

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-00945
 TERM OF CONTRACT 90 YEAR(S) WITH 0 YEAR(S) OTR

Requisition /Project Title: Development of Property Adjacent to the Miami Intermodal Center

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

Issuing Department: DTPW
 Contact Person: Javier Bustamante
 Phone: 786-469-5244

Estimate Cost: Revenue generating

Funding Source:
 GENERAL n/a
 FEDERAL n/a
 OTHER n/a

ANALYSIS

Commodity Codes:	57863	91889	92561		
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:

Signed: Brian Webster	Date sent to SBD: 06/3/2019
	Date returned to DPM:



**REQUEST FOR PROPOSALS (RFP) No. 00945
for
JOINT DEVELOPMENT OF PROPERTY ADJACENT TO THE MIAMI INTERMODAL CENTER**

ISSUED BY MIAMI-DADE COUNTY:

Internal Services Department, Strategic Procurement Division
for
The Department of Transportation and Public Works

MIAMI-DADE COUNTY CONTACT FOR THIS SOLICITATION:

Brian Webster, Procurement Contracting Officer
111 NW 1st Street, Suite 1300, Miami, Florida 33128
Telephone: (305) 375-2676
E-mail: brian.webster@miamidade.gov

PROPOSALS DUE:

On the date and at the time specified in BidSync. Check BidSync for potential updates.

**IT IS THE POLICY OF MIAMI-DADE COUNTY (COUNTY) THAT ALL ELECTED AND APPOINTED COUNTY OFFICIALS AND COUNTY EMPLOYEES SHALL ADHERE TO THE PUBLIC SERVICE HONOR CODE (HONOR CODE). THE HONOR CODE CONSISTS OF MINIMUM STANDARDS REGARDING THE RESPONSIBILITIES OF ALL PUBLIC SERVANTS IN THE COUNTY. VIOLATION OF ANY OF THE MANDATORY STANDARDS MAY RESULT IN ENFORCEMENT ACTION.
(SEE IMPLEMENTING ORDER 7-7)**

Electronic proposal responses to this RFP are to be submitted through a secure mailbox at BidSync until the date and time as indicated in this document. It is the sole responsibility of the Proposer to ensure its proposal reaches BidSync before the Solicitation closing date and time. There is no cost to the Proposer to submit a proposal in response to a Miami-Dade County solicitation via BidSync. Electronic proposal submissions may require the uploading of electronic attachments. The submission of attachments containing embedded documents or proprietary file extensions is prohibited. All documents should be attached as separate files. All proposals received and time stamped through the County's third party partner, BidSync, prior to the proposal submittal deadline shall be accepted as timely submitted. The circumstances surrounding all proposals received and time stamped after the proposal submittal deadline will be evaluated by the procuring department in consultation with the County Attorney's Office to determine whether the proposal will be accepted as timely. Proposals will be opened promptly at the time and date specified. The responsibility for submitting a proposal on or before the stated time and date is solely and strictly the responsibility of the Proposer. The County will in no way be responsible for delays caused by technical difficulty or caused by any other occurrence. All expenses involved with the preparation and submission of proposals to the County, or any work performed in connection therewith, shall be borne by the Proposer(s).

A Proposer may submit a modified proposal to replace all or any portion of a previously submitted proposal up until the proposal due date. The County will only consider the latest version of the proposal. For competitive bidding opportunities available, please visit the County's Internal Services Department website at: <http://www.miamidade.gov/procurement/>.

Requests for additional information or inquiries must be made in writing and submitted using the question/answer feature provided by BidSync at www.bidsync.com. The County will issue responses to inquiries and any changes to this Solicitation it deems necessary in written addenda issued prior to the proposal due date (see addendum section of BidSync Site). Proposers who obtain copies of this Solicitation from sources other than through BidSync risk the possibility of not receiving addenda and are solely responsible for those risks.

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1.0 PROJECT OVERVIEW AND GENERAL TERMS AND CONDITIONS

1.1 Introduction

Miami-Dade County, hereinafter referred to as the "County", as represented by the Internal Services Department (ISD) and Miami-Dade Department of Transportation and Public Works (DTPW), is soliciting proposals from experienced developers with a proven track record of successfully completing profitable, large-scale, multi-component, mixed-use developments for the joint development of approximately 15.85 acres of County-owned property adjacent to the Miami Intermodal Center (MIC) and including a portion of the property on which small, one-story buildings and a metal canopy over the buildings are located.. Developers may include joint ventures or consortiums whose members meet the above described qualifications. Joint development is the term applied to development by private parties of County-owned property under a ground lease in a manner that is mutually beneficial to both the public and private party.

Proposals submitted in response to this Solicitation must include a master plan for the development of the entire approximately 15.85 acre Development Site, incorporate Transit Oriented Development concepts and take maximum advantage of the proximity and convenient accessibility of the property to the airport and to all modes of transportation provided by the MIC.

The County anticipates awarding a Development Agreement for the right and obligation to develop the entire Development Site. The Development Agreement will allow, but not require, the Development Site to be divided into separate development components or Phases for purposes of development. (See definition of Phase in Section 1.3 below.) The Development Agreement will provide for long-term ground lease(s) [Lease(s)] to become effective, on a Phase by Phase basis if applicable, when requirements to begin construction have been met. It is anticipated that the Lease(s) will have a total maximum term of 90 years but will contain periodic renewal terms, the length of which will be based upon the scope of the development proposed and will be established during the negotiation process. Renewal terms shall be automatic provided the successful Proposer has remained in compliance with the provisions of the Development Agreement and Lease(s) resulting from this Solicitation and an adjustment in rent to reflect changes in the market value of the property is determined and agreed to by the parties.

The County anticipates awarding a contract for a ninety (90) year period.

The anticipated schedule for this Solicitation is as follows:

Solicitation Issued:	Friday, XXXX, 2019
Pre-Proposal Conference:	See BidSync for the scheduled date and time
Deadline for Receipt of Questions:	See BidSync for the scheduled date and time
Proposal Due Date:	See front cover for date and time.
Evaluation Process:	Third quarter of 2019
Projected Award Date:	Second quarter of 2020

1.2 Definitions

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

- A. The words "Central Station" or "MIC Central Station" to mean the portion of the Miami Intermodal Center (MIC) containing a Metrorail station, a Tri-Rail station, a Metrobus terminal, an intercity bus station and the pedestrian concourse connecting those facilities and the MIA Mover, the people mover system which provides continuous, direct connection to the Miami International Airport.
- B. The word "Closing" to mean the execution and delivery of a Lease for the Project, or Phase of the Project, if applicable, in accordance with the provisions of the Development Agreement, at which time the Lease shall become effective and the Developer shall take possession of the Development Site or the applicable portion of the Development Site (Phase).

- C. The words "Condition of Rights Granted" to mean any obligation imposed by the Successful Proposer on a space lessee, sublessee, licensee or any third party in exchange for the right or entitlement to occupy or to use any portion of the Development Site or improvements therein.
- D. The word "County" to mean Miami-Dade County, a political subdivision of the State of Florida.
- E. The word "Development Agreement" to mean the agreement between the Successful Proposer and the County resulting from this Solicitation which contains the general terms, conditions, obligations and phasing, if applicable, under which the entire Development Site is to be developed.
- F. The words "Development Site" or "Site" to mean the real property being offered for development by this Solicitation as described in Exhibit A.
- G. The word "Lease(s)" to mean the agreement(s) under which the County-owned property will be leased to the Successful Proposer for development under a ground lease(s) which becomes effective upon the Successful Proposer meeting the obligations and obtaining the required approvals to begin construction, in accordance with the Development Agreement resulting from this Solicitation.
- H. The word "Phase" or "Phased Development" to mean the division of the Project into separate and distinct portions, or Phases under separate Leases for purposes of development, financing, construction, operation and ownership of improvements.
- I. The word "Project" to mean the overall development of the Development Site, including all Phases if applicable, as contemplated by the response of the Successful Proposer to this Solicitation.
- J. The word "Proposal" to mean the properly signed and completed written good faith commitment submitted by the Proposer in response to this Solicitation as amended or modified through negotiations.
- K. The word "Proposer" to mean the person, firm, entity, organization, joint venture or consortium submitting a proposal in response to this Solicitation, as stated on the Proposal Submittal Form.
- L. The words "Scope of Work" to mean Section 2.0 of this Solicitation, which details the work to be performed by the Successful Proposer.
- M. The word "Solicitation" to mean this Request for Proposals (RFP) document, and all associated addenda and attachments.
- N. The word "Subcontractor" to mean any person, firm, entity or organization, other than the employees of the Successful Proposer, who contracts with the Successful Proposer to furnish labor, or labor and materials, in connection with the Services to the County, whether directly or indirectly, on behalf of the Successful Proposer.
- O. The words "Work", "Services", "Program", or "Project" to mean all matters and things that will be required to be done by the Successful Proposer in accordance with the Scope of Work, and the terms and conditions of this Solicitation.

1.3 General Proposal Information

- A. The County may, at its sole and absolute discretion, reject any and all or parts of any or all proposals; accept parts of any and all proposals; further negotiate project scope and fees; postpone or cancel at any time this Solicitation process; or waive any irregularities in this Solicitation or in the proposals received as a result of this process. In the event that a Proposer wishes to take an exception to any of the terms of this Solicitation, the Proposer shall clearly indicate the exception in its proposal. No exception shall be taken where the Solicitation specifically states that exceptions may not be taken. Further, no exception shall be allowed that, in the County's sole discretion, constitutes a material deviation from the requirements of the Solicitation. Proposals taking such exceptions may, in the County's sole discretion, be deemed nonresponsive. The County reserves the right to request and evaluate additional information from any Proposer regarding Proposer's responsibility after the submission deadline as the County deems necessary.
- B. The Proposer's proposal will be considered a good faith commitment by the Proposer to negotiate a contract with the County, in substantially similar terms to the proposal offered and, if successful in the process set forth in this Solicitation and subject to its conditions, to enter into a contract substantially in the terms herein. Proposer proposal shall be irrevocable until contract award unless the proposal is withdrawn. A proposal may be withdrawn in writing only, addressed to the County contact person for this Solicitation, prior to the proposal due date and time, or upon the expiration of 180 calendar days after the opening of proposals.
- C. As further detailed in the Proposal Submittal Form, Proposers are hereby notified that all information submitted as part of, or in support of proposals will be available for public inspection after opening of proposals, in compliance with Chapter 119, Florida Statutes, popularly known as the "Public Record Law."

- D. Any Proposer who, at the time of proposal submission, is involved in an ongoing bankruptcy as a debtor, or in a reorganization, liquidation, or dissolution proceeding, or if a trustee or receiver has been appointed over all or a substantial portion of the property of the Proposer under federal bankruptcy law or any state insolvency law, may be found non-responsible.
- E. To request a copy of any code section, resolution and/or administrative/implementing order cited in this Solicitation, contact the Clerk of the Board at (305) 375-5126, Monday- Friday, 8:00 a.m. – 4:30 p.m.

1.4 Community Business Enterprise Program

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

All privately funded construction with a total value over \$200,000 must comply with Sections 10-33.02 and 2-10.4.01 of the Code of Miami Dade County (the "Code"), which govern the County's Small Business Enterprise-Construction ("SBE-Construction") and Small Business Enterprise-Architectural & Engineering ("SBE-A&E") programs. The Successful Proposer shall submit or cause to be submitted the Design and Construction Packages, to the Small Business Development Division of Internal Services Department ("SBD/ISD") prior to advertisement, for review and determination of appropriate small business program measures, and the application of same. All packages must be advertised and awarded with the applicable small business measures in accordance with the requirements of the above mentioned Code.

1.5 Aspirational Policy Regarding Diversity

Pursuant to Resolution No. R-1106-15, Miami-Dade County vendors are encouraged to utilize a diverse workforce that is reflective of the racial, gender and ethnic diversity of Miami-Dade County and employ locally-based small firms and employees from the communities where work is being performed in their performance of work for the County. This policy shall not be a condition of contracting with the County, nor will it be a factor in the evaluation of solicitations unless permitted by law.

1.6 Non-Discrimination

- A. During the performance of the Development Agreement and/or Lease(s) resulting from this Solicitation, the Proposer agrees to not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, national origin, sex, pregnancy, age, disability, marital status, familial status, sexual orientation, gender identity or gender expression, status as victim of domestic violence, dating violence or stalking, or veteran status, and on housing related contracts the source of income, and will take affirmative action to ensure that employees and applicants are afforded equal employment opportunities without discrimination. Such action shall be taken with reference to, but not limited to: recruitment, employment, termination, rates of pay or other forms of compensation, and selection for training or retraining, including apprenticeship and on the job training.
- B. By entering into any Development Agreement resulting from this Solicitation, the Proposer 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 the Proposer or any owner, subsidiary or other firm affiliated with or related to the Proposer is found by the responsible enforcement agency or the County to be in violation of the Act or the Resolution, such violation shall render any Development Agreement and/or Lease(s) resulting from this Solicitation void. The Development Agreement and/or Lease(s) resulting from this Solicitation shall be void if the Proposer submits a false affidavit

pursuant to this Resolution or the Proposer violates the Act or the Resolution during the term of any Development Agreement and/or Lease(s).

1.7 **Cone of Silence**

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

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

The provisions do not apply to, among other communications:

- oral communications with the staff of the Vendor Services Section, the responsible Procurement Contracting Officer, provided the communication is limited strictly to matters of process or procedure already contained in the Solicitation document;
- oral communications at pre-proposal conferences and oral presentations before Competitive Selection Committees during any duly noticed public meeting, public presentations made to the Board of County Commissioners during any duly noticed public meeting;
- recorded contract negotiations and contract negotiation strategy sessions; or
- communications in writing at any time with any County employee, official or member of the Board of County Commissioners unless specifically prohibited by the applicable RFP or RFQ documents.

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

All requirements of the Cone of Silence policies are applicable to this Solicitation and must be adhered to. Any and all written communications regarding the Solicitation are to be submitted only to the Procurement Contracting Officer with a copy to the Clerk of the Board. The Proposer shall file a copy of any written communication with the Clerk of the Board. The Clerk of the Board shall make copies available to any person upon request.

1.8 **Communication with Competitive Selection Committee Members**

Proposers are hereby notified that direct communication, written or otherwise, to Competitive Selection Committee members or the Competitive Selection Committee as a whole are expressly prohibited. Any oral communications with Competitive Selection Committee members other than as provided in Section 2-11.1 of the Code of Miami-Dade County are prohibited.

1.9 **Public Entity Crimes**

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

287.017 of the Florida Statutes for Category Two for a period of thirty-six (36) months from the date of being placed on the convicted vendor list.

1.10 **Lobbyist Contingency Fees**

- A. In accordance with Section 2-11.1(s) of the Code of Miami-Dade County, after May, 16, 2003, no person may, in whole or in part, pay, give or agree to pay or give a contingency fee to another person. No person may, in whole or in part, receive or agree to receive a contingency fee.
- B. A contingency fee is a fee, bonus, commission or non-monetary benefit as compensation which is dependent on or in any way contingent upon the passage, defeat, or modification of: 1) any ordinance, resolution, action or decision of the County Commission; 2) any action, decision or recommendation of the County Mayor or any County board or committee; or 3) any action, decision or recommendation of any County personnel during the time period of the entire decision-making process regarding such action, decision or recommendation which foreseeably will be heard or reviewed by the County Commission or a County board or committee.

1.11 **Collusion**

In accordance with Section 2-8.1.1 of the Code of Miami-Dade County, where two (2) or more related parties, as defined herein, each submit a proposal for any contract, such proposals shall be presumed to be collusive. The foregoing presumption may be rebutted by the presentation of evidence as to the extent of ownership, control and management of such related parties in preparation and submittal of such proposals. Related parties shall mean Proposer, the principals, corporate officers, and managers of the Proposer; or the spouse, domestic partner, parents, stepparents, siblings, children or stepchildren of a Proposer or the principals, corporate officers and managers thereof which have a direct or indirect ownership interest in another Proposer for the same contract or in which a parent company or the principals thereof of one Proposer have a direct or indirect ownership in another Proposer for the same contract. Proposals found to be collusive shall be rejected. Proposers who have been found to have engaged in collusion may be considered non-responsible, and may be suspended or debarred, and any contract resulting from collusive bidding may be terminated for default.

1.12 **Contract Measures**

This Solicitation includes contract measures for Miami-Dade County Certified Small Business Enterprises (SBE's) pursuant to Sections 2-8.1.1.1.1 and 2.1.1.1.2 of the Code of Miami-Dade County as follows:

Set-aside:

This Solicitation is set-aside for SBE's.

Subcontractor Goal:

_____ % SBE subcontractor goal is applicable. The purpose of a subcontractor goal is to have portions of the work under the contract performed by available subcontractors that are certified SBEs for contract values totaling not less than the percentage of the contract value set out in this Solicitation. Subcontractor goals may be applied to a contract when estimates made prior to Solicitation advertisement identify the quality; quantity and type of opportunities in the contract and SBEs are available to afford effective competition in providing a percentage of these identified services. Proposers shall submit a completed Schedule of Intent Affidavit (Form SBD 504) at the time of proposal identifying all SBEs to be utilized to meet the subcontractor goal. The Schedule of Intent Affidavit shall specify the scope of work and commodity code the SBE will perform. The Schedule of Intent Affidavit constitutes a written representation by the Proposer that to the best of the Proposer's knowledge the SBEs listed are available and have agreed to perform as specified, or that the Proposer will demonstrate unavailability. The Schedule of Intent Affidavit can be found at

<http://www.miamidade.gov/business/library/forms/sbe-soi.pdf>

The participating SBE firms (or joint ventures) must have a valid Miami-Dade County SBE certification by the proposal due date and time as well as meet all other requirements. Additional information regarding Miami-Dade County's Small Business Enterprise Program, including new amendments to the Program, is available on the Small Business Development's website <http://www.miamidade.gov/smallbusiness/>

(If Selection Factor, use Section 4.4 and delete above Section 1.11)

1.13 Art in Public Places Requirement

This project is subject to the Miami-Dade County Art in Public Places requirements, pursuant to Section 2-11.15 of the Code of Miami-Dade County and Administrative Order 3-11, managed by the Miami-Dade County Department of Cultural Affairs as detailed in Procedure 358 in the Miami-Dade County Procedures Manual (see <http://www.miamidadepublicart.org/#tools> or <http://intra.miamidade.gov/managementandbudget/procedures.asp>).

1.14 Responsible Wages

Pursuant to Section 2-11.16 of the County Code, responsible wages applies to competitively bid County contracts in excess of \$100,000 for the construction of public buildings or public works, whether on publicly-owned or privately-owned land. Responsible Wages also apply to privately-funded construction of buildings, whether privately-owned or publicly-owned, located on County-owned land where the construction cost is equal to or greater than \$1 million.

2.0 SCOPE OF WORK

2.1 Background

- A. Miami-Dade County, hereinafter referred to as the “County”, as represented by the Internal Services Department (ISD) and Miami-Dade Department of Transportation and Public Works (DTPW), seeks the development of a large-scale, multi-component, mixed-use developments for the joint development of approximately 15.85 acres of County-owned property located immediately east of the Miami Intermodal Center (MIC) and including a portion of the property on which structures have been constructed.
- B. The property being offered for development consists of approximately 7.24 acres of vacant property and 8.61 acres of property on which surface parking lots, small, one-story buildings and a metal canopy over the buildings have been constructed. (See Exhibit A).
- C. The Miami Intermodal Center (MIC), is a \$2 billion regional transportation hub located just east of the Miami International Airport as depicted in Exhibit B. The MIC includes an 830,000 square foot multi-user rental car center and the Central Station. The Central Station consists of the Miami International Airport (MIA) Metrorail Station, a station on the elevated rapid transit system serving Miami-Dade County, a Tri-Rail station, a Miami-Dade County Metrobus terminal, and, currently, an intercity bus terminal and a pedestrian concourse serving those facilities as depicted in Exhibit C. Inclusion of an Amtrak station is currently being negotiated. The MIC, including the Central Station is connected directly to the Miami International Airport via the MIA Mover, an elevated, automated people mover system.
- D. Miami International Airport is considered a primary economic engine for Miami-Dade County, generating business revenue of approximately \$30.9 billion annually, and is the major trans-shipment point between the Americas, the Caribbean and Europe. In 2017 it ranked number one among US airports for international freight, fourth for total cargo, third for international passenger traffic and number twelfth for total passengers. It currently serves a total of 100 airlines.
- E. The Central Station pedestrian concourse which serves to connect the MIA Metrorail Station, Tri-Rail Station and the Miami-Dade Metrobus terminal and an intercity bus station will also serve as a connector from the development resulting from this Solicitation to the MIA Mover and Miami International Airport. This connection will allow passengers arriving from the airport to conveniently access the development via the MIA Mover without having to drive or access any other transportation.
- F. The development of the subject property will be performed under a Development Agreement. The Development Agreement will allow, but not require, the Development Site to be divided into separate development components or Phases for purposes of development. (See definition of Phase in Section 1.3 below.) The Development Agreement will provide for long-term ground lease(s) [Lease(s)] to become effective, on a Phase by Phase basis if applicable, when requirements to begin construction have been met. It is anticipated that the Lease(s) will have a total maximum term of 90 years but will contain periodic renewal terms, the length of which will be based upon the scope of the development proposed and will be established during the negotiation process. Renewal terms shall be automatic provided the Successful Proposer has remained in compliance with the provisions of the Development Agreement and Lease(s), in accordance with the terms and conditions of the Contract, and an adjustment in rent to reflect changes in the market value of the property is determined and agreed to by the parties.
- G. The term Development Agreement shall be used throughout this Scope of Work to describe the Agreement that contains the terms, conditions, obligations and phasing, if applicable, under which development rights to the Development Site will be granted to the Successful Proposer and the entire Development Site is to be developed.
- H. The term Lease(s) shall be used throughout this Scope of Work to describe the agreement(s) under which the County-owned property will be leased to the successful proposer for development under a ground lease(s) which becomes effective upon the Successful Proposer meeting the obligations and obtaining the required approvals to begin construction, in accordance with the Development Agreement.

- I. The term Phase as used herein means the division of the Development Site into separate portions or components for purposes of development, financing and construction, and ownership and operation of improvements, with separate legal descriptions for each portion or Phase. The term Phase is not meant to require development of the Phases in any particular sequence and Phases may be developed concurrently. Additionally, although the entire Development Site will be included under one Development Agreement, if the Site is developed under a phased approach, it is anticipated that each Phase will be developed, constructed, financed and operated under a separate Lease. It is contemplated that under any agreement(s) resulting from this Solicitation that the Successful Proposer may remain liable under the provisions of such agreement(s) until construction of a Phases is complete.

2.2 Proposal Guarantee

The Proposer must submit a Proposal Guarantee in the amount of \$25,000 as part of its Proposal submission. The Solicitation number must be referenced on the Proposal Guarantee. A copy of the proposal guarantee must accompany the Proposal submitted electronically through the BidSync proposal submission system. The Proposal Guarantee (original document) must be received by the Miami-Dade County Clerk of the Board, at 111 NW 1st Street, 17th Floor, Suite 202, Miami, Florida 33128-1983, within 48 hours of the Proposal response due date on the cover. Proposal Guarantees not received within 48 hours by the Clerk may render the Proposal non-responsive. Proposal Guarantees must be in the form of a certified check, cashier's check, an irrevocable letter of credit or surety bond payable to Miami-Dade County. Proposal Guarantees will be returned after a Development Agreement is executed, unless returned earlier, at the County's discretion.

2.3 Order of Precedence

If there is a conflict between or among the provisions of the Contract, the order of precedence is as follows: 1) the Lease and Development Agreements; 2) agreed upon Scope of Work (as may be negotiated); 3) addenda to the RFP; 4) attachments and exhibits to the Request for Proposal; 4) the Request for Proposal; and 5) the Successful Proposer's Proposal.

2.4 Term of Contract

This contract shall commence on the first calendar day of the month succeeding approval of the contract by the Board of County Commissioners, or designee, unless otherwise stipulated in the Blanket Purchase Order issued by the Internal Services Department, Strategic Procurement Division. The contract shall expire on the last day of the ninetieth (90th) year.

Notwithstanding the defined contract term, the period for expressed and/or implied warranty periods shall remain in full force and effect for the term of those agreements. DTPW will issue a Notice to Proceed (NTP) to the Successful Proposer.

2.5 Payments to the County

Upon award of a Development Agreement the successful Proposer shall deposit with the County pay to the County a Security Deposit and pay or be obligated to pay, a Development Fee, Initial Annual Rent, Minimum Annual Guaranteed Rent or Participation Rent, as described below.

Note: Because a major objective of the County is to develop the entire Development Site as quickly as is feasible and because the timing of the payments to the County will have a significant effect on the financial benefit accruing to the County, the phasing, if any, and time periods proposed for the payment of the Development Fee and Initial Annual Rent will also be important factors in the evaluation of Proposals.

A. Security Deposit

Upon execution of a Development Agreement the successful Proposer shall deposit a Security Deposit in the form of cash or its equivalent into a Miami-Dade County account or, if mutually agreed to by the parties, an escrow account. The Proposer shall propose the amount of the Security Deposit; however, the amount proposed shall not be less than one million dollars (\$1 million). If a phased development is proposed the Security Deposit will be apportioned among

the Phases. The apportionment shall be based upon the approximate square footage of property contained in each of the Phases (collectively "Security Deposit

If the Development Agreement is terminated as a result of a default by the successful Proposer, the County shall retain the entire Security Deposit as liquidated damages for losses sustained by the County as a result of such default and not as a penalty.

