absolute right to develop County owned property outside of the Demised Premises at or near the Vizcaya Metrorail 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 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. If, at any time during the term of this Lease, the Demised Premises, Improvements, or any part thereof, are 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 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 Vizcaya Metrorail Station (or any part thereof) is 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. Neither Landlord nor any Mortgagee shall unreasonably withhold its consent to a release of the proceeds of any fire or other casualty insurance for any loss which occurs during the term of this Lease for repair or rebuilding. Any proceeds remaining after completion of rebuilding or repair under this Article, shall be paid first to Landlord, in the event any Rent was outstanding during the period of rebuilding or repair. 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 shall 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 are 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/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

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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:

- 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;
- 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.

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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. Any property insurance proceeds which exceed the cost of demolition of the damaged Improvements and restoration of the Demised Premises and all business interruption insurance proceeds shall be paid to Landlord.

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.

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 Premise for its subsequent use according to the terms hereof and not for speculation in landholding. Tenant recognizes that, in view

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of the importance of developing the Project/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.

Notwithstanding the above, subject to Section 3.9 Tenant shall have the right and privilege to sell, assign or otherwise transfer all or any portion of its rights under this Lease, its rights to Project/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 bureau, department or agency thereof, or any other entities as Tenant may select; however, (a) Tenant shall not be in default under this Lease at the time of such sale, assignment, or transfer and (b) Tenant shall obtain written consent of the Landlord, both as to the proposed transfer and the proposed transferee.

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

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- 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, 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 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.

Landlord reserves the right to condition such sale, assignment or transfer of Tenant's interests 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/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, Additional Rent, obligation, or encumbrance, and (d) any and all non-monetary obligations have been satisfied, and (e) the Landlord receiving 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, 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, the Landlord receiving payment of all costs and expenses, including but not limited to

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reasonable attorney's fees, disbursements, and court costs, and (j) in the event of default, 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 sale, assignment or transfer of Tenant's interests until Completion of Construction of the Project/Phase. Any sale, assignment or transfer of all or any part of Tenant's interest in the Lease and the Demised Premises shall be made expressly subject to the terms, covenants and conditions of this Lease, and such assignee or transferee shall expressly assume all of the obligations of Tenant under this Lease applicable to that portion of the Demised Premises or the Project/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/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.

Any subsequent assignments shall also be subject to the consent of the Landlord and all provisions of this Lease.

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Once a sale, assignment or transfer has been made with respect to any portion of the Demised Premises or Project/Phase, the transferee and Landlord may thereafter modify, amend or change the Lease with respect to such portion of the Demised Premises or Project/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/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/Phase transferred for the then unexpired term of Lease.

For purposes of this Article, the words "sale," "assignment," or "transfer" shall be deemed to have similar meanings unless the context indicates otherwise. If Tenant is a corporation, limited liability company, unincorporated association, general or limited partnership, or joint venture, the transfer, assignment, or hypothecation 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 an assignment within the meaning 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.

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No confirmation by Landlord of a proposed assignee as holding the proper qualification or its meeting the approval of Landlord shall have the effect of waiving or estopping the Landlord from later claims that said assignee is in fact not properly qualified as an assignee or is no longer operating or maintaining the Project/Phase and Demised premises according to the terms of this Lease.

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.

Section 17.2 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/Phase shall solely secure debt of Tenant which is directly related to the Project/Phase. The Project/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

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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/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. 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.

Section 17.3 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. For the benefit of any such Leasehold Mortgagee who has 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) remains a lien on Tenant's leasehold estate. Tenant shall advise and obtain the written consent of any such Leasehold Mortgagee(s) or Lender(s) prior to any modification of this Lease with respect to the Project/Phase subject to such Leasehold Mortgage(s) and no sale or transfer of Landlord's fee simple interest in the Land or any portion thereof to Tenant shall terminate

this Lease by merger or otherwise so long as the lien of the Leasehold Mortgage remains undischarged. The foregoing is not meant to prohibit a sale of the fee to Tenant.

Section 17.4 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 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 of and with any of the terms of this Lease with the same force and effect as though kept, observed or performed by Tenant, provided such act or performance is timely under Sections 17.5 or 19.2. Nothing contained herein shall be construed as imposing any obligation upon any such Leasehold Mortgagee to so perform or comply on behalf of Tenant, unless such Leasehold Mortgagee become the Tenant in accordance with Section 17.5 below.

Section 17.5 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, which lease in reversion shall have the same terms and provisions, including expiration date, as this Lease. The Leasehold Mortgagee, 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. Such lease in reversion or assignment in lieu of foreclosure shall not be subject to pay 5% of the transfer amount pursuant to Section 3.14. The Leasehold Mortgagee 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

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the Demised Premises with the Leasehold Mortgagee 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 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.