If the successful Proposer satisfies the conditions to close on a Lease on the Project or a Phase of the Project, if applicable, and a Lease becomes effective, then the Security Deposit or, if applicable, the portion of the Security Deposit allocated to that Phase, shall be applied as pre-paid Rent to the first Rents becoming due under the Lease until the amount deposited into the escrow account as Security Deposit is exhausted.

B. Development Fee

Upon award of a Development Agreement the successful Proposer shall pay to the County an annual, non-refundable Development Fee for the Project or for each Phase of the Project as applicable. The Proposer shall propose the amount of the annual Development Fee; however, the proposed amount of the annual Development Fee may be less than the amount proposed for Initial Annual Rent. The Proposer shall also propose the period of time during which payment of the Development Fee is applicable for the entire Project or for each Phase of the Project, if Phased Development is being proposed. The Proposer should base the period of time allowed for the payment of the Development Fee, by Phase if applicable, on a reasonable estimate of the time necessary to obtain the approvals and permits and financing required for construction (the "Scheduled Lease Closing"). The Development Fee shall be payable to the County until the closing of the Lease takes place or until the date of the Scheduled Lease Closing, whichever occurs first.

C. Initial Annual Rent

Upon Closing on a Lease(s) or upon the date of the Scheduled Lease Closing, whichever occurs first, the successful Proposer shall cease paying the Development Fee and begin paying to the County Initial Annual Rent. (If a Lease closing has not taken place by the date of the Scheduled Lease Closing, the successful Proposer shall, in addition to Initial Annual Rent also pay a Delayed Closing Fee as described in paragraph D below). Proposer shall propose an amount for Initial Annual Rent and a maximum period of time allowed for the payment of Initial Annual Rent for the Project, or for each Phase of the Project if applicable. The proposed Initial Annual Rent may be less than Minimum Annual Guaranteed Rent (See paragraph E below). The Proposer should base the proposed period of time for the payment of Initial Annual Rent on the type of development proposed and a realistic estimate of the time required to obtain a Certificate of Occupancy for the Project or Phase of the Project, if applicable.

D. Delayed Closing Fee

In the event that the successful Proposer fails to meet the requirements to close on a Lease by the date of the Scheduled Lease Closing for the Project or Phase of the Project, if applicable, subject to Unavoidable Delays and duly requested changes to the Project Schedule which are approved by the County in writing, the successful Proposer may request, in lieu of default, to begin paying an amount equal to Initial Annual Rent plus 10% as delayed Closing fees (Delayed Closing Fee) up to a maximum of three (3) years.

E. Minimum Annual Guaranteed Rent

The successful Proposer shall pay the County Minimum Annual Guaranteed Rent or, as applicable, Participation Rent, as described below, in accordance with the terms of and through the termination date of a Lease(s) resulting from this Solicitation. Minimum Guaranteed Annual Rent shall be paid no later than upon issuance of a Certificate of Occupancy or upon expiration of the time period allowed for the payment of Initial Rent, whichever occurs first. Minimum Annual

Guaranteed Rent for the initial term of the Lease will be based upon the appraised fair market rental value of the property which has been determined by appraisal(s) performed by independent appraiser(s) selected by the County.

If a phased development is negotiated, a separate amount of Minimum Annual Guaranteed Rent will be established for each Phase.

Minimum Annual Guaranteed Rent will be subject to periodic increases tied to the Consumer Price Index (CPI). At the end of the initial term and prior to the commencement of any renewal term of a Lease, the amount of Minimum Guaranteed Annual Rent for the Development Site, or Phase if applicable, shall be re-evaluated and adjusted to reflect the fair market rental value at the then highest and best economic use as unimproved and free of any Lease.

F. Annual Participation Rent

Annual Participation Rent shall be a percentage of Gross Income generated by the Project, or Phase if applicable, in accordance with the terms of the Lease(s) resulting from this Solicitation.

G. Delayed Completion Rent

A date by which a Certificate of Occupancy or a Certificate of Completion is scheduled to be obtained, by Phase if applicable, will be established in the Project Schedule which shall be based upon the successful Proposer's Proposed Project schedule. In the event that the successful Proposer fails to obtain a Certificate of Occupancy or a Certificate of Completion by the established date, subject to Unavoidable Delays and duly requested changes to the Project Schedule which are approved by the County in writing, the successful Proposer may request, in lieu of default, to begin paying additional rent ("Delayed Completion Rent") in the amount of one hundred and ten percent (110%) of the Minimum Annual Guaranteed Rent that is due upon the date established in the Project Schedule for issuance of a Certificate of Occupancy or Certificate of Completion. Delayed Completion Rent may be paid up to a maximum of three (3) years.

2.6 Definition of Gross Income

The definition of Gross Income in any Lease resulting from this Solicitation shall be as follows:

Gross Income shall mean all consideration, in any form, generated, derived and received, directly or indirectly by the Successful Proposer, or on behalf of the Successful Proposer (or the fair market value if the consideration received is less than the fair market value), (1) as a result of or in connection with the Development Agreement and/or Lease(s) resulting from this Solicitation; (2) in connection with the development and/or any improvements; and (3) as a Condition of Rights Granted by the Successful Proposer to any third party, regardless of the term applied to any of above described consideration or the purpose for which such consideration is received or used.

Without limiting the applicability or generality of the above paragraph, only the following consideration may be deducted or excluded in the calculation of Annual Participation Rent:

- A. Sales tax on rent owed by sublessees, space tenants, licensees, or any third party and paid to the State of Florida;
- B. The cost of separately metered utilities incurred by sublessees, space tenants, licensees and/or any third party and which are paid directly to the utility provider by the party incurring such costs;
- C. Any portion of security deposits which are returned to sublessees, space tenants, licensees and/or any third party by the Successful Proposer;
- D. Casualty insurance claims paid to the Successful Proposer to the extent that such payments are used to repair damages sustained under the applicable claim;
- E. Non-recurrent, special charges (excluding normal, periodic payments and/or fees paid to the Successful Proposer as a Condition of Rights Granted by the Successful Proposer to a third party) imposed by the Successful Proposer on a sublessee, space tenant, licensee or third party to cover the cost of repairing specific, unusual damage to the Development Site or improvements caused by the party so charged to the extent that such payment is used solely to repair the applicable damages;

- F. Consideration received by the Successful Proposer, or on behalf of the Successful Proposer, from sublessees, space tenants, licensees or any third party for the provision of services or amenities to the extent that such services or amenities (a) are not essential to and are not normally and customarily provided in the operation of business to be conducted within the proposed development; (b) that such payments are entirely voluntary and are **not** a Condition of Rights Granted to such parties by the Successful Proposer, **and** (c) that such payments are simply passed through the Successful Proposer to the third party providing the services or amenities. Any portion of such consideration received by the Successful Proposer, or on behalf of Successful Proposer, which are not paid to the party providing the services and/or amenities must be included in Gross Income.
- G. The fair market rental value for the use of space within the Improvements occupied or used by the Successful Proposer or Affiliate of Successful Proposer up to a maximum of one percent (1%) of the rentable space within the Improvements.

If the definition of gross income as established by the United States Internal Revenue Code (IRC) on the Date of Award of any Agreement(s) resulting from this Solicitation includes other consideration not included in Gross Income as defined above, then that consideration shall also be included as part of Gross Income for the purposes of the Agreement(s) resulting from this Solicitation. Changes to the IRC which occur after the Date of Award of Agreement(s) shall not affect this definition of Gross Income.

The provisions, definitions, terms, conditions and/or exclusions contained in subleases, space leases or any agreements between the Successful Proposer and its sublessees, space tenants, licensees and/or any third party shall have no effect upon the determination of Gross Income as defined above or on any other provisions, terms and/or conditions of Agreement(s) resulting from this Solicitation.

2.7 **Financing**

- A. The Successful Proposer shall secure and maintain all necessary financing and shall acquire term sheets and letters of intent (or commitment letters) acceptable to the County from an institutional lender indicating its willingness to lend an amount necessary for construction financing of the Project, or Phase(s) of the Project if applicable, or other documents acceptable to the County indicating that the Successful Proposer has sufficient financing to complete the Project, or Phase(s) if applicable, prior to award of any Development Agreement.
- B. In the event that the Successful Proposer fails, for any reason, to secure adequate financing for development as described, and in conformity with the schedule contained in the Development Agreement resulting from this Solicitation, the County reserves the right to terminate any agreement resulting from this Solicitation.
- C. **Note:** The proposed financing of the Project may **not** allow for the cross-collateralization or cross-defaulting 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 the financing of any Phase(s) or component(s) may not allow for cross-collateralization or cross-defaulting with any other Phase(s) or component(s).

2.8 **Taxes, Assessments and Other 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 Successful Proposer to determine and, after award of a Development Agreement, to pay any and all taxes, assessments and impositions which may arise due to placing the development on County-owned land. The County makes no representations or warranties as to the continued availability of any exemption or tax benefit, or to the Successful Proposer's ability to receive any such exemption or benefit.

2.9 **Indemnification**

- A. The Successful Proposer and its contractors, subcontractors and sublessees, where applicable, 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 (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 the Development Agreement and/or Lease(s) resulting from this Solicitation or any Sublease, if applicable, 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 Successful Proposer or its employees, agents, servants, partners, principals, Sublessees, assigns invitees, contractors or subcontractors or (ii) the failure of the Successful Proposer 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 the Development Agreement and/or Lease(s) resulting from this Solicitation or (iii) the failure of the Successful Proposer 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 the Development Agreement and/or Lease(s) resulting from this Solicitation, (iv) the use or occupancy of the improvements and Development Site or (v) in connection with any Sublease or is a Condition of Rights Granted by the Successful Proposer to any Sublessee. The Successful Proposer 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. The Successful Proposer expressly understands and agrees that any insurance protection required by the Development Agreement and/or Lease(s) resulting from this Solicitation or otherwise provided by Successful Proposer 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.

- B. It is expressly understood and the Successful Proposer acknowledges that certain particles and sediments result from transit and airport operations that may adversely affect the Development Site. The Successful Proposer agrees that it will take reasonable measures to minimize any damages that may occur as a result of such particles and sediments. The Successful Proposer shall hold harmless the County for any costs, losses, injuries or damages resulting from resulting from particles or sediments caused by the operation of the MIC, trains and/or airport operations.

2.10 Insurance

Successful Proposer shall indemnify and hold harmless the County and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the County or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of this Agreement by the Successful Proposer or its employees, agents, servants, partners principals or subcontractors. Successful Proposer 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. Successful Proposer expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by Successful Proposer 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.

The limits for coverage set forth below approximate the values anticipated to apply to the scope of the Successful Proposer's site specific project plan. The applicable limits will be identified subsequent to the County recommendation to negotiate with a Proposer and will be incorporated into the Development Agreement prior to award of the Contract.

Design

- A. Worker's Compensation Insurance for all employees of the Successful Proposer as required by Florida Statute 440.
B. Commercial General Liability Insurance on a comprehensive basis, in an amount not less than \$1,000,000 combined

single limit per occurrence for bodily injury and property damage. **Miami-Dade County must be shown as an additional insured with respect to this coverage.**

- C. Automobile Liability Insurance covering all owned, non-owned and hired vehicles used in connection with the work, in an amount not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage.
- D. Professional Liability Insurance in the name of the Successful Proposer or in the name of the licensed design professional for this project in an amount not less than \$1,000,000 per claim.

Construction

- A. Worker's Compensation Insurance for all employees of the Successful Proposer as required by Florida Statute 440.
- B. Commercial General Liability Insurance on a comprehensive basis, in an amount not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage. **Miami-Dade County must be shown as an additional insured with respect to this coverage.**
- C. Automobile Liability Insurance covering all owned, non-owned and hired vehicles used in connection with the work, in an amount not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage.
- D. Completed Value Builder's Risk Insurance on an "All Risk" basis in an amount not less than one hundred (100%) percent of the insurable value of the building(s) or structure(s) under construction. The policy shall name the Successful Proposer and Miami-Dade County A.T.I.M.A.
- E. Professional Liability Insurance in the name of the Successful Proposer or in the name of the licensed design professional for the project in an amount not less than \$1,000,000 per claim.
- F. 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 loss or expense or claim related to the release of hazardous materials at the Development Site.

Operation

- A. Worker's Compensation Insurance for all employees of the Successful Proposer as required by Florida Statute 440.
- B. Commercial General Liability Insurance on a comprehensive basis, in an amount not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage. **Miami-Dade County must be shown as an additional insured with respect to this coverage.**
- C. Automobile Liability Insurance covering all owned, non-owned and hired vehicles used in connection with the work, in an amount not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage.
- D. Property Insurance on an "All Risk" basis in an amount not less than one hundred (100%) percent of the replacement cost of the building(s). Miami-Dade County must be shown as a Loss Payee with respect to this coverage.
- E. Business interruption insurance upon commencement of operations of the Project, or any Phase of the Project, if applicable, utilizing a gross earnings value, with limits equal to no less than twenty-four (24) months of Successful Proposer'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 has been repaired or restored, the continued loss of income will be insured until such income returns to the same level it was prior to the loss or the expiration of twelve (12) months from the date that the repairs or restoration of the improvements are completed, utility services are restore, if applicable, and operations are resumed, whichever occurs first.
- F. 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 in similar or subsequent statute) in an amount equal to the full replacement cost of the improvements. If TRIPRA or in similar or subsequent statute is not in effect, then the "all risk" property insurance required shall not exclude coverage for acts of terror or similar acts of sabotage unless terrorism insurance is not commercially available, in which case, Successful Proposer shall obtain stand-alone coverage in commercially reasonable amounts.
- G. 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 loss or expense or claim related to the release of hazardous materials at the Development Site.

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

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

or

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

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

2.11 Performance and Payment Bond

A minimum of ten (10) days' before Successful Proposer commences any construction work or any materials are purchased from a supplier, Successful Proposer shall execute, deliver to the County and record in the public records of the County, a payment and performance bond equal to the total cost of construction to take place on County-owned property. Each payment and performance bond shall be in compliance with all applicable laws including the terms and requirements of Florida Statutes, Section 255.05, including Sections 255.05(1)(a) and (c), 255.05(3), and 255.05(6), and shall name the County and the Successful Proposer beneficiaries thereof, as joint obligees.

Alternatively to the payment and performance bond described above, the Successful Proposer may provide County with an alternate form of security ("**Alternative Security**") which fully complies with Section 255.05 of the Florida State Statutes and meets the following specifications:

- A. The Successful Proposer shall provide to County either a certified check that the County may deposit in a County-controlled bank account or an Irrevocable Letter of Credit, in accordance with Paragraph 2.12 "Irrevocable Letter of Credit", either of which shall be in a form and for an amount that is acceptable to the County and which shall remain in place until evidence reasonably satisfactory to the County is submitted to demonstrate that all contractors performing work and/or making improvements on County-owned property and all suppliers of materials have been paid and the Successful Proposer has obtained Completion of Construction; and
- B. Require that each prime contractor hired by the Successful Proposer to perform work and/or make improvements on County-owned property shall provide a Performance Bond with a surety insurer authorized to do business in the State of Florida as a surety in an amount not less than 100% of his/her/its respective contract in a form acceptable to the County to insure that his/her construction work shall be completed by the contractor or, on its default his/her surety, and shall name the County as an additional obligee; and
- C. Require that each prime contractor hired by the Successful Proposer to perform work and/or make improvements on County-owned property shall provide a Payment Bond with a surety insurer authorized to do business in the State of Florida as a surety in an amount not less than 100% of his/her/its respective contract in a form acceptable to the County to secure the completion of the development free from all liens and claims of sub-contractors, mechanics, laborers and material men and shall name the County as an additional obligee and payee.

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

- A. The Successful Proposer shall obtain a Conditional Release of Lien from each of its prime contractor(s) at the time each progress payment is made; and
- B. The Successful Proposer shall obtain an Unconditional Release of Lien from each of its prime contractor(s) within five (5) business days after payment is made.

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

- A. Reduce the amount(s) in question from the cash deposit(s) or security posted until the claim(s) is/are liquidated; or
- B. Appropriate funds for such payment(s) from any cash deposit(s) or security posted and make payment(s) directly to the claimant(s).

In either case, the Successful Proposer shall within ten (10) business days of the County's notification deposit an amount equal to the reduced/dispensed 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.

All bonds provided by the Successful Proposer or its prime contractor(s) must meet the following requirements:

- A. Be obtained from guarantee or surety companies acceptable to the U.S. Government and authorized to do business in the state where the work is to be performed. U.S. Treasury Circular Number 570, published annually in the Federal Register, lists companies approved to act as sureties on bonds securing Government contracts, the maximum underwriting limits on each contract bonded, and the States in which the company is licensed to do business. Use of a company listed in this circular is mandatory. Free copies of the circular may be obtained by writing directly to: U.S. Department of Treasury, Financial Management Service, Surety Bond Branch, 401 14th Street, SW, 2nd Floor, West Wing, Washington, D.C. 20226.
- B. Clearly state the rate of premium and the total amount of premium charged. The current power of attorney for the person who signs for the surety company must be attached to the bond. The effective date of the power of attorney shall not precede the date of the bond. The effective date of the bond(s) shall be prior to the issuance of the NTP. The County may negotiate the amount of the bond(s) depending on the phase of the Project.

Failure by the Successful Proposer to provide the required performance and payment bond(s) or Alternative Security in the manner and within the time specified, or within such extended period as the County may grant based upon reasons determined adequate by the County, shall render the Proposer ineligible for award and the County may retain the ineligible Proposer's bid security.

2.12 Irrevocable Letter of Credit

- A. An Irrevocable Letter of Credit (LOC) will be accepted as a substitution of security for the performance of work, in lieu of providing Payment and Performance Bonds. The Successful Proposer shall, within ten (10) business days after contract award and before the County issues the Notice to Proceed, provide to the County a LOC in the amount of 100% of the estimated value of construction. The LOC shall be accessible such that the County may, at its convenience, withdraw funds from the LOC in the event the Successful Proposer fails to execute its payment and performance obligations in a timely manner. The LOC shall be refreshed within five (5) days if drawdowns are made by the County, such that the amount of the LOC is continual at the amount equal to 100% of the cost of construction. The LOC shall remain in full force for the contract term that terminates upon Final Completion of construction, as the term may be extended by the County. On the first anniversary of the effective date and each anniversary date thereafter contained in the Notice to Proceed, the Successful Proposer may cause the amount of the LOC to decrease to reflect 100% of the outstanding amount for construction.
- B. The LOC shall be in an acceptable form to the County, and shall be issued by a major U.S. commercial bank or a U.S. branch office of a foreign bank, in either case, with a Credit Rating of at least (a) "A-" by S&P and "A3" by Moody's, if such entity is rated by both S&P and Moody's or (b) "A-" by S&P or "A3" by Moody's, if such entity is rated by either S&P or Moody's, but not both. Provisions of the LOC shall not limit, in any way, any liability of the Successful Proposer to the County. The LOC shall be drawn on a financial institution which is federally insured and authorized to do business and with offices in the State of Florida.

2.13 Project Objectives

The objectives of the County in offering the Development Site as described in Exhibit A are the following:

- A. Achievement of development of the entire Development Site, under a comprehensive, cohesive master plan, to its highest and best uses within the shortest time feasible through a large-scale, multi-component, mixed-use development.
- B. Development which meets the following requirements:
 - 1) Iconic design demonstrating excellence, creativity and innovation in architectural and layout design which is compatible with and complementary to the architectural design of the MIC Central Station;
 - 2) Design and inclusion of components that will serve to transform the Development Site into an exciting and vibrant destination attractive to businesses, community residents, visitors and transit, airport and MIC patrons and which will complement and harmonize with existing and planned development in the surrounding area;
 - 3) Concentration of density around the MIC and increased patronage of the MIC facilities, the Miami-Dade transit system and the Miami International Airport; and
 - 4) Incorporation of resource efficient features.
- C. Functional and aesthetic integration of the proposed development into the MIC facilities with a direct physical connection between the development and the MIC Central Station at the pedestrian concourse. Development must take maximum advantage of the proximity and convenient accessibility of the Site to the airport and accessibility to all modes of transportation provided by the MIC.
- D. Providing a long term source of income for the County based upon fair market value.

2.14 Development Site Information

The Miami Intermodal Center (MIC), is \$2 billion, regional transportation hub located just east of the Miami International Airport. The MIC includes an 830,000 square foot multi-user rental car center and the Central Station. The Central Station consists of the Miami International Airport (MIA) Metrorail Station, a station on the elevated rapid transit system serving Miami-Dade County, a Tri-Rail station, a Miami-Dade County Metrobus terminal, and, currently, an intercity bus terminal and a pedestrian concourse serving those facilities. Inclusion of an Amtrak station is currently being negotiated. The MIC, including the Central Station is connected directly to the Miami International Airport via the MIA Mover, an elevated, automated people mover system.

Miami International Airport is considered a primary economic engine for Miami-Dade County, generating business revenue of approximately \$30.9 billion annually, and is the major trans-shipment point between the Americas, the Caribbean and Europe. In 2017 it ranked number one among US airports for international freight, fourth for total cargo, third for international passenger traffic and number twelfth for total passengers. It currently serves a total of 100 airlines.

The Central Station pedestrian concourse which serves to connect the MIA Metrorail Station, Tri-Rail Station and the Miami-Dade Metrobus terminal and an intercity bus station will also serve as a connector from the development resulting from this Solicitation to the MIA Mover and Miami International Airport. This connection will allow passengers arriving from the airport to conveniently access the development via the MIA Mover without having to drive or access any other transportation.

2.15 Site Visits and Inspections

Most areas of the Development Site are open to the public during normal business hours and may be visually inspected by potential proposers during those hours. Additionally, a site visit will take place as part of the Pre-proposal Conference.

All other inspections or information regarding the Site may be arranged by contacting the Contracting Officer whose name and contact information is shown on the front cover of this Solicitation.

2.16 Development Jurisdiction

The property being offered for development is located in unincorporated Miami-Dade County, Florida.

2.17 County Facilities and Operations

County facilities and operations are of critical importance to the County. All operations must be maintained at all times. Any alteration, relocation or replacement of County facilities or activities that may impact 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 the Miami-Dade Transit Construction Safety Manual, May 2012 (Exhibit G) or their replacements, as applicable, including the requirement to obtain contractor identification badges.

2.18 Development Agreement and Lease(s)

- A. Certain provisions of the draft Development Agreement, Attachment B, and draft Lease Agreement, Attachment C, may be negotiated and amended. However, the County reserves the right to determine the final form of the Development Agreement and Lease(s) resulting from this Solicitation and to include non-negotiable standard County provisions and requirements including, but not limited to, those requirements described in Section 5 of this Solicitation.
- B. The property is being offered for development on an "as is" basis. The Proposer is solely responsible for completing a comprehensive due diligence process regarding development of the Development Site. After award of the Development Agreement 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.

2.19 The Development Site

- A. The property being offered for development is located in Unincorporated Miami-Dade County on and adjacent to the MIC and includes connection rights to the MIC Central Station. (See Exhibit A.)
- B. Conditions which apply to development of the property include, but are not limited to, the following:
 - 1) Because of its close proximity to the Miami International Airport certain restrictions, including height restrictions, apply to the property. Approximately 70% of the Development Site has a height limit of 160 feet with the remainder having height restriction of between 100 feet to 160 feet as more fully described in Exhibit E Airport Height Restrictions.
 - 2) The property is located within the Critical Approach Subzone A (CA-A) as described in Article XXXVII of the Miami-Dade County Code, Miami International Airport (Wilcox Field) Zoning. Any application for and utilization of any approval under this section of the Code shall constitute acknowledgement of potential impacts resulting from its close proximity to the airport, including but not limited to, increased noise levels throughout the day and night and acknowledgement that the successful Proposer shall not be entitled to any present or future relief or compensation from the County or any other party to mitigate or ameliorate such impacts.
 - 3) All uses of the property must comply with all federal, state and local aviation regulations, including but not limited to, the Code of Miami-Dade County, Chapter 33.
 - 4) The property is located in Unincorporated Miami-Dade County and is zoned PLMUC (Palmer Lake Metropolitan Urban Center District) which allows industrial, commercial, residential and lodging uses. (See Exhibit D, Article 33(T), Chapter 33 of the Miami-Dade County Code).

- 5) The property is within Flood Zone AE. Areas within this classification are subject to a one percent chance of flooding in any given year. Mandatory flood insurance is required and floodplain management standards apply.
- 6) The Development Site includes a portion of property on which small, one-story buildings and a canopy over the buildings have been constructed. The right to the use of space within the buildings and the right to the use certain surface areas for ingress, egress and parking of automobiles, trucks and buses and passenger loading and unloading is currently granted to the Miami-Dade Police Department, Greyhound Lines, Inc. and Megabus Southeast, LLC under air space agreements. The rights granted to the successful Proposer as a result of this Solicitation shall be subject to those existing agreements and the successful Proposer shall have the obligation to retain the existing tenants and to provide accommodations that are in conformity with those agreements and acceptable to the tenants. Any plans, construction and/or activities which affect the rights granted under those agreements shall be subject to approval by the County.
- 7) The successful Proposer may be granted the right, subject to approval by the County) and any other Authority with jurisdiction over the site, to: (a) build over the top of these structures and to use existing supports for structures to be constructed by the successful Proposer or (b) to demolish the existing structures and replace those facilities with comparable facilities within the improvements constructed by the successful Proposer.
- 8) Fee simple title ownership of the land shall remain in the name of the County and no subordination of the fee simple interest in the land or the County's ability to fully realize the monetary and non-monetary benefits contemplated by the Development Agreement and/or Lease(s) resulting from this Solicitation will be permitted.
- 9) The County reserves the right to require the developer to provide a minimum of 166 parking spaces within the Development Site at all times for the exclusive use of the County and to fulfill County's previous parking obligations to certain third parties. Additionally, the County reserves the right to require the developer to provide an additional 167 parking spaces in the future in the event that additional rail lines are constructed to serve the MIC.
- 10) The County reserves the right to exclude existing or proposed streets, sidewalks and easements from the Development Site.
- 11) The Development Site contains a non-exclusive perpetual easement in, over, above and through a portion of the Development Site for purposes of access, maintenance, construction, repair, rehabilitation, and operation.
- 12) Because of its proximity to the Miami International Airport and to the MIC, in addition to increased noise levels certain conditions exist that may adversely affect the Development Site. These include the existence of a certain particles and sediments that result from the operations conducted at the Airport and the MIC.
- 13) The rights offered by this Solicitation does not include the right to name or re-name any County-owned or operated facility and/or system.

Proposers are strongly encouraged to contact the Development Services Division of the Miami-Dade Regulatory and Economic Resources Department to obtain information regarding the Miami-Dade County Zoning Application and Review Process. Contact information can be obtained through the Miami-Dade County website at <http://www.miamidade.gov/zoning/contact.asp>.

2.20 Site Construction

The construction phase of the Project shall be completed in accordance with the applicable rules, regulations, ordinances and standards required by Miami-Dade County or any other applicable regulatory agency. The Successful Proposer shall obtain certified, experienced and reputable architectural and engineering services and construction services including a general contractor, project manager and subcontractors.

Applicable governmental regulations may include, but are not limited to:

- A. All applicable Occupational, Health and Safety Administration (OSHA) regulations.
- B. All applicable County construction regulations.
- C. Florida Statutes Section 255.05 (Bond of contractor constructing public buildings).
- D. Florida Statutes Section 255.20 (Local bids and contracts for public construction works).
- E. Florida Statutes Section 287.055 (Acquisition of professional architectural, engineering, landscape architectural, or surveying and mapping services).
- F. Chapter 33T of the Miami-Dade County Code (Exhibit D) which includes requirements for development within the Palmer Lake Metropolitan Urban Center District.
- G. All applicable federal, state and local regulations, rules and guidelines.

No construction will commence on the Development Site until the Successful Proposer has obtained all required approvals and permits from all appropriate jurisdictions at which time a Closing shall take place and a Lease shall become effective. Building permits in Unincorporated Miami-Dade County are issued by Miami-Dade County.

The Successful Proposer shall mitigate and/or remediate any negative impact to County, public or private operations and/or facilities prior to commencing any work that may have such impact. A mitigation and/or remediation plan may be required by the County and the County may require amendments to the plan as the project progresses. The plan and any amendments or changes to the plan must be approved by the County, in writing, prior to commencing any work that may impact County or private facilities and/or operations.

2.21 Designation of Improvements by Name

With the written consent of the County, which shall not be unreasonably withheld, the Successful Proposer shall have the right and privilege of designating name(s) by which the Improvements and the Project/Phase thereof shall be known. However, the rights offered by this Solicitation does not include the right to name or re-name any County-owned or operated facility and/or system.

2.22 Environmental Issues

Environmental studies that have been completed are available upon request. However, the successful Proposer shall prepare any additional, required environmental reviews pursuant to the requirements of the Miami-Dade Department of Environmental Resource Management (DERM), or any other applicable regulatory agency as they pertain to the Site. The successful Proposer shall be solely and fully responsible for providing any and all information and paying the cost of any and all studies and analyses required for completion of these assessments. The successful Proposer shall be solely responsible for any further environmental remediation of the Site, if required. The County does not make or offer any representation or warranty, whatsoever, regarding the condition of the Site or its suitability for the uses contemplated by this Solicitation.

2.23 Property Taxes

Because the Site is County-owned property, it is not currently subject to real estate taxes. However, it is the responsibility of the Proposer to determine any and all tax consequences which may arise due to placing the development on County-owned land. The County makes no representations or warranties as to the continued availability of any exemption or tax benefit, or to the Successful Proposer's ability to receive any such exemption or benefit.

2.24 Successful Proposer's Responsibilities

After award of a Development Agreement the Successful Proposer shall be responsible for all aspects related to and payment of all expenses associated with the planning, construction, maintenance and operation of the proposed

development, including but not limited to, the following:

- A. All financing and costs related to the planning, construction and operation of the proposed development;
- B. Duly applying for, obtaining and maintaining any and all permits, licenses, easements, property rights and approvals, necessary prior to, during and after construction. (The County anticipates that all approvals and permits necessary to begin construction on the Project or Phase, should be obtained within two (2) years,
- C. Platting of the Development Site;
- D. All development fees imposed in connection with the development by the County or any other agency of appropriate jurisdiction.
- D. All off-site public improvements and/or infrastructure required for development of the Site (streets, street widening, street lights, sidewalks, water/sewer infrastructure, landscaping, etc.) will be the responsibility of the successful Proposer.
- E. Extension, relocation and/or upgrading of utilities, including utilities serving existing County facilities, or connection of new utilities, if necessary.
- F. Any alteration, relocation, or replacement of any County and/or private facilities, either temporary or permanent, and with any measures required to maintain County and/or private operations during development shall be at the sole cost of the successful Proposer.
- G. Submission of plan(s) to mitigate any disruption to County, other public and/or private operations and/or impacts to County, public and/or private facilities. The plan(s) must be approved in writing by the County prior to commencement of any work that may impact County or private operations and/or facilities. Any damage or impacts to County or private systems, facilities or operations resulting from activities undertaken or authorized by the successful Proposer must be immediately remediated at the successful Proposer's sole expense. If required by the County, the successful Proposer must prepare and submit a mitigation and remediation plan. The plan must receive the written approval of the County and be executed by the successful Proposer.
- H. Certain activities which may potentially impact County facilities and/or operations may require the use of County employees or representatives to monitor and coordinate activities. The Successful Proposer shall be responsible for all costs incurred as a result of such activities, including payment for the use of County employees or representatives.
- I. Any additional environmental review, soil testing, and/or remediation on the Site required by any authority having jurisdiction over such matters shall be done at the sole expense of the successful Proposer.
- J. Filing of Development Agreement, and Lease(s) or any other agreements resulting from this Solicitation and payment of all recording fees.
- K. Payment of any and all taxes associated with the development of the Site, including but not limited to, ad valorem real estate taxes, that may be associated with the Project and/or the Site.
- L. Submission of monthly status reports to the County regarding the Project development upon award of Development Agreement. Frequency of status reports may be changed at any time at the discretion of the County.
- M. Commencement and completion of the construction of the Project in a timely manner.
- N. Prior to construction, the Successful Proposer's designated Project Manager, its contractors and/or subcontractors, as determined appropriate in the sole discretion of the County, will be required to meet with County staff to provide relevant information and to coordinate construction related activities. Upon commencement of construction, such meetings will be required as frequently as deemed appropriate by the County.

- O. If required by the County the successful Proposer shall participate in community outreach activities.
- P. Obtaining bonding and/or assurance of completion as specified in Section 5.2.
- Q. Obtaining all insurance coverages as required by the County.
- R. Any proposed desired zoning changes or any other land use planning changes from the appropriate agency having jurisdiction. (The County does not make or offer any representation or warranty that any such requested changes will be granted.)
- S. Obtaining any and all access permits from the State, County, and any authority with jurisdiction.

2.25 Operations and Maintenance

The successful Proposer shall be responsible for all aspects of the construction, operation and maintenance of the any development resulting from this Solicitation. Additionally, the County may require the successful Proposer to assume the responsibilities for certain aspects of the construction, operation, and/or maintenance of other County or private facilities in connection with the proposed development.

2.26 Approval Rights

County facilities and operations are of critical importance to the County. All operations must be maintained at all times. Any alteration, relocation or replacement of County facilities or activities that may impact 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 the Miami-Dade Transit Construction Safety Manual, May 2012 (Exhibit G) or their replacements, as applicable, including the requirement to obtain contractor identification badges.

The County shall have the right to approve, disapprove or amend, in its sole and absolute discretion:

- A. All matters that affect the integrity, functionality, efficiency, safety, operation, maintenance, legal compliancy, cost or profitability of any County facility, operations, activities or patrons;
- B. The design and construction of any structure or connection, either temporary or permanent, impacting any County facility.
- C. Matters that affect the Successful Proposer's obligations related to the Project schedule or changes to the master plan and/or components of the master plan or Phases, if applicable.

2.27 No Subordination of County's Fee Interest

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 and County's reversionary interest in the Development Site and the improvements thereon shall be superior and prior to any loans, mortgages, liens or any type of encumbrance.

2.28 County's Disclaimer of Liability

The property is being offered for development on an "as is" basis. The Proposer is solely responsible for completing a comprehensive due diligence process regarding development of the Development Site. After award of the Development Agreement 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.

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 or reasons for non-performance by the Successful Proposer or be grounds for a claim for allowance, refund or deduction.

2.29 Inspection of Accounting Records

The Successful Proposer will be required to 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 Solicitation, the Development Agreement and/or Lease(s) resulting from this Solicitation, including but not limited to, such books, documents, papers and records relating to the financial strength or condition of the Successful Proposer, any payment obligations under the resulting Development Agreement and/or 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 Successful Proposer shall retain all such records for a minimum of three years after the required submission, audit or inspection date.

3.0 RESPONSE REQUIREMENTS**3.1 Submittal Requirements**

- A. In response to this Solicitation, Proposer should **complete and return the entire Proposal Submission Package**. Proposers should carefully follow the format and instructions outlined therein. All documents and information must be fully completed and signed as required and submitted in the manner described.

- B. **The proposal shall be written in sufficient detail to permit the County to conduct a meaningful evaluation of the proposed services, in accordance with the requirements of the Proposer Information Document (Proposal Submission Package).**

4.0 EVALUATION PROCESS

4.1 Review of Proposals for Responsiveness

Each proposal will be reviewed to determine if the proposal is responsive to the submission requirements outlined in this Solicitation. A responsive proposal is one which follows the requirements of this Solicitation, includes all documentation, is submitted in the format outlined in this Solicitation, is of timely submission, and has the appropriate signatures as required on each document. Failure to comply with these requirements may result in the proposal being deemed non-responsive.

4.2 Evaluation Criteria

Proposals will be evaluated by a Competitive Selection Committee which will evaluate and rank proposals on the Technical and Price Criteria listed below. The Competitive Selection Committee will be comprised of appropriate County personnel and members of the community, as deemed necessary, with the appropriate experience and/or knowledge, striving to ensure that the Competitive Selection Committee is balanced with regard to both ethnicity and gender. The criteria are itemized with their respective weights for a maximum total of one thousand (1000) points per Competitive Selection Committee member.

<u>Technical Criteria</u>	<u>Points</u>
<p>A. <u>Project Plan/Development Approach</u> Achievement of the highest and best economic use of the Development Site through a financially viable, market-driven development, in accordance with Paragraph 2.13 "Project Objectives" of the RFP and Section XX "Project Plan/Development Approach" of the Proposer Information Document.</p>	100
<p>B. <u>Innovative Design</u> Excellence, creativity and innovation demonstrated in architectural design, in accordance with Paragraph 2.13 "Project Objectives" of the RFP and Section XX "Innovative Design" of the Proposer Information Document.</p>	100
<p>C. <u>Proposer's Financial Strength and Capacity to Secure Financing</u> Demonstrated financing plan and capacity.</p>	200
<p>D. <u>Schedule</u> Project schedule, including proposed phasing if applicable, that results in the development of the entire Development Site meeting all of the project objectives within the shortest feasible time period.</p>	150
<p>E. <u>Proposer's Corporate Experience and Past Performance</u> Relevant experience and qualifications of each firm/corporate entity proposed to perform the Work.</p>	100
<p>F. <u>Proposer's Staff Experience and Past Performance</u> Relevant experience and qualifications of key personnel in the development Industry, including key personnel of subcontractors that will be assigned to this project, and experience and qualifications of subcontractors.</p>	100

<u>Price Criteria</u>	<u>Points</u>
G. <u>Proposal Price</u> Proposed prices, in accordance with the Proposer's completed Form B-1(a) or B-1(b).	200
H. <u>Cost Benefit to the County</u> Any other quantifiable financial benefits to the County such as replacing, upgrading and/or maintaining County facilities including landscaping and hardscaping, illumination and wayfinding signage and enhancing pedestrian access and passenger amenities, that results in a financial benefit to the County.	50
Total:	1000

4.3 Oral Presentations

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

4.4 Selection Factor

This Solicitation includes a selection factor for Miami-Dade County Certified Small Business Enterprises (SBE's) as follows. A SBE/Micro Business Enterprise is entitled to receive an additional ten percent (10%) of the total technical evaluation points on the technical portion of such Proposer's proposal. An SBE/Micro Business Enterprise must be certified by Small Business Development for the type of goods and/or services the Proposer provides in accordance with the applicable Commodity Code(s) for this Solicitation. For certification information contact Small Business Development at (305) 375-2378 or <http://www.miamidade.gov/smallbusiness/>

The SBE/Micro Business Enterprise must be certified by proposal submission deadline, at contract award, and for the duration of the contract to remain eligible for the preference. Firms that graduate from the SBE Program during the contract term may remain on the contract.

OR

A Selection Factor is not applicable to this Solicitation.

OR

(If no points are assigned to evaluation criteria, include the following in addition to above paragraph):

Whenever there are two best ranked proposals that are substantially equal and only one of the two so ranked proposals is submitted by a Proposer entitled to a selection factor, the selection factor shall be the deciding factor for award.

4.5 Local Certified Veteran Business Enterprise Preference

This Solicitation includes a preference for Miami-Dade County Local Certified Veteran Business Enterprises in accordance with Section 2-8.5.1 of the Code of Miami-Dade County. "Local Certified Veteran Business Enterprise" or "VBE" is a firm that is (a) a local business pursuant to Section 2-8.5 of the Code of Miami-Dade County and (b) prior to proposal or bid submittal is certified by the State of Florida Department of Management Services as a veteran business

enterprise pursuant to Section 295.187 of the Florida Statutes. A VBE that submits a proposal in response to this solicitation is entitled to receive an additional five percent of the evaluation points scored on the technical portion of such vendor's proposal. If a Miami-Dade County Certified Small Business Enterprise (SBE) measure is being applied to this Solicitation, a VBE which also qualifies for the SBE measure shall not receive the veteran's preference provided in this section and shall be limited to the applicable SBE preference. At the time of proposal submission, the firm must affirm in writing its compliance with the certification requirements of Section 295.187 of the Florida Statutes and submit this affirmation and a copy of the actual certification along with the Proposal Submittal Form.

4.6 Price Evaluation

The price proposal, Forms B-1(a) and B-1(b), and will be evaluated subjectively in combination with the Technical Criteria, including an evaluation of how well it matches Proposer's understanding of the County's needs described in this Solicitation, the Proposer's assumptions, and the value of the proposed services. The pricing evaluation is used as part of the evaluation process to determine the highest ranked Proposer. The County reserves the right to negotiate the final terms, conditions and pricing of the contract as may be in the best interest of the County.

4.7 Local Preference

The evaluation of competitive solicitations is subject to Section 2-8.5 of the Miami-Dade County Code of Miami-Dade County, which, except where contrary to federal or state law, or any other funding source requirements, provides that preference be given to local businesses. If, following the completion of final rankings by the Competitive Selection Committee a non-local Proposer is the highest ranked responsive and responsible Proposer, and the ranking of a responsive and responsible local Proposer is within 5% of the ranking obtained by said non-local Proposer, then the Competitive Selection Committee will recommend that a contract be negotiated with said local Proposer.

4.8 Negotiations

The Competitive Selection Committee will evaluate, score and rank proposals, and submit the results of the evaluation to the County Mayor or designee with its recommendation. The County Mayor or designee will determine with which Proposer(s) the County shall negotiate, if any, taking into consideration the Local Preference Section above. The County Mayor or designee, at their sole discretion, may direct negotiations with the highest ranked Proposer, negotiations with multiple Proposers, and/or may request best and final offers. In any event the County engages in negotiations with a single or multiple Proposers and/or requests best and final offers, the discussions may include price and conditions attendant to price.

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

Any Proposer recommended for negotiations shall complete a Collusion Affidavit, in accordance with Section 2-8.1.1 of the Code of Miami-Dade County. (If a Proposer fails to submit the required Collusion Affidavit, said Proposer shall be ineligible for award.)

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

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

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

4.9 Contract Award

Any proposed contract (aka Development and Lease Agreements), resulting from this Solicitation, will be submitted to the County Mayor or designee. All Proposers will be notified in writing of the decision of the County Mayor or designee with respect to contract award. The Contract award, if any, shall be made to the Proposer whose proposal shall be deemed by the County to be in the best interest of the County. Notwithstanding the rights of protest listed below, the County's decision of whether to make the award and to which Proposer shall be final.

4.10 Rights of Protest

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

5.0 TERMS AND CONDITIONS

The County's anticipated form of agreement is attached. The terms and conditions summarized below are of special note and can be found in their entirety in the agreement:

5.1 Vendor Registration

Prior to being recommended for award, the Proposer shall complete a Miami-Dade County Vendor Registration Package. For online vendor registration, visit the Vendor Portal:

<http://www.miamidade.gov/procurement/vendor-registration.asp>.

5.2 Insurance Requirements

The Contractor shall furnish to the County, Internal Services Department, Strategic Procurement Division, prior to the commencement of any work under any agreement, Certificates of Insurance which indicate insurance coverage has been obtained that meets the stated requirements.

5.3 Inspector General Reviews

In accordance with Section 2-1076 of the Code of Miami-Dade County, the Office of the Inspector General may, on a random basis, perform audits on all County contracts, throughout the duration of said contracts, except as otherwise indicated.

6.0 ATTACHMENTS AND EXHIBITS

Proposal Submission Package:

Proposer Information Document

Web Forms – Proposal Submittal Form, Fair Subcontract Practices Affidavit, Subcontractor Listing, Lobbyist Registration Form, and Contractor Due Diligence Affidavit

6.1 Attachments to the RFP

- Attachment A Scope of Work
- Attachment B Draft Development Agreement
- Attachment C Draft Lease Agreement
- Attachment D Form B-1(a)
- Attachment E Form B-1(b)

6.2 Exhibits to the RFP

- Exhibit A Development Site
- Exhibit B Miami Intermodal Center
- Exhibit C MIC Central Station
- Exhibit D Palmer Lake Metropolitan Urban Center District, Article 33(T), Chapter 33 of the Miami-Dade County Code
- Exhibit E Airport Height Zoning Map
- Exhibit F Miami-Dade Transit Construction Safety Manual, May 2012

ATTACHMENT A
RFP-00945

PROPOSER INFORMATION DOCUMENT

I. Request for Proposals Objectives

- A. Miami-Dade County is seeking proposals from experienced developers with a proven track record of undertaking and successfully completing profitable, large-scale, multi-component, mixed-use developments for the joint development of approximately 15.85 acres of County-owned property located immediately east of the Miami Intermodal Center (MIC) and including a portion of the property on which structures have been constructed. . Previous experience in successfully completing large-scale developments will be a factor in the evaluation of the proposals. The Proposer must have the authority to submit the proposal and negotiate and execute the resulting Development Agreement. The County will only negotiate and subsequently award a Development Agreement resulting from this Solicitation to the legal entity that submits the proposal. Developers may include joint ventures or consortiums whose members meet the above described qualifications.
- B. The property being offered for development consists of approximately 7.24 acres of vacant property and 8.61 acres of property on which surface parking lots, small, one-story buildings and a metal canopy over the buildings have been constructed. (See Exhibit A). As part of the Proposal submission Proposers must propose a master plan for the development of the entire Development Site and provide functional, aesthetic integration of the MIC facilities into the overall development with a direct physical connection between the development and the MIC Central Station at the pedestrian concourse.
- C. The proposed master plan shall describe the Proposer's concept for the entire Site being offered by this Solicitation. It is anticipated, though not required, that the master plan will include the division of the Site into separate and distinct development components (Phases) each of which can be developed and operated independently from the other Phases. In dividing the Development Site into Phases, Proposers must include all of the property included in the Development Site into the proposed Phases. No portion of the Site shall remain outside of the boundaries of a Phase. Shared easements may be platted/recorded within the Development Site but must be contained within a Phase. Additionally, each Phase must be in compliance with all laws and ordinances zoning requirements and be commercially and economically viable on a stand-alone basis. The master plan shall also include a development schedule establishing a timetable for the development of the Development Site, on a Phase by Phase basis, if applicable. If a Phased development is proposed, the proposal must include a sketch of the division of the Site into the separate Phases and a description of the development components to be included in each Phase, as more fully described in the Proposal Submission Package.
- D. The County contemplates awarding a Development Agreement as a result of this Solicitation which provides for long-term Lease(s) to become effective upon the selected Developer obtaining the approvals and meeting the obligations to commence construction in accordance with the Development Agreement resulting from this Solicitation. The Lease(s) will have an initial term and periodic renewal terms, which in the aggregate, shall have a total maximum term of 90 years. The length of the initial term and renewal terms will be based upon the scope of the development proposed and will be established during negotiations with the County.
- E. The term Phase as used herein means the division of the Development Site into separate portions or components for purposes of development, financing and construction, -and ownership and operation of improvements, with separate legal descriptions for each portion or Phase. The term Phase is not meant to require development of the Phases in any particular sequence and Phases may be developed concurrently. Additionally, although the entire Development Site will be included under one Development Agreement, if the Site is developed under a phased approach, it is anticipated that each Phase will be developed, constructed, financed and operated under a separate Lease. It is contemplated that under any agreement(s) resulting from this Solicitation that the successful Proposer may remain liable under the provisions of such agreement(s) until construction of a Phases is complete.
- F. A major objective of this Solicitation is to provide for the development of the entire Site to its highest and best use as

expeditiously as is feasible under prevailing market conditions and to avoid having any portion of the Site remain undeveloped for an extensive period of time. Consequently, proposals which allow for development of the entire Development Site with the separate development components (or Phases if a phased development concept is proposed) to be constructed concurrently or in quick succession are strongly encouraged.

II. GENERAL REQUIREMENTS

- A. All references to "Proposer" shall mean the respondent to the RFP and all firms proposed to perform the subject RFP Scope of Work ("Work").
- B. The information submitted in response to this RFP must be complete and contain the information requested under Section III "Proposal Submission Requirement". Failure to provide all requested information or any significant deviation from this format might be cause for rejection of the response.
- C. All information submitted will become property of the County. The County reserves the option to request any Proposer submitting a response to clarify its response or to supply additional information, as necessary.
- D. Proposers must submit a complete proposal in response to this RFP, using the forms provided as Attachment of the RFP and requirements stated in this document. Submission of the Proposer's proposal will be construed by the County as the Proposer's acceptance of the procedures, evaluation criteria, and other administrative instructions in this RFP.
- E. The County reserves the right to make clarifications to the scope of work to be performed under this Agreement during contract negotiations with the Proposer.
- F. The Proposer must provide all assumptions used to prepare is Technical and Cost proposal.
- G. Identify if Proposer has taken any exception to the terms of this Solicitation. If so, indicate what alternative is being offered and the cost implications of the exception(s).

III. PROPOSAL SUBMISSION REQUIREMENTS

A. Project Plan/Development Approach

- 1. Provide an executive summary describing the proposed master plan for the entire Development Site and the Proposer's general approach to developing, constructing, maintaining, operating and managing the proposed project components or Phases, if applicable, included in the master plan. The master plan shall include a description of the Proposer's concept for the entire Development Site. If a phased approach is being proposed, the Proposer must propose the division of the Development Site into Phases such that all of the property within the Development Site is included within a Phase. No portion of the Development Site may remain outside the boundaries of a Phase. Shared easements may be proposed but must be contained within one of the Phases. Each Phase must be commercially and economically viable on a stand-alone basis and capable of operating independently from all other Phases in compliance with all Laws and Ordinances and building and zoning codes.
- 2. Each Phase must be in compliance with all laws and ordinances zoning requirements and be commercially and economically viable on a stand-alone basis. The master plan shall also include a development schedule establishing a timetable for the development of the Development Site, on a Phase by Phase basis, if applicable. If a Phased development is proposed, the proposal must include a sketch of the division of the Site into the separate Phases and a description of the development components to be included in each Phase, as more fully described in the Proposal Submission Package.
- 3. A major objective of this Solicitation is to provide for the development of the entire Site to its highest and best use as expeditiously as is feasible under prevailing market conditions and to avoid having any portion of the Site remain undeveloped for an extensive period of time. Consequently, proposals which allow for development of the entire Development Site with the separate development components (or Phases if a phased development concept is proposed) to be constructed concurrently or in quick succession are strongly encouraged.