The Landlord's delivery of the Demised Premises to the Leasehold Mortgagee 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 as Tenant on an "as is" condition and in its then current condition; and (c) the Leasehold Mortgagee, 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 17.6 Rights to Sublease and Non-Disturbance to Sublessees

Tenant shall have the right to enter a Sublease without any approval or consent of Landlord; however, notwithstanding any other provisions of this Lease, no Sublease shall relieve Tenant of any obligations under the terms of this Lease. Additionally, each Sublease must be for a use compatible with the standards and requirements set forth in Section 4.1 herein and which shall not extend beyond the expiration of the term of this Lease and which may be terminated upon the event of a casualty or loss greater than 25% of the Project/Phase within 5 years of the expiration of the 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 is not a "related party" to or Affiliate of the Tenant;
- C. The Sublessee shall be in compliance with the terms and conditions of its Sublease;
- D. The rent payable by such Sublessee shall be at least equal to the then market rental rates;
- E. The Sublessee shall agree to attorn to Landlord; and
- F. 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/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 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.

Section 17.7 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 17.8 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 17.9 No Subordination or Mortgaging of Landlord's Fee Title

There shall be no subordination of Landlord's fee simple interest in the Land to the lien of any Leasehold Mortgage or Lender financing nor shall Landlord be required to join in such mortgage other financing. No Leasehold Mortgagee or Lender may impose any lien upon the Landlord's fee simple interest in the Land. 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 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 17.10 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.

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 is 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 Land. Notwithstanding anything herein contained to the contrary, Landlord shall be entitled to receive from the condemning authority not less than the appraised value of the Land, subject to the Lease, and as if vacant and assuming no Improvements existed on the Land, at the time of Taking and its portion of any reversionary interests in the Lease, Land, and Improvements thereon. 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 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 are determined according to the foregoing provisions of this Section 18 in the eminent domain proceeding pursuant to which the Demised Premises have been taken, the values so determined shall be conclusive upon Landlord and Tenant. If such values have not 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 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

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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 Land. 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 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 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.

Section 18.8 Involuntary Conversion

In the event any Taking or other like proceeding or threat or imminence thereof occurs 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 include, but are not limited to, the following:

- A. Tenant fails to pay on time 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 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 ten (10) 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

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proposing the adjudication of Tenant or any such guarantor with its creditors, unless withdrawn or dismissed within thirty (30) days after the date of its filing;

- E. The written admission of Tenant of its general inability to pay Rent or its 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 passes to another by operation of law;
- G. The vacation or 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.;
- 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. It has become evident that a substantial change in Developer's condition, financial or otherwise, has occurred such that County cannot rely upon Developer to faithfully perform all its undertakings and covenants under this Development Agreement and or to comply with all Federal, State, and Local laws and ordinances;
- L. 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;

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- M. Tenant fails to comply with Section 1.5 Performance and Payment Bonds, or fails to proceed with construction of the Project/Phase within ____ days of the Effective Date of this Lease, subject to Unavoidable Delays in accordance with the Project Schedule;
- N. 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; or
- O. Tenant fails to timely complete construction and obtain a Certificate of Occupancy according to the terms herein.
- P. Tenant fails to secure and/or retain adequate financing to complete the construction of the Project/Phase.

If an Event of Default of Tenant occurs 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 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 occurs 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 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 occurs and the rights of Leasehold Mortgagees and Lenders have 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 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 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 bear interest 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
- 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 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 Premises 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.

Section 19.4 Rights of Landlord After Termination

In any event, Landlord shall not 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 19.5 Events of Default of Landlord

The provisions of Section 19.7 shall apply if any of the following "Events of Default of Landlord" occur: if default occurs as a result of failure by Landlord in keeping, observing or performing any of the duties imposed upon Landlord pursuant to the terms of this Lease and such default continues 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 19.6 Failure to Cure Default by Landlord

If an Event of Default of Landlord occurs, 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.
- 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 19.7 Holdover

If Tenant is 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 19.8 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:

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 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.

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 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, 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 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 is 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 had no actual knowledge.

ARTICLE 23

Construction of Terms and Miscellaneous

Section 23.1 Severability

If any provisions of this Lease or the application thereof to any person or situation is, to any extent, held invalid or unenforceable, the remainder of this Lease, 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 23.2 Captions

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

Section 23.3 Relationship of Parties

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

Section 23.4 Recording

A Memorandum of this Lease, or at Tenant's behest, a full copy hereof, shall be recorded 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 Agreement shall be at the sole cost of Tenant.

Section 23.5 Construction

All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine or neuter, singular or plural, as the identity of the party or parties may require. The parties hereby acknowledge and agree that each was properly represented by counsel and this Lease was negotiated and drafted at arm's length so that the judicial rule of construction to the effect that a legal document is construed against the drafters shall be inapplicable to this Lease which has been drafted by counsel for both Landlord and Tenant.