The master plan for the Development Site must include the following:

- a) Site plan of the Development Site, drawn to scale, showing the following:
 - i) the boundaries of each proposed Phase, if applicable;
 - ii) the location of buildings, other structures and features including parking structures, surface parking, roadways, sidewalks, open areas, landscaping, etc.;
 - iii) the location of all easements, including but not limited to, utility easements and ingress and egress easements;
 - iv) traffic circulation plan showing all modes of transportation including but not limited to motor vehicle, pedestrian and bicycle, internal circulation and all ingress and egress access; and
 - v) facilities and/or accommodations for all modes of transportation including shared use paths, drop-off and pick-up sites, charging and docking stations and any other transportation related facilities.
 - b) Provide a table for each component or Phase, if applicable, with gross square footage proposed for each use including office space, hotel, retail, residential, open space, roadways, etc.;
 - c) Provide detailed description of each development component or Phase, if applicable, including square footage proposed for each use within the component or Phase. For example, eight story office building with 100,000 square feet of office space with 10,000 square feet of ground floor retail space or six story market rate rental apartments, with x number of studio apartments containing 400 square feet, x number of one bedroom apartments containing 750 square and x number of two bedroom apartments containing 950 square feet;
 - d) Conceptual drawings of the proposed master plan for the Development Site; and
 - e) Plans which clearly show integration of the proposed project with the Miami Intermodal Center (MIC), including the physical connection at the pedestrian concourse of the MIC Central Station.
4. Describe in detail how the proposed development will meet the following objectives:
- a) Explanation of the factors that will contribute to the proposed development becoming an attractive destination;
 - b) Explanation of why the proposed development is appropriate to the Development Site and complementary to existing and future development in the surrounding area;
 - c) Explanation of how the proposed project will concentrate density around the MIC and promote development in the surrounding areas;
 - d) Explanation of how the proposed development will take maximum advantage of the proximity and convenient accessibility to the airport and all modes of transportation available at the MIC;
 - e) Explanation of how the proposed project will promote the use of public transportation including the Miami-Dade County transit system and increased patronage of the MIC facilities and the Miami International Airport;
 - f) Description of energy efficient features that are planned to be incorporated into the development; and
 - g) Description of the quality of construction and materials to be used in the development buildings and structures.
5. Describe the Proposer's methodology in obtaining regulatory approvals and building permits.

6. A plan for securing and recording of all property rights necessary for the successful construction, operation, and use of the Project including the securing of property rights between the Project Phases, as applicable. The plan should include the location and description of such rights and the schedule for securing and recording of the rights. The plan must take into the account the possibility of an assignment of any Project Phases and the proposed Project schedule; and
7. Describe the impact that the project will have on any MIC facilities and operations and, if applicable, describe in detail the measures to be taken to mitigate impacts on any of the following operations and/or facilities:
 - a) Miami Intermodal Center (MIC);
 - b) Metrorail;
 - c) Metrobus;
 - d) Miami International Airport; and
 - e) TriRail.
8. Provide a copy of Proposer's Quality Control Plan for previous projects and identify the quality control procedures and mechanisms that will be implemented for the proposed development.
9. Explain how the project or how each phase of the project, if applicable, complies with zoning requirements and height restrictions. Describe any variances Proposer will be seeking and methodology to be used to obtaining them.

Proposers are strongly encouraged to contact the Development Services Division of the Miami-Dade Regulatory and Economic Resources Department to obtain information regarding the Miami-Dade County Zoning Application and Review Process. Contact information can be obtained through the Miami-Dade County website at:

<http://www.miamidade.gov/zoning/contact.asp>.

10. The development should incorporate the following criteria:
 - a) Achievement of the highest and best economic use of the Development Site;
 - b) Excellence, creativity and innovation demonstrated in architectural design and layout of proposed development which is complementary to the architectural design of the MIC Central Station;
 - c) Inclusion of components that take maximum advantage of the proximity and convenient accessibility of the Development Site to the airport and accessibility to all modes of transportation provided by the MIC and promote increased patronage of the MIC facilities, the Miami-Dade transit system and the Miami International Airport;
 - d) Inclusion of components which will serve to transform the Site into an attractive destination and concentrate density around the MIC;
 - e) Incorporation of uses and which complement and harmonize with existing and planned development in the surrounding area;
 - f) Functional, aesthetic and physical integration of the proposed development into the MIC at the pedestrian concourse and compatibility with the MIC facilities and operations;
 - g) Market/financial viability of the proposed development; and
 - h) Incorporation of resource efficient features that would allow eventual LEED certification.

11. Approach to Site Development

The Proposer shall include in its approach to development of the Site the following:

- a) A master plan for the entire Development Site which, if applicable, describes the division of the Site into separate and distinct development components (Phases).
- b) Submission of an analysis of the economic impacts of the proposed development, by Phase, to include the following information:
 - I. Estimated annual ad valorem taxes directly generated by the development for the County and Miami-Dade County Public Schools;
 - II. Estimated impact fees;
 - III. Proposed improvements to area infrastructure;
 - IV. Estimated permit fees;
 - V. Number of jobs to be generated during construction;
 - VI. Number of permanent jobs created by development; and
 - VII. Estimated increase in transit ridership and MIC and Miami International Airport patronage.
- c) Submission of a Project schedule/plan, by Phase if applicable, delineating steps, and the timing of such steps, to complete development of the Site. The Project schedule/plan must be approved by the County.
- d) Design which best meets the highest and best economic use permitted by existing market conditions and project objectives outlined in Section 2.3 above.
- e) Layout which maximizes use of the entire Development Site and if Phased Developed is proposed, each Phase must be commercially and economically viable on a stand-alone basis.
- f) Construction that meets all applicable regulatory requirements and if Phased Developed is proposed, each Phase must meet all applicable regulatory requirements independently and on a stand-alone basis.
- g) Monitoring, mitigation and remediation of negative impacts to County and/or private operations and facilities during and after construction.
- h) An analysis of the Development Site to include, at minimum, the following information:
 - I. Determination of the most appropriate market driven uses of the Development Site;
 - II. Analysis of economic and demographic conditions;
 - III. Most effective phasing of development, if applicable;
 - IV. Potential regulatory and/or legal challenges and methods of dealing with such challenges; and
 - V. Identification of geographic constraints and methods of dealing with such constraints.
- i) Proposers are encouraged to propose developments that incorporate the use of resource efficient features and to obtain LEED certification for each project component.

B. Innovative Design

Excellence, creativity and innovation demonstrated in architectural design which is complementary to the architectural design of the MIC Central Station, the proposed layout of the development, the functional, aesthetic and physical integration of the proposed development into the MIC at the pedestrian concourse and incorporation of resource efficient features that would allow eventual LEED certification;

C. **Financial Strength and Capacity to Secure Financing**

Financial Strength

1. Provide documentation which clearly demonstrates the Proposer's financial strength and ability to develop the proposed project. Such documentation may include the Proposer's most recent certified financial statements as of a date not earlier than the end of the Proposer's preceding official tax accounting period with a statement, in writing signed by a duly authorized representative, stating that the present financial conditions are materially the same as that shown on the balance sheet and income statement submitted, or with an explanation for a material change in the financial statements. If certified financial statements are not available, provide latest available financial statements (balance sheet and income statement) and letters of credit available from accredited financial institutions accompanied by a letter authoring each credit reference to respond to inquiries from Miami-Dade County. Any other relevant documentation may also be included.
2. Identify the sources and amounts of equity capital raised for the projects described in No.11 above.
3. State the minimum and maximum anticipated cash capital investment by Proposer and any equity commitment by Proposer.
4. Net worth of any lender and assets under management from any financing source.

If Proposer is a joint venture or a consortium the Proposal must include the above described information for each member of the joint venture or consortium.

Proposer's Financial Benefits to the County and the Community

5. Provide a spreadsheet, corresponding to the proposed Project Schedule showing the amounts which are proposed to be paid to County for the Development Fee, Initial Annual Rent, and Minimum Annual Guaranteed Rent for the Project or for each Project Phase covering a period of thirty years from award of the Development Agreement. The spreadsheet at a minimum shall include the amount to be paid by Proposer to County for each calendar year after award and an overall total at the end of thirty years. If a Phased Development is contemplated, the spreadsheet should be separated by Phase with the amount to be paid by Proposer to County for each Project Phase shown for each calendar year after award of Development Agreement. The spreadsheet shall contain a total of all amounts to be paid to County for: (i) all Phases for each thirty (30) calendar years after award; (ii) a total for each Phase at the end of thirty years, and (iii) for all Phases combined at the end of thirty years. The amount stated in the spreadsheet shall include a yearly CPI adjustment estimated at two percent. The spreadsheet shall also indicate the net present value of the total Development Fees and Rents to be paid to the County using a six percent rate of return.
6. Provide an analysis of the economic impacts of the proposed development, by Phase if applicable, to include the following information:
 - a) Estimated annual ad valorem taxes directly generated by the development for the County and Miami-Dade County Public Schools;
 - b) Estimated impact fees;
 - c) Proposed improvements to area infrastructure;
 - d) Estimated permit fees;
 - e) Number of jobs to be generated during construction;
 - f) Number of permanent jobs created by development;

- g) Estimated number of indirect jobs to be created by the development; and
- h) Estimated increase in transit ridership and patronage of the MIC and the Miami International Airport.

Market/Financial Viability

- 7. Provide a market analysis of the Development Site to include, at minimum, the following information:
 - a) Determination of the most appropriate market driven uses of the Development Site with detailed explanation of the factors contributing to this determination;
 - b) Analysis of economic and demographic conditions;
 - c) Most effective phasing of development;
 - d) Potential regulatory and/or legal challenges and methods of dealing with such challenges; and
 - e) Identification of geographic constraints and methods of dealing with such constraints.
- 8. Provide a 15-year pre-development, construction and operating period cash flow statement, by Phase if applicable, beginning in the month in which proposals are due. The statement should be separated by land use (for example, residential, office, retail) and contain, at minimum, the following projections:
 - a) Financing
 - i) Construction loan rate, term and amount;
 - ii) Permanent loan rate, term and amount;
 - iii) Loan to value ratio;
 - iv) Equity as a percentage of total construction costs; and
 - v) Debt service ratio.
 - b) Revenues (as applicable)
 - i) Office rent (\$/gross square foot and number of gross square feet proposed);
 - ii) Retail rent (\$/gross square foot and number of gross square feet proposed);
 - iii) Residential rent (\$/dwelling unit and number of dwelling units proposed);
 - iv) Hotel income (\$/key and number of guest rooms proposed);
 - v) Parking income (4/space and number of spaces proposed); and
 - vi) Other revenues.
 - c) Construction Costs
 - i) Total hard costs; and
 - ii) Total soft costs and total soft costs as a percentage of total hard costs.
 - d) Operating Costs -Operating expenses shown in total dollars, dollars per gross square foot and as a percentage of revenues.
- 9. Provide a 30-year pro forma including the following line items:
 - a) Sources
 - i) Equity;
 - ii) Construction financing;
 - iii) Permanent financing;

- iv) Other financing; and
 - v) Total financing.
- b) Revenues
- i) Office;
 - ii) Residential;
 - iii) Retail;
 - iv) Hotel;
 - v) Parking;
 - vi) Other revenues;
 - vii) Total gross revenues; and
 - viii) Total net revenues.
- c) Returns
- i) Proposer's internal rate of return;
 - ii) Return on investment; and
 - iii) Return on equity.

The pro forma must be presented in current dollars. An annual escalation rate of 2% will be assumed.

D. Schedule

1. Provide a realistic, detailed project schedule for the development, with a separate schedule for each Phase if a phased approach is being proposed, from award of Development Agreement to issuance of the last Certificate of Occupancy, identifying key tasks and duration of each. At minimum the project schedule must contain the following key tasks for the Project, or each Phase of the Project, if applicable (Specify the proposed duration of each task in number of months from award of the Development Agreement until completion of each task.):
 - a) Anticipated time period from award of Development Agreement until completion of design;
 - b) Anticipated time period from award of Development Agreement until Lease Closing (Scheduled Lease Closing)*;
 - c) Anticipated time period from award of Development Agreement until commencement of construction
 - d) Anticipated time period from award of Development Agreement until issuance of Certificate of Occupancy or Certificate of Completion;

* Lease Closing takes place upon receiving the approvals, permits and financing required for construction to begin.

2. **Note:** Proposers are cautioned to be realistic in proposing the above described time periods as this information will be relied upon in evaluating proposals and in establishing the project schedule. The Development Agreement and Lease(s) resulting from this Solicitation will include substantial penalties for failing to complete the key tasks included in the project schedule.

E. Proposer's Corporate Experience and Past Performance

Company Experience

1. If the Proposer is a joint venture or a consortium of developers, provide the following information for each firm that is a member of the joint venture or consortium and include the portion or Phases of the project for which each member will be responsible.
2. State the number of years that the Proposer has been in existence, the current number of employees and the primary markets served.

3. Provide a history of the Proposer's development background and experience.
4. Provide detailed information on Proposer's comparable projects, either on-going or completed within the past five years. The information should include a detailed description and location of the project, the total dollar value and any other partners or entities involved in the project.
5. List all contracts, if any, that the Proposer has performed for Miami-Dade County. The County will review all contracts the Proposer has performed for the County in accordance with Section 2-8.1(g) of the Miami-Dade County Code, which requires that a "Bidder's or Proposer's past performance on County Contracts be considered in the selection of Consultants and Contractors for future County Contracts."
6. As such, the Proposer must list and describe all work performed for Miami-Dade County and include the following information for each project:
 - (a) Name of the County department which administers or administered the contract;
 - (b) Description of the work;
 - (c) Total dollar amount of the contract;
 - (d) Dates covering the term of the contract;
 - (e) County contact person and phone number;
 - (f) Statement of whether Proposer was the prime contractor or subcontractor; and
 - (g) The results of the project.
7. Describe Proposer's past experience in obtaining the necessary permits and approvals from local government authorities and familiarity with the Florida Building Code.
8. Provide any other information demonstrating the Proposer's ability to complete the development as proposed.

Litigation

9. Identify any past and/or ongoing litigation, and any known potential litigation with Miami-Dade County.
10. Identify any past and/or ongoing litigation and any known potential litigation that may negatively impact the Proposer's ability to finance the proposed development.

If Proposer is a joint venture or a consortium the Proposal must include the above described information for each member of the joint venture or consortium.

Defaults, Bankruptcies, Criminal History and Debarments

11. List any projects on which the Proposer, its parent(s), or any member of the Development Team has defaulted. Explain the circumstances of such default(s).
12. List any projects on which the Proposer, its parent(s), or any member of the Development Team has gone bankrupt. Explain the circumstances of such bankruptcy(ies).
13. List any criminal indictments and felony or fraud convictions of Proposer, its parent(s), or any member of the Development Team or any principal of any of those entities.
14. Identify any debarments for government contracts by Proposer, its parent(s), or any member of the Development Team or any principal of any of those entities.

If Proposer is a joint venture or a consortium the Proposal must include the above described information for each member of the joint venture or consortium.

F. Proposer's Staff Experience and Past Performance

Address the qualifications of key personnel and relevant experience to perform the Work. The Proposer shall provide necessary staff to execute the Work, to perform all of the required tasks, and produce all required deliverables.

1. Provide an organization chart showing all key personnel, including their titles, to be assigned to this Project. The chart must clearly identify the Proposer's employees and those of other Development Team Members and Subcontractors. Identify functions to be performed by each person. Key personnel include all partners, managers, seniors and other professional staff that will perform work and/or services for the Project.
2. Attach resumes for all key personnel. The resume should accurately describe each person's experience, education and qualifications including experience on previous development projects.
3. Identify the Proposer's project manager that will be responsible for the Project (at each phase, if applicable) and contact information including address, phone number and e-mail address.

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

G. Proposal Price

1. Complete all fields of either Form B-1(a), for a phased development, or Form B-1(b), for a non-phased development. The total amount of the applicable form will be used for the purpose of scoring for this criteria. See Attachments D and E of the RFP.
2. Guaranteed Rent for the initial term of the Lease will be based upon the appraised fair market rental value of the property which has been determined by appraisal(s) performed by independent appraiser(s) selected by the County. If a phased development is negotiated, a separate amount of Minimum Annual Guaranteed Rent will be established for each Phase.

H. Cost Benefit to the County

Any other quantifiable financial benefits to the County such as replacing, upgrading and/or maintaining County facilities including landscaping and hardscaping, illumination and wayfinding signage and enhancing pedestrian access and passenger amenities, that results in a financial benefit to the County.

**Joint Development of Miami Intermodal
Center Property**

Draft

Development Agreement

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**Sample Development Agreement for Joint Development of
Miami Intermodal Center Property**

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").

WITNESSETH:

- A. County owns certain real property located in Miami-Dade County, Florida, as more particularly described on Schedule 1.1, attached hereto and made a part hereof (the "Development Site" or "Site").
- B. County has a material interest in developing the Site to its highest and best use and focusing density around the Miami Intermodal Center (MIC).
- C. County recognizes the potential for public and private benefit through a joint use development of the Site, in order to promote usage of transit, airport and MIC facilities and to further economic development in Miami-Dade County.

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- 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 Master 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’s award of 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, ~~a~~ground lease(s) for the portions of the Site included within the Phasedd of the ProjectDevelopment 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 Master 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.

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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 ~~and maintain~~ the Development Site as more particularly described in Schedule 1.1 in accordance with the Master 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 Board of Miami-Dade County Commissioners and any other authority having jurisdiction shall have approved the execution of this 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. All Leases executed pursuant to this Development Agreement shall be subject to the terms and conditions of this Agreement during the Term of this Agreement.

Section 1.4 Development of Project Under Master Plan

The Developer’s Master Plan which describes the Developer’s concept for the entire Development Site is attached hereto as Schedule 1.4A. The Developer shall develop and construct the Development Site in substantial conformity with the Master 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.

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Section 1.5 Phased Development Contemplated (if applicable)

The approved Master Plan calls for a phased development approach (“Phased Development”) which shall mean the division of the Project into separate and distinct portions or Phases, 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. Milestones for each Phase of the Project shall be set forth in the Project Schedule contained in ~~Section~~ Schedule 1.4B. Each Phase must be completed in conformity with the Master Plan upon the Development Site 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 each 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 1.6 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. ~~On the Scheduled Closing Date(s)~~ At Closing, and as a condition thereof, Developer shall deliver to County a certified check or equivalent for Initial Rent due under the Lease and for any other amount due at the onset of the Lease.
- 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 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 2:00pm on the Scheduled Closing Date(s), or such earlier

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date as the parties may mutually agree or such later date for Closing, as the same maybe extended pursuant to Section 3.3 of this Agreement.

Section 1.7 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, which may be referred to herein 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 may also be referred to herein 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 1.8 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 condition, maintenance, safety, security, repair, remediation of the Development Site and/or other County or private facilities in coordination with DTPW (except as otherwise agreed by the parties);~~

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- ~~12)~~ the performance of studies, inspections, tests, evaluations, remediation, and similar type of work necessary to develop the Project in coordination with DTPW;
 - ~~23)~~ obtaining insurance as set forth in Article VII;
 - ~~34)~~ timely satisfying the Closing Conditions as set forth in Section 1.10;
 - ~~45)~~ timely payment of all the Development Fees, Delayed Closing Fees, and any and all other debts in accordance with Article III; and
 - ~~56)~~ submitting the Security Deposit as set forth in Section 3-4.
- ~~7) — construct, operate, maintain or repair other facilities in connection with the Project in coordination with DTPW (except as otherwise agreed by the parties).~~
- ~~B. — County shall have no obligation whatsoever to perform any work or make any repairs with respect to the Development Site (including latent defects).~~
- ~~C. — County may require Developer to construct, operate, maintain or repair other facilities in connection with the Project.~~

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Section 1.9 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) ~~and (2)~~ 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. Parking shall be allowed only as necessary for the uses as set forth in Section 1.8 (A)(1) ~~and (2)~~ above.

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- 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 ~~maintenance, repair,~~ remediation, physical tests, investigations, analysis and/or studies on Convertible Property.
- ~~F. Developer shall provide County reasonable advance notice prior to commencing any such maintenance, repair, remediation, physical tests, investigations, analyses and/or studies of Convertible Property.~~
- FG. 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 any such County escort or representative be necessary or appropriate, in County's sole and absolute discretion, Developer shall pay the charges therefore, upon demand.
- GH. 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.

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- HI.** 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.
- IJ.** Developer expressly acknowledges and agrees that County has not made and is not making, and Developer in executing and accepting the Development Agreement and license, is not relying upon any warranties, representations, promises or statements, except to the extent that the same are expressly set forth in this Agreement. Without limiting the generality of the preceding provision, Developer, by executing this Development Agreement, shall conclusively be deemed to have agreed that the Development Site was in satisfactory condition as of the Commencement Date.
- JK.** 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.
- KL.** 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.
- LM.** Developer shall not alter or disturb Convertible Property. Upon Developer's completion of any ~~maintenance, repair,~~ 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.

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MN. 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.

NO. 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 1.10 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 ~~Leased Property~~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, ~~Leased Property~~ to the Developer, Developer shall accept and execute the Lease and take possession of the Development Site, or a portion thereof, ~~Leased Property~~, 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

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(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 -bysubmitting 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 has caused its general contractors, construction managers, architects, and subcontractors to obtain insurance as required under Article 7 and has delivered to County -certificates evidencing such insurance naming County as an additional insured and loss payee;

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- 6) Developer shall have executed and delivered to County a payment and performance bond in accordance with Section 1.11;
- 7) Developer shall have obtained all government approvals;
- 8) In coordination with DTPW, Developer shall have platted the entire Development Site, as necessary;
- 9) 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;
- 10) ~~-~~Developer shall have obtained any zoning changes or any other land use planning changes necessary to develop the Project.
- ~~11~~) Developer shall have paid all development fees imposed in connection with the development by the County or any other agency of appropriate jurisdiction; and
- ~~12~~) 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 Miami Intermodal Center (MIC) or 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 MIC and County facilities and systems. Precedent to any proposed construction, excavation, demolition, restoration, testing or staging, Developer shall submit to the DTPW Right-of-Way, Utilities and Joint Development Division through the DTPW Director, or his or her designee, three (3) copies of the final design plans, drawings and calculations showing the relationship between the proposed activities and MIC and County facilities. The drawings and calculations shall have sufficient detail to allow DTPW to determine if such activities are likely to impact MIC

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or 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 MIC or 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 MIC or County operations or facilities, other public or private facilities or operations, or County tenant's may be unacceptably impacted and/or to request

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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 MIC or County facilities or operations, other public or private facilities or operations, or County's tenants 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 coordination ~~of any payment~~ for the use of County employees or representatives required to monitor and coordinate such activities, if required. The plan must be approved by the County in writing prior to the commencement of any such activities and Developer shall reimburse County for all such actual costs incurred by County upon demand, including but not limited to for relocation, alteration, and repairs, and the use of County employees and/or representatives required to monitor such activities. If directed by the County, the Developer must 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 MIC or County facilities, operations or to MIC or 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 1.11 Performance and Payment Bonds

A. 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 construction of the Project. 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 Developer beneficiaries thereof as joint obligees. Alternatively to the above described payment and performance bond, the Developer may provide security to County (Alternate Security) in the following manner:

1. Provide the County with a certified check that County 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 County to remain in place until evidence reasonably satisfactory to the County is submitted to demonstrate that all contractors and material suppliers performing any work on and/or supplying any materials for the Project have been paid in full and a Certificate of Occupancy has been issued for the Project; and
2. Require that each prime contractor hired by Developer to perform work and/or make improvements on the Project 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 County to insure that its construction work shall be

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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

3. Require each prime contractor hired by Developer to perform work and/or make improvements on the Project 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 County to secure the completion of the Project 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.

B. If Developer provides the Alternative Security, Developer shall also comply with the following obligations:

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

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

C. In the event of Developer's contractor(s) claim non-payment(s) and/or, fail to timely provide unconditional releases of lien within the timeframe stipulated, County 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).

D. In either case, Developer shall, within ten (10) business days of notification by County, deposit an amount equal to the reduced/dispensed amount in the County's escrow account or increase the

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irrevocable letter of credit so as to replenish the original amount of the cash deposit(s) or security posted.

E. All bonds provided by the Developer or its prime contractor(s) must meet the following requirements:

1. Be obtained from guarantee or surety companies acceptable to the U.S. Government and authorized to do business in the state where the work is to be performed. U.S. Treasury Circular Number 570, published annually in the Federal Register, lists companies approved to act as sureties on bonds securing government contracts, the maximum underwriting limits on each contract bonded, and the States in which the company is licensed to do business. Use of a company listed in this circular is mandatory. Free copies of the circular may be obtained by writing directly to: U.S. Department of Treasury, Financial Management Service, Surety Bond Branch, 401 14th Street, SW, 2nd Floor, West Wing, Washington, D.C. 20226.

2. Clearly state the rate of premium and the total amount of premium charged. The current power of attorney for the person who signs for the surety company must be attached to the bond. The effective date of the power of attorney shall not precede the date of the bond. The effective date of the bond(s) shall be prior to the issuance of the NTP. The County may negotiate the amount of the bond(s) depending on the phase of the Project.

F. Developer shall not allow any mechanics liens or materialman's liens, or liens, judgements or encumbrances of any kind to be placed on, or to cloud the title of County's fee simple interest in the Land and shall indemnify County for any costs, expenses or damages County incurs by reason thereof, in the event that any such encumbrance is not removed as a lien on County's fee simple interest in the Land within thirty (30) days after Developer receives written notice from County demanding removal of such encumbrance, in which case such encumbrance shall be deemed an

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Event of Default hereunder. Developer shall promptly take all steps required to promptly remove and otherwise resolve all such encumbrances of which Developer has been given actual or constructive notice.

G. This section shall survive the term of the Development Agreement in the event the Project is constructed, redeveloped or reconstructed in accordance with a Lease executed pursuant hereto and compliance with this section shall be a condition precedent to any construction, redevelopment or reconstruction of the Development Site under any such Lease.

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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 Annual Rent, Minimum Annual Guaranteed Rent, ~~Penalty-Delayed~~ Completion Rent and Participation 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 ~~in all material respects~~.

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- 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. Board shall mean the Board of County Commissioners of Miami-Dade County, Florida.
- H. BOMA Standard shall mean the Standard Method of Floor Measurement for Office Buildings, as most recently published by the Building Owners and Managers Association International (BOMA), which shall be used to compute square footage of all office and retail space.
- I. Certificate of Occupancy shall mean the certificate issued by the person or agency authorized to issue a certificate of occupancy or certificate of completion, as applicable, evidencing that the applicable Improvement(s) is (are) ready for occupancy or use in accordance with applicable Law or Ordinance.
- J. 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.

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- K. Closing shall mean the execution and delivery of the Lease(s) for the Project or Project Phase, payment of applicable portion of Initial Annual 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 ~~in accordance with the Developer's Project Schedule.~~
- 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 the tenth day after approval by the Miami Dade Board of County Commission and the Mayor.
- 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 ~~a~~ 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.

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~~Q.~~ ~~Construction Phases, if applicable, shall mean the division of the Project into the Phases specified in Section 1.5 for purposes of development, construction, and mortgaging of each Phase.~~

~~R-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.

~~S-R.~~ Convertible Property shall mean that portion of the Development Site not encumbered by a Lease.

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

T. Delayed Completion Rent shall mean the rent due under a Lease if a Developer has not received a Certificate of Occupancy by the date set forth for Construction Completion in the Project Schedule, subject to Unavoidable Delays and duly requested changes to the Project Schedule which are approved by the County in writing. Developer shall pay to County Delayed Completion 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.

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- 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 of Section 23.1.
- 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. Project Schedule shall mean the schedule establishing the timeline of deadlines or Milestones for the completion of the development of the Project as set forth in Schedule 1.4B.
- 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 Master Plan, which shall be subject to the provisions of this Agreement;

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

- 1) Developer shall provide a minimum of 166 parking spaces within the Development Site at all times for the exclusive use of the County and to fulfill County's previous parking obligations to certain third parties. Additionally, the County reserves the right to require the developer to provide an additional 167 parking spaces in the future in the event that additional rail lines are constructed to serve the MIC;
- 2) County reserves the right to exclude existing or proposed streets, sidewalks, and easements from the Development Site to provide and accommodate access to and from the entire Project or for all Project Phases, County or MIC Facilities, any government agency property or facility, or any other entities' or persons' property or facility ; and
- 3) IT BEING UNDERSTOOD between the parties hereto that no portion of the MIC 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 MIC 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.

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- 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. Gross Income shall mean the income generated by the Project, or Phase of the Project if applicable, as set forth in the Lease(s) to be executed pursuant to this Agreement in substantially the form attached hereto as Schedule 1.6.
- FF. 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.
- GG. 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.
- HH. Including shall always mean as used any time herein “including but not limited to”.
- II. Initial Annual Rent shall have the meaning ascribed to it in Section 3.5.

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- JJ. Land shall mean the real property described in Schedule 1.1 hereto.
- KK. 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.
- LL. Lease shall have the meaning ascribed to it in the recitals herein.
- MM. Leased Property shall mean that portion of the Development Site subject to a Lease.
- NN. 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 ~~or trust indenture~~ under which the Lease executed at such Closing shall have been encumbered.
- OO. 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.
- PP. 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

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Commencement Date and upon each anniversary of such date thereafter provided that County may cause the Lease Year to be a calendar year.

QQ. 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.

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

SS. Miami Intermodal Center (MIC) shall mean the regional intermodal transportation hub located east of the Miami International Airport.

TT. MIC Facilities shall mean the Miami Intermodal Center facilities including, without limitation, all trains, buses, fixed guideways, stations, parking lots and parking structures, drop off/pickup areas, bus stops and shelters, bus bays, streets and sidewalks, maintenance facilities, structures and all associated facilities required in the operation of the MIC including those systems and structures operated by or to be operated by Miami-Dade County, the National Railroad Passenger Corporation d/b/a Amtrak, Tri-Rail and FDOT.

UU. MIC Central Station or Central Station shall mean the portion of the Miami Intermodal Center consisting of the Miami International Airport Metrorail Station, a Tri-Rail station, a future Amtrak station, a Metrobus terminal, an Intercity Bus Station (currently occupied by Greyhound) and the pedestrian concourse connecting those facilities to the MIA Mover, the elevated light-rail people mover which connects to the Miami International Airport.

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

WW. Minimum Annual Guaranteed 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

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Schedule. Developer shall pay to County Minimum Annual Guaranteed 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.

XX. Participation Rent shall mean a percentage of Gross Income generated by the development, or Phase if applicable. Developer shall pay the greater of Participation Rent or Minimum Annual Guaranteed 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.

~~YY. Penalty Rent shall mean the rent due under a Lease if a Developer has not received a Certificate of Occupancy by the date set forth for Construction Completion in the Project Schedule, subject to Unavoidable Delays and duly requested changes to the Project Schedule which are approved by the County in writing. Developer shall pay to Penalty 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.~~

~~ZZ.YY.~~ Parties shall mean the County together with the Developer.

~~AAA.ZZ.~~ 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.

~~BBB-AAA.~~ Phase or Phases shall have the meaning ascribed to such term(s) in Section 1.5.

~~CCC-BBB.~~ Phased Development shall have the meaning ascribed to such term in Section 1.5.

~~DDD-CCC.~~ 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 all Phase(s)

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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.

~~EEE,DDD.~~ 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.

~~FFF.~~ 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 the Miami Intermodal Center Property, as such proposed development may be amended and/or revised from time to time (Proposal).

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~~EEE.~~

~~FFF.~~ 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. 945, Joint Development of Miami Intermodal Property, as approved by the County/Landlord and subject to Unavoidable Delays and duly requested changes which are approved by the County/Landlord in writing.

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GGG. Proposal shall have the meaning ascribed to such term in the preceding definition.

HHH. 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.

III. Rent shall collectively mean Initial Annual Rent, Minimum Annual Guaranteed Rent, Participation Rent, ~~Delayed CompletionPenalty~~ 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.

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JJJ. 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).

KKK. [Intentionally Deleted]

LLL. 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.

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

NNN. 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.

OOO. 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.

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

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

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RRR. 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

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Developer upon executing this Development Agreement shall deposit with DTPW cash (in form or its equivalent and from a lending institution reasonably satisfactory to DTPW) in an amount equal to (\$) _____ (collectively, the “Security Deposit”), as further set forth in Schedule 3-1 attached hereto:

- A. The Security Deposit shall, be in cash or its equivalent, and be deposited by DTPW into an interest bearing ~~account at a bank located in~~ 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. The parties acknowledge and agree that if a Developer Default were to occur, it would be difficult to determine actual damages. Based on the parties’ knowledge at the time of entering this Agreement, the parties acknowledge and agree that that if a Developer Default were to occur, the amount of the Security Deposit is a reasonable estimate of damages if a Developer Default were to occur in the future.
- C. If prior to any Closing, the entire Development Agreement is terminated by reason of a Developer Default, DTPW shall retain the entire Security Deposit as liquidated damages under the Development Agreement for DTPW’s losses sustained by reason of a Developer Default, and not as a penalty.
- 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)

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as liquidated damages under the Development Agreement for losses sustained by the County as a result of such default and not as a penalty.

- 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 ~~3-1~~ 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 ~~3-1~~, 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

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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 3-1, or until the actual Closing of the subject Lease takes place, whichever occurs first.

Section 3.3 Delayed Closing Fee

Subject to the Terms and Conditions of this Agreement, if Developer has not Closed on the Project or any Phase of the Project, as applicable, by the Scheduled Closing Date(s) due to Developer’s inability to satisfy the Closing Conditions in accordance with the Project Schedule, subject to Unavoidable Delays and duly requested changes to the Project Schedule which are approved by the County in writing, Developer may request to pay to County, an amount equal to the applicable Rent which would have been due upon the Closing on the Lease in accordance with Schedule 3-1 and thereafter plus 10% of the applicable Initial Annual 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 Annual Rent

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Upon the actual Closing Date of any Lease(s), or upon the Scheduled Closing Date, whichever occurs first, Developer shall cease payment of the Development Fee or Delayed Closing Fee, as applicable, and pay to County Initial Annual Rent for the Project or Phase of Project as set forth in Schedule 3-1. The first payment of Initial Annual Rent shall be due upon or prior to the actual Closing Date or Scheduled Closing Date, whichever occurs first. Subsequent payments shall be due upon the anniversary of the actual Closing Date or Scheduled Closing Date, as applicable, without notice or demand from County (collectively, "Initial Annual 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, Rent or other amount (irrespective of a partial payment) shall be added to such delinquent payment for each month that the payment remains delinquent. In the event any payments for Fees, Rents or other amounts are delinquent for concurrent months, subsequent payments will be credited to the delinquent month's Fee, Rent or amount of the corresponding Delayed Closing Fee that was first in time. Partial payment of any, Fee or Rent or amount for a month will not alleviate the late charge of 5% per month of the entire amount of the applicable Fee or Rent. In addition to the 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

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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

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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 Where Developer Sells, Assigns or Transfers Any Development Rights

The intent of the parties is that as a joint development upon public land, Developer shall equitably share with County profits made in any sale or assignment of this Agreement or rights to develop the Project. As such, in the event prior to Construction Completion, 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 51% interest in such portion of the project or Phase of the Project, then in such event, Developer shall pay County 50% of the amount of such sale, assignment or transfer. In the event that such transfer occurs after Completion of Construction, Developer shall pay County 10% of the proceeds. Developer shall pay County's share of the proceeds 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. 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 Landlord. Any additional assignments shall be subject to the above described payment to Landlord.

Section 3.9 Additional Fees

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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 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 1.8 (A)(1) ~~and (2)~~ above and for no other purposes. Developer shall use Leased Property for the uses as set forth in the corresponding Lease(s) executed for the Project or Phase of the Project, as applicable, upon any Closing(s).
- B. The Parties recognize and acknowledge that the manner in which the Development Site is developed, used and operated are matters of critical importance to County and to the general welfare of the community. Developer agrees that at all times during the term of this Development Agreement, Developer will use best efforts to develop the Project, or Phase of the Project in conformity with the approved Master Plan.

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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 Master 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, ~~and its Assignee(s)~~ and an Assignee of any other Phase of the Project under this Development Agreement 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 either such party to develop, maintain, operate and use its 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 Master Plan and approved Construction Plans and in a manner otherwise permitted hereunder, with County approval at its sole discretion. If approved or requested by County, any failure to join in such documents and instruments by the Developer and/or by any Assignee 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 master plan and approved Construction

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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

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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.

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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 Master 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 and operations. All proposed work in connection with the Development shall comply in all material respects with the

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requirement of the Master Plan, Final Plans and specifications approved by County. The proposed materials, fixtures, machinery and equipment to be installed in the facility 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. All County operations must be maintained at all times. 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 the Miami-Dade Transit Construction Safety Manual, May 2012 (Exhibit G) or their replacements, as applicable, including the requirement to obtain contractor identification badges. The County shall have the right to approve, disapprove or amend, in its sole and absolute discretion:

- A. All matters that affect the integrity, functionality, efficiency, safety, operation, maintenance, legal compliancy, cost or profitability of any County facility, operations, activities or patrons;
- B. The design and construction of any structure or connection, either temporary or permanent, impacting any County facility; and
- C. Matters that affect the Developer's obligations related to the Project Schedule or changes to the Master Plan and/or components of the Master Plan or Phases, if applicable.

Section 4.5 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. 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 in conformity with applicable building codes, federal, state, county and local laws and regulations, including applicable provisions of the Metrorail Compendium of Design Criteria.
- 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. Within thirty (30) business days of DTPW's response to such request for reconsideration, Developer shall, if necessary, resubmit such altered plans to DTPW. Any resubmission shall be subject to review and approval by

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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.

Section 4.6 Construction Plans

- A. Developer shall give DTPW final site and elevation plans (for each Phase, if applicable) prior to submittal for the building permits for each Phase. All Construction Plans (for each Phase, if applicable), must be in conformity with the Final Design Plans approved (for that Phase, if applicable) by DTPW, the Master Plan and ~~procedures in 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 Master Plans, 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 Eevent of Default occur and the affected Leasehold Mortgagee under any Lease executed pursuant to

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this Agreement, if any, does 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.

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Section 4.7 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 building and zoning approvals, including plat approval, issuance of building permits, building inspections and issuance of certificates of occupancy. Developer acknowledges that any approval given by DTPW, as County pursuant to this Article 4, shall not constitute an opinion or agreement by DTPW that the plans are structurally

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sufficient or in compliance with any Laws or Ordinances, codes or other applicable regulations, and no such approval shall impose any liability upon DTPW. ~~It should be noted that the County retains~~

Section 4.8. 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 4.9 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 any Development Fee or other payments due to the County or of any applicable time frame or deadline under this Agreement or Lease executed pursuant thereto in the event of any abnormal site conditions unless the site conditions are so unusual that they could not have reasonably been anticipated, and in such event, time periods and the commencement of any Delayed Closing Fees and/or ~~Penalty-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.

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Section 4.10 Art in Public Places

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

<https://library.municode.com/fl/miami-dade-county/codes/code-of-ordinances>
<http://www.miamidade.gov/ao/home.asp?Process=alphalist>
<http://intra.miamidade.gov/managementandbudget/library/procedures/358.pdf>

Section 4.11 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 County.

Any off-site improvements required to be paid or contributed which are caused by or are as 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.

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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 4.13 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 as provided elsewhere in this Agreement;
- 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; and
- H. To amend this Agreement to correct any typographical or non-material errors.

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Section 4.14 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 or Rent credit.

Section 4.15 Community Business Enterprise Program

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

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

Section 4.16 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 and comply with the requirements of Schedule 4.16 "Building Construction Responsible Wages and Benefits Requirements".

ARTICLE 5

Payment of Taxes, Assessments, and Impositions

Section 5.1 Developer's Responsibility for Determining Impositions

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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 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.

Section 5.2 Developer's Obligations for Impositions

Developer shall pay or cause to be paid all Impositions for which Developer 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 Agreement have been imposed, or which may become a lien on the Development Site or any part thereof, or any appurtenance thereto, provided, however, that:

- A. If, by law, any Imposition (for which Developer is liable hereunder) may, at the option of Developer be paid in installments (whether or not interest shall accrue on the unpaid balance of such Imposition), Developer 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 Agreement (and provided further, that those installments which are to become due and payable after the expiration of the term of this Agreement, but relating to a fiscal period fully included in the term of this Agreement, shall be paid in full by Developer);

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- B. Any Imposition for which Developer is liable hereunder relating to a fiscal period, a part of which period is included within the term of this Agreement and a part of which is included in a period of time after the expiration of the term of this Agreement, shall be adjusted between County and Developer as of the expiration of the term of this Agreement so that Developer shall pay only that portion of such Imposition which is applicable to the period of time prior to expiration of the term of this Agreement;
- C. Any Imposition relating to the period prior to the Commencement Date shall not be the responsibility and obligation of Developer; and
- D. County hereby covenants and represents that the Land, prior to the execution of this Agreement was not subject to real estate or ad valorem taxations during County's ownership. After execution of this Agreement, should the Land become subject to ad valorem taxation, for any reason, then Developer shall be responsible for and pay such taxes.

Section 5.3 Contesting Impositions

- A. Developer shall have the right to contest the amount or validity, in whole or in part, of any Imposition, for which Developer 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 5.2 herein, Developer may postpone or defer payment of such Imposition if:
 - 1) County is notified of Developer's intent to contest such Imposition within 30 days after Developer's actual or constructive notice of such Imposition;
 - 2) Developer is in good faith disputing liability therefor or the amount thereof;

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- 3) Such contest of liability or amount operates as a stay of all sale, entry, foreclosure, or other collection proceedings in regard to such obligations;
 - 4) Neither the Development Site nor any part thereof would by reason of such postponement or deferment be in danger of being forfeited or lost and County is not subject to any expense or liability;
 - 5) Developer 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 30 days after Developer's actual or constructive notice of such Imposition; and
 - 6) Immediately upon the termination of any such proceedings, Developer 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.
- B. County shall not be required to join in any proceedings referred to in this Section 5.3 unless the provisions of any law, rule or regulation at the time in effect shall require that County is a necessary party to such proceedings, in which event County shall participate in such proceedings at Developer's cost.
- C. An Event of Default shall occur if:
- 1) Developer fails to discharge or contest any Imposition as provided herein within ninety (90) days of actual or constructive notice of said Imposition; or
 - 2) Any sale, entry, foreclosure or collection proceeding, execution on any judgement, or any other affirmative attempt is made to enforce such obligation upon the Development Site, whichever occurs first.

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D. Developer shall protect and indemnify County against all losses, expenses and damages including attorney's fees arising from any Impositions upon the Development Site in accordance with Article 7.

Section 5.4 Special Assessments

DTPW 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 Developer the same as similarly sized and situated parties.

ARTICLE 6

Property Rights

Section 6.1 Rights to Real Property after Agreement Expiration

Upon the ~~natural expiration of the Term of this Agreement~~ 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

Any personal property of Developer which shall remain on Convertible Property after the fifteenth (15th) day following the early termination or expiration of this Agreement, if no Closing has occurred on the Project or Project Phase, as applicable, 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.

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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

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the laws of the State of Florida, with the following qualifications:

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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.

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- 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 Division ("ISD") and any Leasehold Mortgagee or Lender as applicable. The Developer will deliver to the County, 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 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.

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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

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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,

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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 and Developer acknowledges that certain particles and sediments result from transit and airport 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. Developer shall hold harmless the County for any costs, losses, injuries or damages resulting from particles or sediments caused by the operation of the MIC, trains and/or airport 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)

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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 Tenant to obtain the approvals, permits, and rights necessary and/or (iii) the inability of Tenant to develop or construct the Project as intended.

ARTICLE 8

Operation

Section 8.1 Control of Development Site

Parties hereby agrees 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 ~~License~~ 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 ~~its~~ Convertible Property without interruption. Developer hereby agrees not to interfere with the free flow of pedestrian or vehicular traffic to and from transit, airport and MIC 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

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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 of the Premises

Section 9.1 Developer Repairs and Maintenance

Upon Closing, Developer ~~shall be~~ solely responsible for all costs and expenses related to the repair and maintenance of ~~Development Site~~Leased Property and may be responsible for the construction, maintenance, and repair of certain other facilities in connection with the Project (except as may otherwise be agreed to in writing). Developer shall be responsible for the maintenance, 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 Agreement Developer, at its sole cost and expense, is obligated to and shall keep the Development Site safe and secure, in good order and condition, and make all necessary repairs thereto with the standards of operation and maintenance of first class properties similar to the Development Site. The term "repairs" shall include all replacements, renewals, alterations, additions and betterments deemed necessary by County. All repairs made by Developer shall be at least substantially similar in quality and class to the original work. Developer shall keep and maintain all portions of the Development Site in a clean and orderly condition, reasonably free of dirt, rubbish, graffiti, and unlawful obstructions. Developer shall at its sole cost and expense, store, dispose of, and remove or cause to be removed from the Development Site all trash and refuse which might accumulate. County, at its option, and after thirty (30) days written notice to Developer, may perform any maintenance or repairs required of Developer hereunder which have not been performed by Developer following the notice described above, and Developer shall pay to County, as an Additional Fee, all actual costs and expenses incurred thereof within thirty (30) days notification by County.~~

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Section 9.2 County Repairs and Maintenance

County shall keep and maintain in good condition and repair the MIC Central 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, 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, except as otherwise provided in this Agreement, shall have no obligation with respect to the maintenance and repair of the Development Site.~~ 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

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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

Changes and Alterations to Master Plan

Developer, shall have the right during the term of this Agreement and prior to construction commencement to propose changes to the Master 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:

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- A. The method, schedule, plans and specifications for the proposed amended Master Plan are submitted to County at least one hundred eighty (180) days prior to the date the Closing Conditions must be satisfied for the Project or Phase of the Project as applicable;
- B. The proposed amended Master Plan does not violate any other provisions of this Agreement;
- C. The proposed amended Master Plan shall not at any time change or adversely affect County or MIC facilities, or any access thereto except as may be required by Laws and Ordinances or agreed to by County;
- D. The proposed amended Master Plan will produce, based on reasonable projections, an amount of Fees and Rent to County over the term of the Agreement and Lease entered into pursuant to this Agreement, for the Project or Phase of the Project, as applicable, which is at least ~~thirty percent (30%)~~ more than the County would have received during the term of the Agreement and Lease for the Project or Phase of the Project under the Master Plan prior to such Amendment or otherwise be a benefit to the County.
- E. Developer obtains all approvals, Permits and authorizations required under applicable Laws and Ordinances prior to the date the Closing Conditions for the Project or Phase of the Project must be satisfied.

ARTICLE 12

Discharge of Obligations

Section 12.1 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

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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's interest under Article 12.
- 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

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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 12.2 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 13

Use of Premises

Section 13.1 Use of Development Site by Developer

- A. Developer shall only use Convertible Property for the uses stated in Section 1.8 (A)(1) ~~and (2)~~ 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 ~~So as 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 13.2 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 shall not apply to prevent the following:

- (1) the entry and parking of motor vehicles carrying flammable or combustible liquids solely for the purpose of their own propulsion; or
- (2) the use of normal cleaning and maintenance liquids and substances.

Section 13.3 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 the these assessments.

Section 13.4 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 4.9 shall apply.

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Section 13.5 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 compliances 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. Developer shall be solely and fully responsible for any environmental remediation of the site, if required.
- 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

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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. 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 13.6 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, 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

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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.

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Section 13.7 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.

ARTICLE 14

Inspection by County

Section 14.1 Inspection by County

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

Section 14.2 Inspection of Accounting Records

The Developer will be required to 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,

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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 15

Limitation of Liability

Section 15.1 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.

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~~Section 15.2 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.~~

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ARTICLE 16

Damage and Destruction

Section 16.1 Developer's Duty to Restore

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Developer bears all risk of loss due to fire or any other casualty. If, at any time during the term of this Agreement, any Convertible Property or any part thereof shall be damaged, Developer shall at its sole cost and expense, if so requested by County, regardless if insurance proceeds related to such casualty are made available to Developer for use in connection therewith, restore the Convertible Property to its value, conditions and character which existed immediately prior to such damage, subject to such changes or alterations as Developer may elect and which are approved by County in writing. Such alterations or restoration, including such changes and alterations as aforementioned, are sometimes referred to in this Article 16 as the "Work."

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Section 16.2 Interrelationship of Agreement Sections

Except as otherwise provided in this Article 16, the conditions under which any Work is to be performed and the method of proceeding with and performing the same shall be governed by all the provisions of Article 1 and Article 4 herein.

Section 16.3 Fee Abatement

Except as otherwise set forth in this Agreement, Developer shall not be entitled to abatement, allowance, diminution, reduction or suspension of any fee or other payments due to County. Except as otherwise provided in this Agreement, no such damage or destruction shall release Developer of or from any other obligation imposed upon Developer under this Agreement.

ARTICLE 17

Transfers

Section 17.1 Right to Transfer

Commented [SM(9)]: Should combine with Assignment Section above

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

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the importance of developing the Project to contribute to the general welfare of the ~~general~~ community, the Developer's qualifications and identity are of a particular concern to the community and the County. Accordingly, Developer acknowledges that it is because of such qualifications and identity that the County is entering into the Agreement with Developer and in so doing, the County is further willing to accept and rely on Developer's obligations for faithfully performing all its undertakings and covenants.

- B. No transfer may or shall be made, suffered or created by Developer, its successors, assigns, or transferees without complying with the terms of Article 17. Any transfer that violates this Agreement shall be null and void and of no force and effect.
- C. 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.
 - 2) Developer shall obtain written consent of the County, both as to the proposed transfer and the proposed transferee.
- D. 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

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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 assignee 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 Annual Rent, Minimum Annual Guaranteed Rent, Penalty-Delayed Completion Rent, Participation 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.

- E. In addition, the proposed transfer must be approved by State, Federal and Local governmental agencies where applicable. Moreover, County reserves the right to not approve the sale, transfer, or assignment, and to ~~or~~ 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

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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 ~~Assignees 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 ~~E~~event of ~~D~~efault, all monetary defaults hereunder have been cured; (xiii) in the ~~E~~event of ~~D~~efault, all non-monetary defaults susceptible to cure having been remedied and cured; (ix) in the ~~E~~event of ~~D~~efault, 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 ~~E~~event of ~~D~~efault, that Developer and any ~~Assignees 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 ~~E~~vents of Default, until such obligations are satisfied and cured to the satisfaction of County.

Additionally, County reserves the right to condition the release of the original Developer from its liability under the Agreement until completion of construction of the Project or, if applicable, completion of a Phase of the Project. 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 ~~assignee~~ ~~or~~ 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

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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.

- F. 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. Such transferee of Developer (and all succeeding and successor transferees) shall succeed to all rights and obligations of Developer under this Agreement with respect to the portion of the Development Site or Phase so transferred, subject to the terms and conditions of this Agreement.
- G. 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.
- H. Except as may otherwise be specifically provided in Section 17.1, only upon County's written consent to a transfer ~~by any assignor, shall~~ such transferor shall be released and discharged

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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 ~~or Lease~~.

- I. 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.
- J. No confirmation by County of a proposed ~~Assignee 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 ~~Assignee transferee~~ is no longer in compliance with the terms and conditions of this Agreement or is in fact properly qualified as a ~~transferee~~ ~~assignee~~.

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

Section 17.2 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

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Site and County's reversionary interest in the Development Site and the Improvements thereon 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.

Section 17.3 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 23.1.

ARTICLE 18

Eminent Domain

Section 18.1 Taking under Eminent Domain

If at any time during the term of this Agreement the power of eminent domain shall be exercised by any ~~Federal, State, or County sovereign~~ competent authority or their proper delegates, by

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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. Developer and County agree that this Development Agreement does not grant Developer any property right in Convertible Property. Termination of this Agreement as to Convertible Property shall not be deemed a taking under any eminent domain or other law so as to 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 the event any Leased Property is taken by eminent domain proceedings, the executed Lease shall govern the respective rights of Developer and County.