Section 23.6 Consents

Whenever in this Lease the consent or approval of Landlord or Tenant is required, 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 23.7 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. 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 23.8 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 23.9 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.

Section 23.10 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 23.11 Holidays

It is hereby agreed and declared that whenever the day on which a payment due under the terms of this Lease, or the last day on which a response is due to a notice, or the last day of a cure period, falls on a day which is a legal holiday in Miami-Dade County, Florida, or on a Saturday or Sunday, such due date or cure period expiration date shall be postponed to the next following business day. Any mention in this Lease of a period of days for performance shall mean calendar days.

Section 23.12 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 23.13 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 23.14 Protest Payments

If at any time a dispute arises as to any amount or sum of money to be paid by Tenant to Landlord under the provisions of this Lease, in addition to the rights set forth in Article 19 herein, Tenant shall have the right to make payment "under protest" and such payment shall not be regarded as a voluntary payment, and there shall survive the right on the part of Tenant to seek the recovery of such sum, and if it should be adjudged that there was no legal obligation on Tenant to pay such sum or any part thereof, Tenant shall be entitled to recover such sum or so much thereof as it was not legally required to pay under the provisions of this Lease; and if at any time a dispute arises 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 is 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 23.15 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 23.16 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.

Section 23.17 Governing Law

This Lease shall be governed by and construed in accordance with the laws of the State of Florida.

Further, the parties agree that the venue shall be in Miami-Dade County.

Section 23.18 Counterparts

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

Section 23.19 Documents Incorporated and Order of Precedence

Landlord and Tenant acknowledge that Miami-Dade County issued a Request for Proposals for Joint Development of Property at the Vizcaya Metrorail Station, that Tenant submitted the Proposal in response to that Request for Proposals and that the Request for Proposals and Tenant's Proposal, including all addenda to the Request for Proposals, was the basis for award of a Development Agreement and upon which the Landlord has relied. Upon the Tenant meeting the applicable requirements of the Development Agreement this Lease has become effective. The Development Agreement, the Request for Proposals, including all addenda to the Request for Proposals, and Tenant's Proposal are incorporated herein by this reference. If there is a conflict between or among the provisions of this Lease, the Development Agreement, the Request for Proposals, including all addenda to the Request for Proposals, and the Proposal, the order of precedence is as follows: (a) the terms of this Lease; (b) the terms of the Development Agreement, as applicable, (c) addenda to the

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Request for Proposals, (d) the Request for Proposals for Joint Development of Property at the Vizcaya Metrorail Station, RFP No. ____ and the Tenant's Proposal.

Section 23.20 Vendor Registration and Forms

The Tenant 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)
- 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

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(as required by the Internal Revenue Service)

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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 such exists. 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
- 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 23.21 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 as it pertains to the Request for Proposals solicitation, 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,

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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 23.22 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.

Section 23.23 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 23.24 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 23.25 No Third-Party Beneficiaries

Except to the extent limited elsewhere in this Lease, all of the covenants conditions and obligations contained in the Lease shall be binding upon and insure to the benefit of the respective successor and

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assigns of the Landlord and Tenant. No third party shall have any rights or claims arising hereunder, nor is it intended that any third party shall be a third-party beneficiary of any provisions hereof.

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Section 23.26 Amendments

No Amendments to this Lease shall be binding on either Party unless in writing and signed by both parties and approved by the Federal Transit Administration, the Florida Department of Transportation and Miami Dade County Board of Commissioners.

Section 23.27 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 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 23.28 Standard of Conduct

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

Section 23.29 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 23.30 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 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 23.31 Landlord Representatives Not Individually Liable

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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 Land 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 Vizcaya Metrorail 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 Vizcaya Metrorail Station is damaged or destroyed and as a result trains cannot stop thereat, the foregoing sentence shall not apply during the period of repair and rebuilding done in accordance with Section 16.2.

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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.

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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, 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

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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

- E. 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 or the County to be in violation of the Act or the Resolution, such violation shall render this Lease void. This Lease shall be void if Tenant submits a false affidavit pursuant to this Resolution or Tenant violates the Act or the Resolution during the term of this Lease, even if Tenant was not in violation at the time it submitted its affidavit.

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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:_____

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Signed in the presence of:

TENANT

By: _____

Print Name: _____

Title: _____

Print Name: _____

Signed in the presence of:

By: _____

Title: _____

Print Name: _____

Print Name: _____

Notarizations begin on following page.

Approved as to form and legal sufficiency

Print Name: _____

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

The foregoing instrument was acknowledged before me this ____ day of _____,
2012, 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 _____,
2012, 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

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