Section 18.2 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 shall satisfy all fees and other payments due and accrued

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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 ~~to Convertible Property~~ a result of such termination of this Agreement, including any residual interest in the Agreement or any factor or circumstances arising out of or in connection with this Agreement. In 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 18.3 Partial Taking; Continuation of Agreement

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

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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 18.4 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 Developer shall continue to pay, in the manner and at the times herein specified, the full amounts of the Fees, Rents, revenues and all other charges payable by Developer hereunder and, except only to the extent that Developer 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 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 19

Default by Developer or County

Section 19.1 Events of Default of Developer

~~The following acts shall be considered~~ Events of ~~D~~default of Developer shall include but not be limited to the following (“Developer Default”):

- A. On the Scheduled Closing Date(s), any Closing Conditions remain unsatisfied;
- B. On the Scheduled Closing Date(s), all Closing Conditions are satisfied and Developer refuses or willfully fails to close on such date(s);

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- C. Developer fails ~~at any time to~~proceed with due diligence and dispatch and satisfy its Pre-Closing Responsibilities in accordance with the Project Schedule;
- D. Developer fails to pay on time any Development Fee, revenues or other monies due and payable to County under this Agreement when and as the same shall become due and payable;
- 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;

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- 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.

~~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 19.2 Failure to Cure Default by Developer

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- A. If prior to any Closing(s), an Event of Default shall occur and, County at any time after the periods set forth in Section 19.1, provided Developer has failed to cure such Event of Default within such time applicable 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 an Event of Default of Developer fails to cure such Event of Default, within this additional time period, County shall occur, then County, at any time after the periods for exercise of rights as set forth under Section 19.1 and 19.2 herein 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.

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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 19.3 Surrender of Development Site Upon Default

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

- 1) If Phased Development is not contemplated under the Master Plan then Developer shall surrender the Development Site and the Development Agreement and its right to develop the Project under the Master 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 ~~shall~~ 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 Master Plan; or

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- (b) The Development Agreement and the right to develop all Phases of Convertible Property 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~~ commenced, then such Lease shall not terminate and such Phase of the Project shall be constructed in conformity with the Master Plan and remain subject to this Development Agreement, unless such Event of Default is also a ~~d~~Default under such Lease in which case the ~~d~~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 Master Plan upon Convertible Property shall cease and terminate. If a Lease(s) for any Phase(s) of the Project has commenced then the Default provision of the Lease shall be operative.
- 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 Master Plan; or
 - 2) The Development Agreement and the right to develop all Phases of the Project in which Closing has not occurred and a Lease has not commenced shall cease and terminate. If a

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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 master 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 (except those County seeks to retain).

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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 (except those 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.

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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 19.4 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 19.5 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, ~~the Development Agreement shall expire~~ and ~~any such~~ the executed Lease(s) shall be operative upon the Development Site.

Section 19.6 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

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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 19.7 Events of Default of County

The provisions of Section 19.7 shall apply if any of the following "Events of Default of County" shall happen: if default shall 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 shall continue 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 20

Notices

Section 20.1 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, ~~Assistant Director~~ Chief of Right-of-Way Engineering, Planning and Development, Utilities, and Joint Development, 701 N.W. 1st Court, ~~15~~7th 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.

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Section 20.2 **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 21

Certificates by County and Developer

Section 21.1 **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

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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 shall have no actual knowledge.

Section 21.2 **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 shall 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 shall be 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 shall have had no actual knowledge.

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ARTICLE 22

Construction of Terms and Miscellaneous

Section 22.1 **Severability**

If any provisions of this Agreement or the application thereof to any person or situation shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, and the application of

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such provisions to persons or situations other than those as to which it shall have been held invalid or unenforceable, shall not be affected thereby, and shall continue valid and be enforced to the fullest extent permitted by law.

Section 22.2 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 22.3 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 22.4 Recording

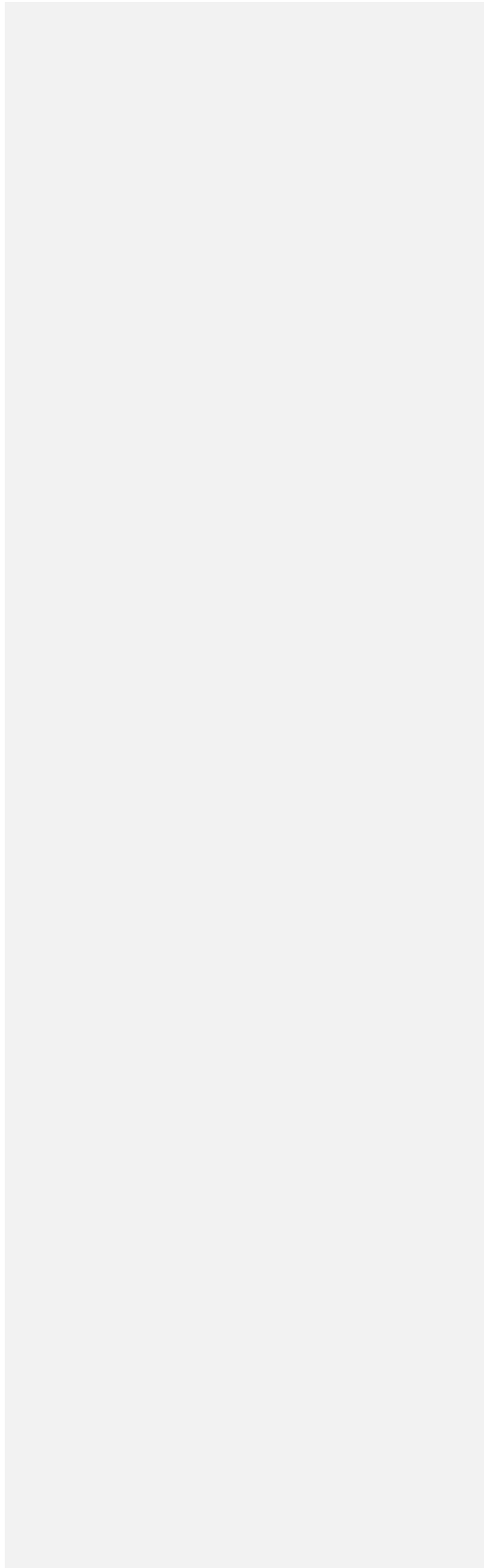
Any recording in the public records or any other filing in connection with this Agreement shall be at the sole cost of Developer.

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Section 22.5 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.

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Section 22.6 **Consents**

Whenever in this Agreement the consent or approval of County or Developer is required, such consent or approval shall be made by the Miami-Dade County Mayor or his/her designee, the Director of the Miami-Dade Department of Transportation and Public Works or his/her designee, or such person as subsequently designated by the Director of the Miami-Dade Department of Transportation and Public Works upon notice to Developer, on behalf of County and:

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- 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 22.7 **Entire Agreement**

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

Section 22.8 **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, Sublessees as appropriate and applicable), except as may be otherwise provided herein.

Section 22.9 **MIC Central 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,

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relating to the MIC Central 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 22.10 Holidays

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

Section 22.11 Schedules

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

Section 22.12 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 22.13 Protest Payments

If at any time a dispute shall arise 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

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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 shall arise between the parties hereto as to any work to be performed by either of them under the provisions of this Agreement, the party against whom the obligation to perform the work is asserted may perform such work and pay the cost thereof "under protest" and the performance of such work shall in no event be regarded as a voluntary performance and there shall survive the right upon the part of said Developer and/or County to seek the recovery of the cost of such work, and if it shall be adjudged that there was no legal obligation on the part of said Developer and/or 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 22.14 Radon

In accordance with Florida law, the following disclosure is hereby made:

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

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Section 22.15 Energy-Efficiency Rating Disclosure

In accordance with Florida law, the following disclosure is hereby made:

Developer may have the property's energy efficiency rating determined. Developer 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.

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Section 22.16 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 22.17 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 22.18 Documents Incorporated and Order of Precedence

County and Developer acknowledge that Miami-Dade County issued a Request for Proposals for Joint Development of Property Adjacent to the Miami Intermodal Center 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 Adjacent to the Miami Intermodal Center, RFP No. 00945.

Section 22.19 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:

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- 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**
(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** **Miami-Dade County Vendor Obligation to County Affidavit**
(Section 2-8.1 of the County Code)
- G. **Miami-Dade Code of Business Ethics Affidavit**
(Section 2-8.1(i) and 2-11(b)(1) of the County Code through (6) and (9) of the County Code and Section 2-11.1(c) of the County Code)
- H. **Miami-Dade County Family Leave Affidavit**
(Article V of Chapter 11 of the County Code)
- I. **Miami-Dade County Living Wage Affidavit**
(Section 2-8.9 of the County Code)
- J. **Miami-Dade County Domestic Leave and Reporting Affidavit**
(Article 8, Section 11A-60 11A-67 of the County Code)
- K. **Subcontracting Practices**
(Ordinance 97-35)
- L. **W-9 and 8109 Forms**
(as required by the Internal Revenue Service)
- M. **FEIN Number or Social Security Number**
In order to establish a file, the Contractor's Federal Employer Identification Number (FEIN) must be provided. If no FEIN exists, the Social Security Number of the owner or individual must be provided. This number becomes Contractor's "County Vendor Number". To comply with Section 119.071(5) of the Florida Statutes relating to the collection of an individual's Social Security Number, be aware that the County requests the Social Security Number for the following purposes:
 - Identification of individual account records
 - To make payments to individual/Contractor for goods and services provided to Miami-Dade County
 - Tax reporting purposes
 - To provide a unique identifier in the vendor database that may be used for searching and sorting departmental records
- N. **Antitrust Laws**
By acceptance of any contract, the Contractor agrees to comply with all antitrust laws of the United States and the State of Florida.

Miami-Dade Employment Drug-free Workplace Certification

Miami-Dade Disability and Nondiscrimination Affidavit

Miami-Dade County Code of Business Ethics Affidavit

Section 22.20 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

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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 22.21 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 22.22 No Tax Abatement or Other Public Subsidies to Developer

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

Section 22.23 No Partnership or Joint Venture

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

Section 22.24 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

Miami-Dade County, Florida
RFP No. 00945

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

Section 22.25 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 22.26 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 22.27 Standard or Conduct

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

Section 22.28 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 22.29 No Waiver of Sovereign Immunity

Miami-Dade County, Florida

RFP No. 00945

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.

Miami-Dade County, Florida

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Section 22.30 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 22.31 Independent Private Sector Inspector General Review

In accordance with Section 2-1076 of the Miami-Dade County Code of Ordinances, as amended by Ordinance No. 99-63, the County has established the Office of the Inspector General, which is required to perform mandatory random audits on Landlord's contracts, including Lease Agreements, concessions, franchises and other revenue-generating contracts, throughout the duration of each contract. The Landlord Inspector General is authorized and empowered to review past, present and proposed Landlord contracts, transactions, accounts, records and programs. In addition, the Inspector General has the power to subpoena witnesses, administer oaths, require the production of records and monitor existing projects and programs. Monitoring of existing projects or programs may include a report whether the project is on time, within budget and in conformance with plans, specifications and applicable law. The Inspector General is empowered to analyze the necessity for and reasonableness of proposed change orders to the contract. The Inspector General is empowered to retain the services for independent private sector inspectors general to audit investigate, monitor, oversee, inspect and review operations, activities, performance and procurement processes, including but not limited to project designs, specifications, proposal submittals, activities of the contractor, its officers, agents and employees, lobbyists, Landlord staff and elected officials to ensure compliance with contract specifications and to detect fraud and corruption.

ARTICLE 23

Representations and Warranties

Section 23.1 County's Representations and Warranties

County hereby represents and warrants to Developer that:

- A. It has full power and authority to enter into this Agreement and perform in accordance with its terms and provisions and that the parties signing this Agreement on behalf of County have the authority to bind County and to enter into this transaction and County has taken all requisite action and steps to legally authorize it to execute, deliver and perform pursuant to this Agreement.
- B. County will allow entry onto the Land by Developer and upon any Lease becoming effective will deliver possession of the Land free and clear of any and all tenancies and occupancies of every nature whatsoever, whether by Miami-Dade County or otherwise, and also free and clear of any violations by Miami-Dade County of Laws and Ordinances, except as may be agreed by Developer in writing, and subject only to the rights reserved herein to County.
- ~~C.~~
- 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 23.2 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

Miami-Dade County, Florida
RFP No. 00945

transaction and Developer has taken all requisite action and steps to legally authorize it to execute, deliver and perform pursuant to this Agreement.

ARTICLE 24

Federal and County Regulations

Section 24.1 Compliance

A. Developer shall comply with all of 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 33 as it pertains to airport zoning.

B. Developer agrees to not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, national origin, sex, pregnancy, age, disability, marital status, familial status, sexual orientation, gender identity or gender expression, status as victim of domestic violence, dating violence or stalking, or veteran status, and on housing related contracts the source of income, and will take affirmative action to ensure that

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Miami-Dade County, Florida

RFP No. 00945

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.

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Miami-Dade County, Florida

RFP No. 00945

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. 00945

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. 00945

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. 00945

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. 00945

Schedule 1.1
Development Site

Miami-Dade County, Florida
RFP No. 00945

Schedule 1.4A
Developer's Master Plan

Miami-Dade County, Florida
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Schedule 1.4B
Project Schedule

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Schedule 1.6
Ground Lease

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Schedule 3-1

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

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RFP No. 00945

Schedule 4.15

Small Business Enterprise Requirements Package

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Schedule 4.16

Building Construction Responsible Wages and Benefits Requirements

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Schedule 21.2
County's Estoppel Certificate

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RFP No. 00945

Schedule 22.18A

Request for Proposals (RFP) No. 00945

Miami-Dade County, Florida
RFP No. 00945

Schedule 22.18B

Developers Response to Request for Proposals (RFP) No. 00945

**Joint Development of Miami Intermodal
Center Property**

**Draft
Form of Lease**

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Schedule 3.2	Initial Annual Rent
Schedule 3.3	Minimum Annual Guaranteed Rent
Schedule 4.1	Master Plan (Project/Phase Description)
Schedule 4.2	Project Schedule
Schedule 4.18	Art in Public Places Procedure
Schedule 4.23	Community Business Enterprise Program
Schedule 4.24	Responsible Wages
Schedule 22.2	Landlord's Estoppel Certificate

Phase ___ of MIC Lease

Sample Lease for Joint Development of Miami Intermodal Center Property

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").

WITNESSETH:

- A. Landlord owns certain real property located in Miami-Dade County, Florida, as more particularly described on Schedule 1.1, attached hereto and made a part hereof (the "Land").
- B. Landlord has a material interest in rapidly developing the site to its highest and best use and focusing density around the Miami Intermodal Center (MIC).
- 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 and airport 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 Master Plan.
- E. Tenant has satisfied the precedent 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.

Commented [SM(1): Need definition

Phase ___ of MIC Lease

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.

Commented [SM(2): Need to confirm no easements on property.

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.

Commented [SM(3): May not want each Lease to be 90 years, but have the Leases be 90 years from commencement of the Development Agreement.

Commented [SM(4): Need to finalize Term

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;

Phase ___ of MIC Lease

- 2) No event of Default under this Lease shall exist and remain 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 Minimum Annual Guaranteed 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 Board of Miami-Dade County Commissioners shall 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 Annual 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 all material terms and conditions thereof), equal in the aggregate to the total cost of

Phase ___ of MIC Lease

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 Annual Rent (as defined herein) for the first year of the term hereof 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 repair and/or rebuilding of the Improvements.

Tenant and Landlord agree that all construction and development plans within the Demised Premises or such plans for development that may impact any Miami Intermodal Center (MIC) or 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 MIC and 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 MIC and County facilities. The drawings and calculations shall have sufficient detail to allow DTPW to determine if such activities are likely to impact the MIC or 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:

Phase ___ of MIC Lease

- 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.

D. 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.

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

Any such proposed construction, excavation, demolition, restoration, testing or staging may commence only after DTPW has completed its review and the DTPW Director or designee has issued written approval of the plans, drawings and calculations. Notwithstanding anything herein, all construction shall be in compliance with the latest edition of the Miami-Dade Transit Construction Safety Manual or its replacement, as applicable.

Landlord reserves the right at all times to disapprove of plans and/or activities in whole or in part if Landlord, in its sole discretion, determines that MIC or County operations or facilities may be

Phase ___ of MIC Lease

unacceptably impacted and/or to request additional information. If the Landlord, in its sole discretion, determines that activities undertaken or authorized by the Tenant, or planned to be undertaken or authorized by the Tenant, may impact the MIC or 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 for the use of County employees or representatives required to monitor and coordinate such activities, if required. The plan must be approved by the Landlord in writing prior to the commencement of any such activities. If directed by the Landlord, the Tenant must 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 MIC or County facilities, operations or to MIC or Miami-Dade County employees, patrons or to the public and to require the Tenant to implement appropriate safety measures as deemed necessary by the Landlord at the sole cost of the Tenant. Landlord shall not incur any expense as a result of such actions.

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

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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. Alternatively 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
- 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

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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 be placed 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

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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. Assignment shall have the meaning ascribed to such term in Article 17 herein.
- E. Board shall mean the Board of County Commissioners of Miami-Dade County, Florida.
- F. 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.
- G. Certificate of Occupancy shall mean the certificate issued by the person or agency authorized to issue a certificate of occupancy or certificate of completion, as applicable, evidencing that the applicable Improvement(s) is (are) ready for occupancy or use in accordance with applicable Law or Ordinance.
- H. 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 the time the County delivered this Lease to

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Tenant and Tenant has possession of the Demised Premises and the Lease provisions are effective subject to this Development Agreement.

I. 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.

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

K. 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.

L. Completion of Construction shall mean the date a Certificate of Occupancy is issued.

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 or to use any portion of the Improvements or the Demised Premises, including but not limited to, payment(s) or compensation in any form, regardless of the designated use or the term applied to such payments or compensation.

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

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format with sufficient detail as required to obtain building permits for such improvements and as further described in Section 4.6.

- P. Delayed Completion Rent shall have the meaning ascribed to it in Section 3.7.
- Q. Day shall mean a calendar day unless otherwise specified.
- R. 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 shall be necessary or desirable for entrance, exit and passageway of persons and property, including vehicles, to and from County and/or MIC facilities;
- 2) all subsurface rights under the sidewalks, streets avenues, curbs and roadways fronting on and abutting the Demised Premises subject to Tenant's rights described in this definition;
- 3) the permanent and perpetual non-exclusive right to use the space located in the Public Areas of the Demised Premises solely for the purpose of ingress and egress of patrons using MIC and/or County facilities, as well as the transportation of baggage, mail, supplies and materials of such passengers, from the Demised Premises, public thoroughfares and MIC and/or County and 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

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approved by Tenant as to location, size, and consistency pursuant to the terms of this Lease;

- 5) Tenant shall provide a minimum of ___ parking spaces within the Demised Premises at all times for the exclusive use of the County and to fulfill County's previous parking obligations to certain third parties. Additionally, the County reserves the right to require the developer to provide an additional ___ parking spaces in the future in the event that additional rail lines are constructed to serve the MIC; and
- 6) County reserves the right to exclude existing or proposed streets and sidewalks from the Demised Premises to provide and accommodate access to and from the entire Project or for all Project Phases; and

IT BEING UNDERSTOOD between the parties hereto that no portion of the MIC facilities, and/or systems are leased or intended to be leased to Tenant and that all portions or areas of MIC facilities and/or systems 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.

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

Commented [SM(5): Shall we set forth the development agreement as a separate exhibit or will it be in the master plan

Commented [SM(6): Need to confirm commencement date

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- 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. Gross Income shall have the meaning ascribed to such term in Section 3.10.
- AA. Impositions shall mean all ad valorem taxes, special assessments, sales taxes and other governmental charges and assessments levied or assessed with respect to the Demised Premises and the activities conducted thereon or therein.
- BB. 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.
- CC. Including shall always mean “including but not limited to”.
- DD. Initial Annual Rent shall have the meaning ascribed to it in Section 3.2.
- EE. Land shall mean the real property described in Schedule 1.1 hereto.

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- FF. 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.
- GG. 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.
- HH. Lease shall mean this Lease and all attachments, amendments, supplements, addenda or renewals thereof.
- II. 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.
- JJ. Leasehold Mortgage shall mean a mortgage or mortgages of the leasehold interest of Tenant hereunder given to any Leasehold **Mortgagee for the sole purpose of providing financing or capital for the** Improvements under the Lease, and shall be deemed to include any mortgage which this Lease shall have been encumbered.
- KK. 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.

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- LL. 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.
- MM. Master Plan shall mean the development plan for the entire Development Site as set forth in Schedule 4.1.
- NN. Miami Intermodal Center (MIC) shall mean the regional intermodal transportation hub located east of the Miami International Airport.
- OO. MIC Facilities shall mean the Miami Intermodal Center facilities including, without limitation, all trains, buses, fixed guideways, stations, parking lots and parking structures, drop off/pickup areas, bus stops and shelters, bus bays, streets and sidewalks, maintenance facilities, structures and all associated facilities required in the operation of the MIC including those systems and structures operated by Miami-Dade County, Tri-Rail and FDOT.
- PP. MIC Central Station or Central Station shall mean the portion of the Miami Intermodal Center consisting of the Miami International Airport Metrorail Station, a Tri-Rail station, a Metrobus terminal and, currently, an intercity bus terminal and the pedestrian concourse connecting those facilities to the MIA Mover, the elevated light-rail people mover which connects to the Miami International Airport.
- QQ. Milestones shall have the meaning as ascribed to such term in Section 4.2 herein.
- RR. Minimum Annual Guaranteed Rent shall have the meaning ascribed to such term in Section 3.2 herein.
- SS. Participation Rent shall have the meaning ascribed to such term in Section 3.7 herein.

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- TT. 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.
- UU. 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.
- VV. 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.
- WW. 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 the Miami Intermodal Center Property, as such proposed development may be amended and/or revised from time to time.
- XX. 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. 945, Joint Development of Miami Intermodal Property, as approved by the County/Landlord and subject to Unavoidable Delays and duly requested changes which are approved by the County/Landlord in writing.
- YY. Proposal shall have the meaning ascribed to such term in Section 23.17.

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

AAA. Rent shall collectively mean Initial Annual Rent, Minimum Annual Guaranteed Rent, Participation Rent, Delayed Completion Rent and Additional Rent.

BBB. 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).

CCC. Scheduled Closing Date- shall mean the date Closing shall occur by for the Project/Phase upon satisfaction of the Closing Conditions as set forth in the Development Agreement.

DDD. Security Deposit shall mean the money deposited into an escrow account under 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 escrow account as Security Deposit is exhausted.

EEE. 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.

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

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

HHH. 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.

III. Unavoidable Delays are delays beyond the control of a party required to perform, such as (but not limited to) delays due to strikes; acts of God; floods; fires; any act, neglect or failure to perform of or by the Landlord; enemy action; civil disturbance; sabotage; restraint by court or public authority; litigation or administrative challenges by third parties to the execution or performance of this Lease or the procedures leading to its execution; or moratoriums. The obligated party shall be entitled to an extension of time because of its inability to meet a time frame or deadline specified in this Lease where such inability is caused by an Unavoidable Delay, provided that such party shall, within fifteen (15) days after it has become aware of such Unavoidable Delay, give notice to the other party in writing of the causes thereof and

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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.

JJJ. 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 Annual Rent, Minimum Annual Guaranteed Rent, Delayed Completion Rent, Participation 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 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 Annual Rent, Minimum Annual Guaranteed Rent, Delayed Completion Rent, Participation Rent and Additional Rent in accordance with Schedule 3, attached hereto and by reference made a part hereof.

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Section 3.2 Initial Annual Rent

During the first [redacted] Lease Years as set forth in Schedule 3 or until Construction Completion and a Certificate of Occupancy is issued, whichever occurs first, Tenant shall pay to Landlord Initial Annual Rent for the Demised Premises. The first payment of Initial Rent shall be due upon or prior to the Effective Date of this Lease. Subsequent payments shall be due upon the anniversary of the Effective Date without notice or demand from Landlord. The Security Deposit which was deposited into an [redacted] account under the Development Agreement shall be applied to the first Rents payable, including but not limited to Initial Annual Rent payments, until the Security Deposit is exhausted.

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Section 3.3 Minimum Annual Guaranteed Rent

[Upon Construction Completion and issuance of a Certificate of Occupancy for the Project/Phase or upon the ___ anniversary of the Effective Date as set forth in Schedule 3, whichever occurs first, and during remaining term of this Lease, Tenant shall pay to Landlord Minimum Annual Guaranteed Rent or Participation Rent, whichever is greater. Minimum Annual Guaranteed Rent, shall be payable monthly in advance on or before the 1st day of each month in an amount equal to one-twelfth of the Minimum Annual Guaranteed Rent, due for the applicable Lease Year without notice.

Commented [SM(9)]: This should be negotiated based upon Tenant's response to RFP

Section 3.4 Consumer Price Index Adjustment

Following the first Lease Year in which it is due and following the first Lease Year of any renewal term, if applicable, Minimum Annual Guaranteed Rent, shall be adjusted annually to reflect any increase in the Consumer Price Index, for the preceding Lease Year. (However, in the event of the expansion or redevelopment of the Project or Phase of the Project, if applicable, during a renewal term, then Minimum Annual Rent shall be adjusted and due as described in Section 3.5 below.) 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 [redacted]

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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. 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 Minimum Annual Guaranteed Rent to be paid for the ensuing year. Landlord shall advise Tenant, of any increase in the Minimum Annual Guaranteed 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 Minimum Annual Guaranteed Rent.

Section 3.5 Rent Adjustment in Renewal Terms

The Minimum Annual Guaranteed 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 Minimum Annual Guaranteed Rent established for any renewal term be less than the amount of the Minimum Annual Guaranteed 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

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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.
- 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 Minimum Annual Guaranteed 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 Minimum Annual Guaranteed 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

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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 Minimum Annual Guaranteed 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 Minimum Annual Guaranteed Rent established thereby is an increase of thirty-five percent (35%) or more over the Rent (either Minimum Guaranteed Rent or Participation Rent, whichever is applicable) 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 Minimum Annual Guaranteed Rent 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 or to redevelop, Tenant shall, prior to expiration of the existing Lease term, submit to Landlord preliminary plans for the Project/Phase expansion or Project/Phase to be redeveloped and reasonable and supportable projections of income anticipated to be generated by the expanded or redeveloped Project/Phase. The proposed redevelopment or expansion must be reasonably expected to generate gross income to Tenant which will support the

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new Minimum Annual Guaranteed Rent as determined by the appraisal procedure described in A through G above **and** which is at least thirty-five percent (35%) greater than the Gross Income received by Tenant in the Lease Year Lease Year immediately preceding the year in which the appraisal process was completed.

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.
- C. If the new Minimum Annual Guaranteed 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 Rent paid to Landlord in the Lease Year immediately preceding the year in which the appraisal process was completed (either the adjusted Minimum Annual Guaranteed Rent or Participation Rent, whichever is applicable) then Landlord may accept Rent in a lesser amount than the new Minimum Annual Guaranteed 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 be less than 50% of the new Minimum Annual Guaranteed Rent as established by the appraisal process and the result obtained from the following calculation shall not total less than 85% of the new Minimum Annual Guaranteed Rent multiplied by the total number of years in the renewal term:
 - 1) Calculate the total amount of Rent to be paid during the Redevelopment Period;
 - 2) Subtract the number of Lease Years in the Redevelopment Period from the total number

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of Lease Years in the renewal term;

- 3) Multiply the number of years remaining in the renewal term times the new Minimum Annual Guaranteed Rent as established by the appraisal process;
- 4) Add the resulting product obtained in (3) above to the total amount of Rent to be paid during the Redevelopment Period.

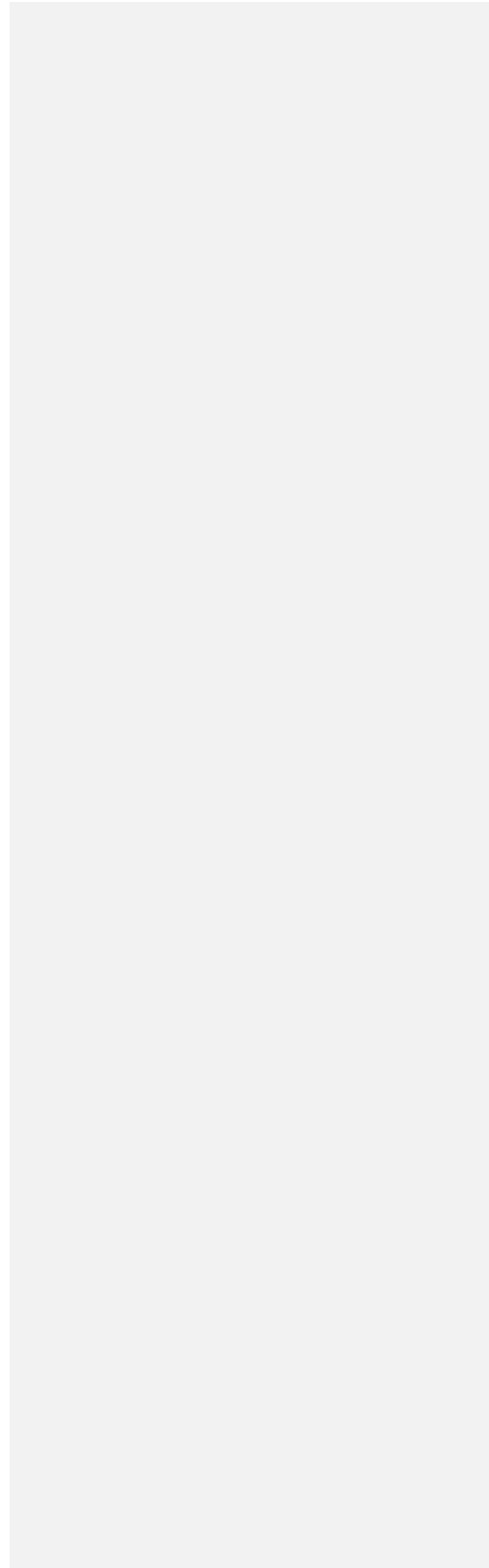
Additionally, Tenant shall be entitled to a reduction in the new Minimum Annual Guaranteed Rent during the Redevelopment Period only if the following deadlines are met:

- 5) Commencement of Construction of the expansion or redevelopment must take place within eighteen (18) months of commencement of the applicable renewal term;
- 6) 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
- 7) 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 Minimum Annual Guaranteed Rent and the amount of Rent actually paid, for the period of time that the applicable deadline was not met.

In the Lease Year following the Redevelopment Period, Tenant shall pay the new Minimum Annual Guaranteed Rent as established by the appraisal process which shall be adjusted for inflation as described in Section 3.4 with such adjustment reflecting the increase in inflation from the commencement of the renewal period or Participation Rent, whichever is greater. The Minimum Annual Guaranteed Rent for the remainder of the renewal term shall then continue to be subject to annual adjustments for inflation as described in Section 3.4 of this Lease.

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If a Certificate of Occupancy is not obtained within five (5) years of the commencement of the applicable renewal term, then Tenant shall pay to Landlord upon commencement of the fifth Lease Year of the applicable renewal term, the new Minimum Annual Guaranteed Rent plus ten percent (10%) until a Certificate of Occupancy is issued for the expansion or redeveloped Project/Phase. Notwithstanding the above, if the new Minimum Annual Guaranteed Rent as established by the procedure described in A through H above is less than an increase of thirty-five percent (35%) over the amount of Rent paid to Landlord in the Lease Year immediately preceding the year in which the appraisal process was completed (either the adjusted Minimum Annual Guaranteed Rent or Participation Rent, whichever is applicable) then, upon commencement of the renewal term, Tenant shall pay to Landlord the new Minimum Annual Guaranteed Rent which shall be subject to annual adjustments as described in Section 3.4 of this Lease. Tenant may, however, elect to expand or redevelop the existing Project/Phase pursuant to Article 11 of this Lease.

Section 3.7 Delayed Completion Rent

If Tenant has not received a Certificate of Occupancy within ___ years after the Effective Date for the Project/Phase (the "Scheduled Completion Date"), subject to Unavoidable Delays and duly requested changes to the Project Schedule which are approved by the Landlord in writing, Tenant shall pay to Landlord, in addition to Minimum Annual Guaranteed Rent due upon the Scheduled Completion Date or any other Rent due, (the "Delayed Completion Rent") in the amount of ten percent (10%) of the Minimum Annual Guaranteed Rent up to a maximum of three years.

All construction contracts for the construction of the Project/Phase shall provide that all construction and Improvements in the Project/Phase will be completed within ___ years of the date of Commencement of Construction of that Phase, subject to Unavoidable Delays.

Tenant shall be obligated to pay, if applicable, the initial payment of Delayed Completion Rent by the twentieth (20th) day after Landlord gives Tenant notice of the requirement to pay Delayed

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Completion Rent. Thereafter, Tenant shall pay Delayed Completion Rent pro rata by the first day of the month after the Landlord notifies Tenant that Delayed Completion Rent is due, and on the first day of each month thereafter, without additional notices by Landlord, until such time as the construction of the Project/Phase is completed, which completion shall be evidenced by receipt of a Certificate of Occupancy for the Project/Phase. Delayed Completion Rent shall be paid in addition to any other Rent due and payment of such Delayed Completion Rent shall not waive Landlord's right to take any additional action under this Lease, law or equity.

Section 3.8 Participation Rent

Tenant shall pay to Landlord the greater of Minimum Annual Guaranteed Rent as applicable, or ___ percentage of annual Gross Income as defined in Section 3.10 below.

Section 3.9 Payment of Participation Rent

Tenant shall prepare and submit to Landlord, no later than ninety (90) days following the close of each Lease Year, an annual statement of Gross Income with an itemization of all inclusions and exclusions based upon audited financial statements for the Demised Premises which shall be in compliance with Generally Accepted Accounting Principles and with the provisions of this Lease. The annual statement must be certified as being accurate by a reputable, independent certified public accountant selected by Tenant and certified by Tenant's most senior executive and chief financial officer or treasurer that the calculation of Gross Income and Participation Rent is accurate and has been made in accordance with the definition of Gross Income contained in this Lease. Participation Rent shall be paid to Landlord within one hundred twenty (120) days after the end of each Lease Year that Participation Rent is due.

Section 3.10 Gross Income

Gross Income shall mean all consideration, in any form, generated, derived and received, directly or indirectly, by the Tenant or Affiliate, or on behalf of the Tenant or Affiliate (or the fair market value

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if the consideration received is less than the fair market value), (a) as a result of, or in connection with, this Lease; (b) in connection with the Demised Premises and/or Improvements; and (c) as a Condition of Rights Granted by the Tenant to any third party, regardless of the term applied to any of the above described consideration or the purpose for which such consideration is received or used. Without limiting the generality or applicability of the forgoing, only the following may be deducted or excluded from consideration as described above in the calculation of Annual Participation Rent:

- A. Sales tax on rent which is owed by Sublessees and/or third parties and collected by Tenant and paid to the State of Florida;
- B. The cost of separately metered utilities incurred by Sublessees and/or third parties and which are paid directly to the utility provider by those entities;
- C. Any portion of security deposits which are returned to Sublessees and/or third parties by the Tenant;
- D. Casualty insurance claims paid to the Tenant to the extent that such payments are used to repair damages sustained under the applicable claim;
- E. Non-recurrent, special charges (excluding any normal, periodic payments and/or fees paid to Tenant as a Condition of Rights Granted) imposed by Tenant on a Sublessee and/or third party and received by Tenant as a result of specific, unusual damage to the Demised Premises or Improvements caused by the party so charged to the extent that such payments are used to repair the applicable damage;
- F. Consideration received by Tenant, or on Tenant's behalf, from, Sublessees or any third party for the provision of services or amenities to the extent that such services or amenities (a) are not essential to and are not normally and customarily provided in the operation of business to be conducted within the Project/Phase; (b) that such payments are entirely optional and

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voluntary and are **not** a Condition of Rights Granted; and (c) that such payments are simply passed through the Tenant to the third party providing the services or amenities. Any portion of such payments made to Tenant which are not paid to the party providing the services and/or amenities shall be included in Gross Income;

- G. The fair market rental value for the use of space within the Improvements occupied or used by Tenant or Affiliate of Tenant up to a maximum of one percent (1%) of the rentable space within the Improvements.

If the definition of Gross Income as established by the United States Internal Revenue Code (IRC) on the Effective Date of this Lease includes other consideration which is not included in Gross Income as defined herein, then that consideration shall also be included as part of Gross Income for the purposes of this Lease. Changes to the IRC which occur after the Effective Date of this Lease shall not affect this definition of Gross Income.

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 not diminish and shall have no effect upon the determination of Gross Income as defined above or on any other provisions, terms and/or conditions of this Lease.

Section 3.11 Landlord's Right to Verify and Audit Information Submitted

Landlord or any of its duly authorized representatives may, during normal business hours and upon ten (10) business days written notice to Tenant, inspect, take extracts from and make copies of Tenant's books and records pertaining to the Demised Premises and/or Improvements, to the payment obligations of Tenant under this Lease, to the financial strength or condition of the Tenant and/or the proposed or actual financing of the Project/Phase, including but not limited to, the right to inspect any reports, statements and/or tax returns filed with the State of Florida and/or the U.S. Internal Revenue Service (IRS) which document income received by Tenant as a result of this Lease or the

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result of any use of the Demised Premises and/or any portion of the Project by Tenant or any third party. Additionally, Tenant agrees, upon the written request of Landlord, to provide authorization allowing the State of Florida and/or the IRS to provide, directly to Landlord, information confirming the accuracy of statements submitted to Landlord by Tenant. Such authorization shall be provided to Landlord, in the form specified by Landlord, within thirty (30) calendar days of receipt of such request by Tenant.

Landlord may, at its option and at its sole expense, conduct or cause to be conducted an audit to verify the Gross Income received by Tenant from the operation of the Demised Premises Project, or any portion thereof, for any Lease Year or to verify any payments or Rents under this Lease. If Landlord's audit shall disclose that an amount is due to Landlord in excess of the amount Tenant had previously or should have paid to Landlord for such Lease Year, then such amount, together with any late charge required by Section 3.12, shall be paid by Tenant within ten (10) business days after receipt by Tenant of a written notice from Landlord setting forth the amount due and the calculations used in making the determination. If the amount due Landlord under the preceding sentence (excluding any late charge) exceeds the amount Tenant had previously or should have paid to Landlord for such Lease Year by five percent (5%) or more, the cost of such audit shall be at Tenant's expense. If Landlord's audit shall disclose that Landlord has been overpaid for such Lease Year, Landlord shall credit such overpayment to the next payment or payments required to be paid by Tenant under the terms of this Lease. Tenant's books and records regarding the ~~Demised Premises~~ Project shall be maintained in Miami-Dade County, Florida, or such other location approved by Landlord in writing. Landlord's right to audit shall continue for a period of three (3) years after submittal of any statement or report by Tenant.

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Section 3.12 Late Payments

In the event that any payment of Initial Rent, Minimum Annual Guaranteed Rent, Delayed Completion Rent, Participation Rent or Additional Rent due Landlord shall remain 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 shall 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 3.13 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 Master Plan described in Schedule 4.1. Landlord and Tenant acknowledge that the Initial Annual Rent, Minimum Annual Guaranteed Rent, and Participation Rent and Delayed Completion Rent established in this Lease were based on the understanding that Tenant would be able to develop the Project/Phase as described. If, due to Laws and Ordinances or 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

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above, Tenant shall become entitled to an adjustment in Rent (Initial Annual Rent and Minimum Annual Guaranteed Rent, and Delayed Completion 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 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 3.14 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 a portion of any sale, assignment or transfer of any interest of the Tenant shall be shared with Landlord. Accordingly, in the event 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 prior to Completion of Construction then in such event, 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. In the event that such transfer occurs after Completion of Construction, Tenant shall pay Landlord ten percent (10%) of the proceeds. Tenant shall pay Landlord's share of the proceeds at the closing of such sale, assignment, or 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.

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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 3.15 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 Annual Rent, Minimum Annual Guaranteed Rent, Delayed Completion Rent and Participation Rent.

Section 3.16 No Subordination of Rent

The Rent payable to Landlord hereunder shall never be subordinate to any other amounts due to any third party by Tenant, including to any sums due under any Leasehold Mortgage, Financing Agreement or Tenant obligation and Landlord shall at all times have a first priority right to payment of Rent.

ARTICLE 4

Development of Land and Construction of Improvements

Section 4.1 Master Plan/Land Uses

- A. The Master Plan which describes the overall development concept for the entire Development Site is attached hereto as Schedule 4.1 and a made a part hereof.
- B. The Tenant shall develop and construct the Project/ Project Phase on the Demised Premises in substantial conformity with the Master Plan as set forth in Schedule 4.1.
- C. Tenant and Landlord agree, for themselves and their successors and assigns, to devote the Demised Premises in substantial conformity with the Master Plan as set forth in Schedule 4.1.

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D. 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, airport and MIC facilities;
- 2) Creates strong access links between the Demised Premises and transit, airport and MIC facilities;
- 3) Provides a physical connection between the development at the pedestrian concourse of the MIC Central Station; and,
- 4) Creates a (type of project) with a quality of character and operation consistent with that of similar, comparable projects of this nature in Miami-Dade County, Florida **in conformity with the Master Plan set forth in Schedule 4.1.**

E. Tenant shall establish such reasonable rules and regulations governing the use and operation by Sublessees, licensees and any occupants of the Demised Premises and Improvements as Tenant shall deem necessary or desirable in order to assure the level or quality and character of operation of the Demised Premises and Improvements required herein; and Tenant will use reasonable efforts to enforce such rules and regulations.

Section 4.2 Project Schedule/ Phased Development (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. 945, Joint Development of Property Adjacent to the Miami Intermodal Center, in Phases in accordance with the Master Plan for the entire Project as set forth in Schedule 4.1,

The portion of the Development Site leased to Tenant under this Lease is described as (“Phase ___”) in the Master Plan as set forth in Schedule 4.1.

Commented [SM(10)]: Phase may have been assigned prior to Lease being executed; therefore Tenant.

Commented [SM(11)]: Defined Term

Commented [SM(12)]: Duplicate to 4.1(c)

Phase ___ of MIC Lease

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”):

Commented [SM(13)]: Need to define

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

Commented [SM(14)]: Need definitions

The Tenant shall develop and construct the Project or Phase ___ of the Project, as applicable, in substantial conformity with the Master Plan and in accordance with the Project Schedule, as approved by DTPW.

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 be at no liability, exposure, or cost to Landlord other than its costs of review, and also provided that the location, terms, and form of any such easements or other documents shall be reasonably acceptable to Landlord, which acceptance shall not be unreasonably withheld or delayed.

Phase ___ of MIC Lease

B. Miami-Dade County's Rights As Sovereign

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

- 1) Miami-Dade County retains all of its sovereign prerogatives and rights as a county under Florida laws (but not in regard to its status as Landlord and the performance of its contractual duties hereunder) and shall in no way be estopped from withholding or refusing to issue any approvals of applications for building or zoning; from exercising its 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,

Phase ___ of MIC Lease

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 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 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 repair 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.

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.

Phase ___ of MIC Lease

- 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 shall, 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 shall receive 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.

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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 Master Plan, specifications, drawings and construction documentation prepared in connection with this Lease and all intellectual property rights in any of the foregoing, which assignment shall be in a form reasonably satisfactory to Landlord. Moreover, 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 the affected Leasehold Mortgagee under any Lease executed pursuant to this Agreement, if any, does not elect to construct and complete the improvements. Such assignment must include an acknowledgement by the architect, engineer, general contractor, sub-contractor design/builder, 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 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.

Phase ___ of MIC 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 or MIC 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 no such approval shall impose any liability upon DTPW. Tenant shall include a provision in each Leasehold Mortgage which will vest DTPW with all right, title and interest in the Construction Plans and specifications financed thereby, should an Event of Default occur, and the affected Leasehold Mortgagee does not elect to construct and complete the Improvements. Platting or 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.

Phase ___ of MIC Lease

Tenant shall provide a minimum of ___ parking spaces within the Demised Premises at all times for the exclusive use of the County and to fulfill County's previous parking obligations to certain third parties. Additionally, the County reserves the right to require the developer to provide an additional ___ parking spaces in the future in the event that additional rail lines are constructed to serve the MIC.

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. No extension of any time period contained within the land use and/or development orders and permits shall be deemed to be an extension of any time requirement of this Lease.

Section 4.10 Construction Costs

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

Section 4.11 Commencement of Construction

Commencement of Construction, subject to Unavoidable Delays and duly requested changes to the Commencement of Construction Date which are approved by the Landlord in writing, shall occur within _____ days of the Effective Date in accordance with the Project Schedule. If

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Commencement of Construction does not occur within such period of time, subject to Unavoidable Delays and duly requested changes which are approved by the Landlord in writing, it shall be considered to be an Event of Default subject to the provisions of Article 19 of the Lease.

Section 4.12 Progress of Construction

Subsequent to the Effective Date of this Lease, Tenant shall submit monthly written reports to DTPW of the progress of Tenant with respect to development and construction of the Project/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 MIC Central 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 MIC Central 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, although in an effort of full disclosure and good-faith, County provided certain environmental reports 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 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.

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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 the these assessments.

Tenant, by executing this Lease, accepts the Demised Premises in its “as-is” condition and represents it has visited the site, is familiar with local conditions under which the construction and development is to be performed and has performed all test borings and subsurface engineering generally required at the site under sound and prudent engineering practices, and has correlated the results of the test borings and subsurface engineering and other available studies and its observations with the requirements of the construction and development of the Improvements. Tenant shall provide the Landlord with a copy of all test results.

Tenant shall not be entitled to any adjustment of Rent payments or of any applicable time frame or deadline under this Lease in the event of any abnormal site conditions unless the site conditions are so unusual that they could not have reasonably been anticipated, and in such event, time periods and the commencement of Delayed Completion Rent shall be extended by the reasonable time necessary to accommodate redesign and lengthened construction schedules resulting from that event.

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 and MIC 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.

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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 and/or MIC 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's use of County facilities shall not materially and adversely interfere 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. 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 MIC and/or County facilities, or of the users of such facilities or of any employees, agents, licensees and permittees of Landlord is jeopardized. Any such slowdown or stoppage shall be deemed to be an Unavoidable Delay and shall entitle Tenant to appropriate extensions of time hereunder (including, without limitation, time frames pertaining to Delayed Completion Rent), provided that such safety hazard which caused the slowdown or stoppage is not the result of Tenant's negligence or willful act.

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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 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

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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 4.20 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 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;

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- 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 4.24 Community Business Enterprise Program

Tenant shall comply, and shall cause its contractor, architect/design professionals, and all subcontractors, sub-consultants, subtenants and licensees to comply, with the Landlord's Small Business Enterprise ("SBE") Programs including, without limitation, SBE-Construction, SBE-Architectural and Engineering, SBE-Goods, SBE-Services, Responsible Wages and Benefits Program, the Community Workforce Program, Residents First Training and Employment, and First Source Hiring Programs, as set forth in Sections 10-33.02, 2-10.4.01, 2-8.1.1.1.1, 2-8.1.1.1.2, 2-

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11.16, 2-1701 and 2-11.17 of the Code of Miami-Dade County, Florida (“Code”), and the Employ Miami-Dade Program Administrative Order No. 3-63. Prior to advertisement and entering into any design or construction contract for the Project/Phase, and in the case of a design or construction management contract, prior to the authorization of any design or construction package, the Tenant shall deliver the proposed contract and design and construction package to the Small Business Division of the Internal Services Department of the Landlord (“SBD”) for a determination and recommendation to the County Mayor of the SBE measures applicable to such design and construction. The County Mayor shall establish the applicable goals upon receipt of the recommendation of SBD (“Applicable Measures”). Tenant shall include the Applicable Measures in design and construction documents, as applicable, and Tenant shall adhere to those the Applicable Measures established by the County in all design and construction activities. Tenant shall incorporate in all design and development contracts the prompt payment provisions contained in the Code with respect to SBE entities. Tenant agrees to include in construction contracts a prohibition against imposing any requirements against SBE entities that are not customary, not otherwise required by law, or which impose a financial burden that intentionally impact SBE entities. Tenant shall require that its contractor(s) shall, at a minimum, use SBD’s hiring clearinghouse, Employ Miami-Dade Register, and Employ Miami-Dade Project – all available through CareerSource to recruit workers to fill needed positions for skilled laborers on the Project/Phase, and any Project/Phase enhancements. Tenant shall comply with the SBE requirements during all phases of construction of the Project/Phase, including in accordance with the SBE requirements package attached hereto as Schedule 4.24, which is incorporated herein by this reference. Tenant shall require its contractor(s) to include Responsible Wages, and Workforce Programs requirements in all subcontractor agreements. Should the Tenant fail to comply with any of the SBE requirements, Tenant shall be obligated to

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make up such deficit in future phases of construction of the Project/Phase, and/or pay the applicable monetary penalty pursuant to the Code.

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:

- A. If, by law, any Imposition (for which Tenant is liable hereunder) may, at the option of Landlord or Tenant be paid in installments (whether or not interest shall accrue on the unpaid balance of

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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 shall occur 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

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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

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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 shall require that Landlord is a necessary party to such proceedings, in which event Landlord shall 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

At least 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 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 upon expiration, or early termination of this Lease and in any other event under this Lease in which the Improvements are to be demolished. 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 thereon and not a Lease; however, all terms and conditions shall be applicable except

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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 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, 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 of the Improvements, restored the Demised Premises to a level, unimproved, vacant state with all debris removed, all excavations filled in, free 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 of the Improvements shall be performed in a good and workmanlike manner and in compliance with all Laws.

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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.

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

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be liable to Landlord for any and all damages which Landlord shall suffer 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 shall remain in the Demised Premises after the fifteenth (15th) day following the termination or expiration of this Lease and the removal of Tenant from the Improvement, may, at the option of Landlord, be deemed to have been abandoned by Tenant without court action and, unless any interest therein is claimed by a Leasehold Mortgagee, 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.

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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

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cost or value of Tenant Improvements shall not be intended to constitute Rent, a license fee or other consideration for the right to occupy the Demised Premises or Improvements thereon.

Tenant shall have no claim against Landlord for the value of Tenant's Improvements following any termination of this Lease, whether at the natural expiration of the term or otherwise, except, with respect to any claims against the County acting in its governmental capacity, including any claims related to a condemnation by County. Moreover, Tenant shall have no claim against Landlord for the value of Improvements during the Term of this Lease as may be extended or 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

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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. In addition, the Tenant shall obtain 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.
 - 2) 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.
 - 3) 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.

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- 4) 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.
- 5) 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. In addition, the Tenant shall obtain 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.
- 2) 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.
- 3) 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.

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- 4) 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.
- 5) 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.
- 6) 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. In addition, the Tenant shall obtain Employer Liability Insurance

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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.
- 2) 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.
 - 3) 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.
 - 4) 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.
 - 5) 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.
 - 6) 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

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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.

- 7) 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.

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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;

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- 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.

Section 7.5 Effect of Loss or Damage

Except as provided in Section 16.7 of this Lease, any loss or damage by fire or any other casualty of or to any of the Tenant Improvements or the Demised Premises at any time shall not operate to terminate this Lease or to relieve or discharge Tenant from:

- A. The payment of Rent;
- B. Payment of any money to be treated as Additional Rent in respect thereto: or
- C. From the performance or fulfillment of any of Tenant obligations pursuant to this Lease as the same may become due or payable as provided in this Lease.

No acceptance or approval of any insurance agreement or agreement by the Landlord shall relieve or release or be 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 shall have been damaged or destroyed, Tenant shall promptly make proof of loss in accordance with the terms of the insurance policies and shall proceed promptly to collect or cause to be collected all valid claims which may have arisen against insurers or others based upon any such damage or destruction.

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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.

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Section 7.12 Indemnification and Hold Harmless

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

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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 certain particles and sediments result from transit and airport 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 particles and sediments. Tenant shall hold harmless the County for any costs, losses, injuries or damages resulting from particles or sediments caused by the operation of the MIC, trains and/or airport 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, the inability 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, iii) Tenant's loss of use or occupancy of the Demised Premises, and/or (d) any such rights, claims or damages flowing from adjacent properties, owned, leased or under a development agreement.

ARTICLE 8

Operation

Section 8.1 Control of Demised Premises

Landlord hereby agrees that, subject to any express limitations imposed by the terms of this Lease, Tenant shall be free to perform and exercise its rights under this Lease and shall have exclusive

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control and authority to direct, operate, lease and manage the Demised Premises. Tenant is hereby granted the exclusive right to enter into any Sublease, license or similar grant for any part or all of the Improvements 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 in order for the Gross Income generated by the Demised Premises to be reasonably comparable to that generated in similar facilities in Miami-Dade County.

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 transit, airport and MIC 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 transit, airport and MIC facilities. The foregoing shall not prohibit Tenant from closing the Improvements and denying access to the public at such times and in such manner as deemed necessary by Tenant, during:

- A. The development or construction of any portion of the Improvements;
- B. The repair and maintenance of the Demised Premises; or

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- C. During the operation of the Demised Premises, provided such closing does not materially and adversely interfere with the public's reasonable access to transit, airport and MIC 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, utility facilities within the Demised Premises required for the operation of the Demised Premises or of County and MIC 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 or MIC 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.

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Section 8.4 Rights to Erect Signs; Revenues Therefrom

- A. Landlord hereby agrees that, to the extent permitted by law, Tenant shall have the right, during the term of this Lease, to place, erect, maintain and operate, or cause, allow and control the placement, erection, maintenance and operation of any signs or advertisements in accordance with subparagraph B below, in or on the Demised Premises. Tenant shall be responsible for obtaining any and all Permits and licenses which may be required from time to time by any governmental authority for such signs and advertisements, and Landlord agrees to execute any consents reasonably necessary or required by any governmental authority as part of Tenant's application for such Permits or licenses.
- B. The following types of signs and advertising shall be allowed, to the extent allowed by 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 shall have the right to remove any signs which, from time to time, may have become obsolete, unfit for use or which are no longer useful, necessary or profitable in the conduct of Tenant's business, or in the occupancy and enjoyment of the Demised Premises by Tenant, or any Sublessees.
- D. As used in this Lease, "sign(s)" shall be deemed to include any display of characters, letters, illustrations, logos or any ornamentation designed or used as an advertisement or to indicate

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direction, irrespective of whether the same be temporary or permanent, electrical, illuminated, stationary or otherwise.

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

Section 8.5 Landlord's Signs Upon Demised Premises

Signs and informational graphics pertaining to County and MIC facilities, operations and services shall be allowed to be placed within the Demised Premises at the sole expense of Landlord and at locations and in sizes mutually agreed upon by Landlord and Tenant.

Section 8.6 Tenants' Signs in Station Subject to the terms of this Lease, Tenant shall be permitted to place directional signs within the MIC Central 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 responsibility for all costs and expenses related to the repair and maintenance of the Improvements and Demised Premises. **Tenant shall be responsible for the remediation and repair of any damage or impacts to County or private systems, facilities or operations resulting from activities undertaken or authorized by the 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" shall include all replacements, renewals, alterations, additions and betterments deemed

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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 thereon, whether partially or fully constructed in a clean, neat, orderly, sanitary and presentable condition. Tenant shall at its sole cost and expense, store, dispose of and remove, or cause to be removed, all trash and refuse which may accumulate or result from its use of the Demised Premises. Tenant shall be responsible for complying at its sole cost with any governmental requirements including construction re-certification of any Tenant Improvement on the Demised Premises. Landlord, at its option, and after thirty (30) days written notice to Tenant, may perform any maintenance or repairs required of Tenant hereunder which have not been performed by Tenant following the notice described above, and Tenant shall pay to Landlord, as Additional Rent, all reasonable costs and expenses incurred thereof within thirty (30) days notification by Landlord. In no event shall Landlord be responsible or liable for any maintenance or repair of any of Tenant's Improvements, fixtures, equipment, structures, facilities, addition thereto, or personal property. Except in connection with the construction of the Project/Phase, or redevelopment or reconstruction of the Project/Phase as permitted by this lease, no excavation of any of the land shall be made, no soil or earth shall be removed from the Demised Premises, and no well of any nature shall be dug,

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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 MIC Central 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" shall include 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 shall require the cooperation and participation of Landlord, Landlord agrees to use its best efforts to cooperate and participate provided there is no cost, liability or other exposure to Landlord.

Section 10.2 Contest by Tenant

Tenant shall have the right, after prior written notice to Landlord, to contest the validity or application of any Law or Ordinance by appropriate legal proceedings diligently conducted in good faith, in the name of Tenant without cost or expense to Landlord, except as may be required in Landlord's capacity as a party adverse to Tenant in such contest. If counsel is required, the same shall be selected and paid by Tenant. 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

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reconstruct the Improvements and to raze the Improvements provided any such razing shall be preliminary to and in connection with the rebuilding of a new Improvement or Improvements and provided further that unless waived by Landlord:

- A. The method, schedule, plans and specifications for such razing and/or rebuilding of a new Improvement or Improvements are submitted to Landlord for its reasonable approval at least one hundred eighty (180) days prior to the commencement of any razing;
- B. The rebuilding, alteration, reconstruction or razing does not violate any other provisions of this Lease;
- C. The rebuilding, alteration, reconstruction or razing does not at any time change or adversely affect County or MIC facilities, or any access thereto except as may be required by Laws and Ordinances or agreed to by Landlord;
- D. The rebuilding, alteration, reconstruction or razing will produce, based on reasonable projections, an amount of rent to Landlord over the initial ten (10) years after the rebuilding, alteration, reconstruction, or razing which is at least thirty percent (30%) more than the rent received by Landlord during the ten (10) year period prior to the redevelopment of the Demised Premises;
- E. Notwithstanding any other provision of this Lease, in the case of any rebuilding, alteration, reconstruction or razing not arising out of Tenant's duty to restore under Article 16, Tenant shall pay Landlord for each Lease Year during the period of such rebuilding, alteration, reconstruction or razing, which period shall not exceed two (2) years, the average annual Rents payable to Landlord under this Lease during the five (5) Lease Years immediately preceding commencement of such rebuilding, alteration, reconstruction or razing, prorated based on the proportion of the Demised Premises being rebuilt, altered, reconstructed or razed;

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- 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 rebuilding, alteration, reconstruction 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.

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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 mechanics liens will be asserted against Landlord's interest in the Demised Premises. Said contracts and subcontracts shall provide, inter alia, the following:

- C. That notwithstanding anything in said contracts or subcontracts to the contrary, Tenant's contractors, subcontractors, suppliers and materialman (collectively, "Tenant Contractors") will perform the work and purchase the required materials on the sole credit of the Tenant;
- D. 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 the Lease prohibiting such liability, before the recording of a notice of commencement for Improvements to the Demised Premises and the terms of the lease shall expressly prohibit such liability. Tenant and Landlord agree that such notice, short form or memorandum or

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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.

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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

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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) Operate any overnight or long-term parking operation(s) that compete with similar parking operations operated or managed by the Miami International Airport;
- 4) Any activity which has the potential to cause waste to the Demised Premises; or
- 5) Any activity or purpose that violates the provisions of this Lease.

B. No covenant, agreement, lease, Sublease, Leasehold Mortgage, conveyance or other instrument shall be effected or executed by Tenant, or any of its successors or assigns, whereby the Demised Premises or any portion thereof is restricted by Tenant, or any successor in interest, upon the basis of race, color, religion, sexual orientation, sex or national origin. 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.

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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 Against Tenant and Successor and Assignee

Tenant, promptly upon learning of the occurrence of actions prohibited by Section 13.1 and 13.2; shall take 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

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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 compliances 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;

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- 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 shall not constitute waste.

Section 13.7 Designation of Improvements by Name

With the written consent of Landlord, which shall not be unreasonably withheld, Tenant shall have the right and privilege of designating name(s) by which the Improvements, the Project/Phase thereof shall be known.

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At Landlord's request Tenant shall provide Landlord copies of fully executed license or franchise agreements by and between the Tenant and the applicable licensor, franchisor, any other party, if any, the terms of which shall grant Tenant or any Sublessee the authority to operate under any such name.

ARTICLE 14

Entry on Premises by Landlord

Section 14.1 Inspection by Landlord of Demised Premises

Landlord and its authorized representatives, upon reasonable 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

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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 of the services, public or private, provided at or by the Miami International Airport and/or the MIC.
- D. The County shall have the absolute right to develop County owned property at or near the Miami International Airport 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.

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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, shall be damaged or destroyed by fire or other casualty, Tenant, shall at its sole cost and expense, if so requested by Landlord, regardless if insurance proceeds related to such casualty are made available to Tenant for use in connection therewith, shall repair, alter, restore, replace or rebuild to the value, conditions and character which existed immediately prior to such damage or destruction, subject to such changes or alterations as Tenant may elect and are approved by Landlord, to make in conformity with the provisions of this Lease and modern construction techniques and methods. Provided Tenant

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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 MIC Central Station (or any part thereof) shall be damaged or destroyed by fire or other casualty covered within the insurance designation of fire and extended coverage as same is customarily written in the State of Florida, Landlord, at its sole cost and expense, if required by Landlord, may repair or rebuild a station for a design, size and capacity meeting its needs at the time of such repair or rebuilding, if any.

Section 16.3 Interrelationship of Lease Sections

Except as otherwise provided in this Article 16, the conditions under which any Work is to be performed and the method of proceeding with and performing the same shall be governed by all the provisions of this Lease, including but not limited to, the applicable provisions of the Articles 1, 4 and 11 of this Lease.

Section 16.4 Loss Payees of Tenant-Maintained Property Insurance

With respect to all policies of property insurance required to be maintained by Tenant in accordance with Article 7 of this Lease:

- A. Landlord shall be named as an additional insured as its interest may appear, and

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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 shall occur 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 or if no Rent was outstanding then to Tenant and such excess insurance proceeds shall be considered Gross Income as defined in Section 3.10. 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, which in the year of payment or in the year immediately following the payment, shall act to reduce Gross Income by a like amount.

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

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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, no such damage or destruction shall release Tenant of or from any other obligation imposed upon Tenant under this Lease.

Section 16.7 Termination of Lease for Certain Destruction Occurring During Last Five Years of Lease Term

Notwithstanding anything to the contrary contained herein, in the event that the Improvements or any part thereof shall be damaged or destroyed by fire or other casualty during the last five (5) years of the term of this Lease or the last five (5) years of any renewal term and the estimated cost for repair and restoration exceeds an amount equal to twenty-five percent (25%) of the then-current Fair Market Value of the 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 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 all Sublessees or occupancy agreements shall be validly terminated by reason of such damage or destruction. Such language or language substantially similar thereto but with the same meaning, shall be expressly stated in any Leasehold Mortgage, Financing Agreement, Sublease and any other occupancy agreement.

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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.

In such event, the demolition of the Improvements shall be performed in a good and workmanlike manner and in compliance with all Laws and the Demised Premises shall be restored to a level, unimproved, vacant state with all debris removed, all excavations filled in.

After demolition is complete and the Demised Premises is returned to a state acceptable to Landlord, Tenant shall surrender the Demised Premises to Landlord free of all liens, claims, encumbrances and this Lease shall terminate.

The obligations of Tenant to pay rent under this Lease shall be prorated to the date of termination. All property insurance proceeds for the damaged Improvements 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 all of the foregoing conditions are met.

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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.

Tenant shall demolish the Improvements thereon (except as otherwise directed in writing by Landlord), **within 120 days** of the expiration of the Lease, remove all debris, grade the Demised Premises and restore the Premises to its previous condition in a level, unimproved, vacant state with all debris removed, all excavations filled in, and free of this liens, claims, encumbrances and lease. Tenant shall adequately secure the site during such Work. Tenant's demolition of the Improvements shall be performed in a good and workmanlike manner and in compliance with all Laws.

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 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

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willing to accept and rely on Tenant to faithfully perform all its obligations, undertakings and covenants under this Lease.

Subject to Section 3.14 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 shall 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
- 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 Annual Rent, Minimum Annual Guaranteed Rent, Delayed Completion Rent, Participation Rent and any other

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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 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.

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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

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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.

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.

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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, No Subordination of Landlord's Fee Simple Estate

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 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

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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.

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 shall have become entitled to notice as hereinafter provided in this Article 17, Landlord agrees, subject to all the terms of this Lease, not to accept a voluntary surrender or termination of this Lease at any time while such Leasehold Mortgage(s) shall remain a lien on Tenant's leasehold estate. 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

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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 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

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- 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. 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

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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.

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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,

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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 shall be exercised by any federal or state sovereign or their proper delegates, by condemnation proceeding (a "Taking"), to acquire the entire Demised Premises, such Taking shall be deemed to have caused this Lease to terminate and expire on the date of such Taking. Tenant's right to recover a portion of the award for a Taking, as hereinafter provided, is limited to the fair market value of the Improvements, plus the value of Tenant's interest in the unexpired term of the leasehold estate created pursuant to this Lease (subject to Landlord's reversionary interests in same), and in no event shall Tenant be entitled to compensation for any fee interest in the 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,

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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 shall be determined according to the foregoing provisions of this Section 18 in the eminent domain proceeding pursuant to which the Demised Premises shall have been taken, the values so determined shall be conclusive upon Landlord and Tenant. If such values shall not have been separately determined in such proceeding, such values shall be fixed by agreement between Landlord and Tenant, or if they are unable to agree, by an apportionment hearing within the condemnation proceeding so that the allocation between the parties is fair and equitable. Leasehold Mortgagees and other Lenders shall be entitled to participate in any proceedings in connection with a Taking, and to receive directly from the taking authority any sums to which they are found to be entitled.

Section 18.3 Partial Taking; Termination of Lease

If, in the event of a Taking of less than the entire Demised Premises, the remaining portion of the Demised Premises not so taken cannot be adequately restored, repaired or reconstructed so as to constitute a complete architectural unit of substantially the same usefulness, design, construction,

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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 shall satisfy all rents, revenues and other payments due and accrued hereunder up to the date of such termination and shall perform all of the obligations of Tenant hereunder to such date, and thereupon this Lease and the term herein demised shall cease and terminate. Upon such termination the Tenant's interest under this Lease in the remainder of the Demised Premises not taken shall be sold in accordance with applicable Law, and the proceeds of the sale shall be combined with the award given for the partial Taking with the entire amount then being distributed amongst the parties as if a total Taking had occurred. Landlord shall have the option to purchase Tenant's interest under this Lease in the remainder of the Demised Premises at its fair market value for a period of sixty (60) days after the determination of fair market value, which value shall be determined by a mutually acceptable appraiser (or if no one appraiser is agreed upon by the parties, by an appraiser, chosen by two appraisers, one of which will be appointed by each party, within one hundred and fifty (150) days from the date the Lease was terminated). The fair market value specified in the preceding sentence shall be limited to the fair market value of the Improvements and the value of Tenant's interest in the unexpired term of the leasehold estate created pursuant to this Lease (subject to Landlord's reversionary interests in same), and in no event shall such value include any fee simple interest in the 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.

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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. Any portion of the excess award after such reconstruction, repair or rebuilding, retained by Tenant shall be included as Gross Income in the Lease Year in which it is received. 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 Minimum Annual Guaranteed Rent and any Delayed Completion Rent, if applicable, 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

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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. All such proceeds paid to Tenant pursuant to this Section shall be considered as Gross Income as defined in Section 3.10. Tenant covenants that, upon the termination of any such period of temporary Taking, prior to the expiration of the term of this Lease, it will, at its sole cost and expense, restore the Demised Premises, as nearly as may be reasonably possible, to the condition in which the same were immediately prior to such Taking, provided that the Taking Authority compensates Tenant for such restoration.

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:

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- 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 shall occur as provided for hereinabove or otherwise, Landlord and Tenant agree to cooperate with each other in order to provide proper evidence of communication of the proceeding or threat or imminence thereof (including evidence of like Takings under Section 18.7) to the Internal Revenue Service for purposes of determining whether property has been voluntarily converted within the meaning of the Internal Revenue Code.

Section 18.9 Condemnation of Fee Interest

Notwithstanding anything in Article 18 to the contrary, Landlord hereby covenants and agrees with Tenant that (a) it will not agree to any Taking by any party without the consent of Tenant which may be withheld in Tenant's sole direction, (b) it will contest such Taking, and (c) it will, as part of its defense against a Taking, avail itself of the defense, if available, that one entity with condemnation powers cannot condemn the property of another entity with similar powers.

ARTICLE 19

Default by Tenant or Landlord

Section 19.1 Events of Default of Tenant

Events of Default of Tenant include, but are not limited to, the following:

- A. Tenant provides knowingly fraudulent calculations of Participation Rent or fails to exercise due diligence in providing incorrect calculations of Participation Rent;
- B. Tenant fails to pay on time any Rent, revenues or other monies due and payable to Landlord under this Lease when and as the same shall become due and payable or fails to submit audited statements within the time period specified and as required by Section 3.9 of this Lease.
- C. 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.
- D. 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.;
- E. The commencement of a case under the Federal Bankruptcy Code by or against Tenant or any guarantor of Tenants obligations hereunder, or the filing of a voluntary or involuntary petition proposing the adjudication of Tenant or any such guarantor with its creditors, unless withdrawn or dismissed within thirty (30) days after the date of its filing;
- F. The written admission of Tenant of its general inability to pay Rent or its debts when due;
- G. The appointment of a receiver or trustee of an assignment for the benefit of Tenant's creditors, or if in any other manner, Tenant's interest in this Lease shall pass to another by operation of law;

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- H. 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.;
- I. Tenant becomes a Restricted Entity as sanctioned by the Federal Government and/or the Convicted Vendor List (Florida Department of Management Services).
- J. Tenant fails to maintain or provide the insurance requirements of this Lease in all material respects;
- K. 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;
- L. 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.;
- M. 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;
- N. 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;**
- O. 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

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- P. Tenant fails to timely complete construction and obtain a Certificate of Occupancy according to the terms herein.

If an Event of Default of Tenant shall occur Landlord shall give written notice to Tenant and to any Leasehold Mortgagee and Lender, who has notified Landlord in accordance with Sections 17.1 or 17.3 and Tenant shall have thirty (30) days to cure such default after written notice thereof from Landlord setting forth with reasonable specificity the nature of the alleged breach, or in the case of such default which cannot with due diligence and in good faith be cured within thirty (30) days, Tenant shall have thirty (30) days to proceed to pursue curing said default to completion within such reasonable period of time as approved by the Landlord.

Section 19.2 Failure to Cure Default by Tenant

- A. If an Event of Default of Tenant shall occur and Tenant has failed to cure or proceeded to pursue curing such Event of Default as set forth in Section 19.1 above, then Landlord shall give written notice to Tenant and to any Leasehold Mortgagee and Lender, who has notified Landlord in accordance with Sections 17.1 or 17.3, stating that this Lease and the term hereby are demised shall expire and terminate on the date specified in such notice, which shall be at least thirty (30) days after the giving of such notice, during which time Tenant and/or the Leasehold Mortgagee(s) and/or any Lender(s) shall have the right to cure such default, and upon the date specified in such notice if the Event of Default has not been cured, then, subject, however, to the provisions of Section 17.4 herein, this Lease and the term hereby demised and all rights of Tenant and Leasehold Mortgagee(s) and Lender(s) under this Lease, shall expire and terminate.
- B. If an Event of Default of Tenant shall occur and the rights of Leasehold Mortgagees and Lenders shall not have been fully exercised as provided within this Lease, then Landlord, at

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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

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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 agreement;

- 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 shall 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.

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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

Landlord shall in no way be responsible or liable for any failure to relet the Demised Premises or any part thereof, or for any failure to collect any rent due for any such reletting.

Section 19.5 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

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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 19.6 Events of Default of Landlord

The provisions of Section 19.7 shall apply if any of the following "Events of Default of Landlord" shall happen: if default shall be made by Landlord in keeping, observing or performing any of the duties imposed upon Landlord pursuant to the terms of this Lease and such default shall continue for a period of thirty (30) days after written notice thereof from Tenant to Landlord setting forth with reasonable specificity the nature of the alleged breach; or, in the case of any such default or contingency which cannot, with due diligence and in good faith, be cured within thirty (30) days, Landlord fails within said thirty (30) day period to proceed promptly after such notice and with due diligence and in good faith to cure said Event of Default.

Section 19.7 Failure to Cure Default by Landlord

If an Event of Default of Landlord shall occur, Tenant, at any time after the period set forth in Section 19.6, shall have the following rights and remedies which are cumulative:

- A. In addition to any and all other remedies, in law or in equity, that Tenant may have against Landlord, Tenant shall be entitled to sue Landlord for all damages (as limited by Section 15.1 and Section 23.29), costs and expenses arising from Landlord's committing an Event of Default hereunder and to recover all such damages, costs and expenses, including reasonable attorneys' fees at both trial and appellate levels.
- B. To restrain, by injunction, the commission of or attempt or threatened commission of an Event of Default of Landlord and to obtain a decree specifically compelling performance of any such term or provision of the Lease.

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

Section 19.8 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 19.9 Holdover

If Tenant shall be in possession of the Demised Premises after expiration or early termination of the Lease, the Tenant under this Lease shall become a tenancy at sufferance, on a month to month basis, terminable by either party upon notice thereof, receipt of which shall occur no later than thirty (30) days prior to termination, and shall be subject all terms and conditions contained in this Lease as though the term has been extended from month to month ("Holdover Period"). Such holding over shall not be deemed to operate as a renewal or extension of this Lease and nothing herein shall be interpreted to permit Tenant to retain possession of the Demised Premises after the expiration or termination of this Lease. Moreover such hold over shall not be deemed a waiver of any Landlord rights and remedies under this Lease, law or equity.

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Section 19.10 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 Minimum Annual Guaranteed Rent or Participation Rent, as applicable, 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, Assistant Director of

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Engineering, Planning and Development, 701 N.W. 1st Court, 17th Floor, Miami, Florida, 33136

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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

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Certificates by Landlord and Tenant

Section 22.1 Tenant Certificates

Tenant agrees at any time and from time to time, upon not less than twenty (20) days' prior written notice by Landlord, to execute, acknowledge and deliver to Landlord a statement in writing setting forth the rents, payments and other monies then payable under the Lease, if then known; certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that the Lease is in full force and effect as modified and stating the modification), and the dates to which the rents, payments and other monies have been paid, and stating (to the best of Tenant's knowledge) whether or not Landlord is in default in keeping, observing or performing any of the terms of this Lease; and, if in default, specifying each such default (limited to those defaults of which Tenant has knowledge). It is intended that any such statement delivered pursuant to this Section 22.1 may be relied upon by Landlord or any prospective assignee, transferee or purchaser of the fee, but reliance on such certificate shall not extend to any default of Landlord as to which Tenant shall have no actual knowledge.

Section 22.2 Landlord Certificates

Landlord agrees at any time and from time to time, upon not less than twenty (20) days' prior written notice by Tenant or by a Leasehold Mortgagee, to furnish a statement in writing, in substantially the form attached hereto as Schedule 22.2 setting forth the Rents, payments and other monies then payable under the Lease, if then known; certifying that this Lease is unmodified and in full force and effect (or if there shall have been modifications that the Lease is in full force and effect as modified and stating the modifications) and the dates to which rents, payments and other monies have been paid; stating whether or not to the best of Landlord's knowledge, Tenant is in default in keeping, observing and performing any of the terms of this Lease, and, if Tenant shall be in default, specifying each such default of which Landlord may have knowledge. It is intended that any such statement

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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 shall have had no actual knowledge.

ARTICLE 23

Construction of Terms and Miscellaneous

Section 23.1 Severability

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

Section 23.2 Captions

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

Section 23.3 Relationship of Parties

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

Section 23.4 Recording

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

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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 shall be 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 or approval shall be made by the County Mayor or County Mayor's designee on behalf of Landlord and:

- A. Shall not be unreasonably or arbitrarily withheld, conditioned, or delayed unless specifically provided to the contrary, and shall not require a fee from the party requesting same;
- B. Shall not be effective unless it is in writing; and
- C. Shall apply only to the specific act or transaction so approved or consented to and shall not relieve Tenant or Landlord, as applicable, of the obligation of obtaining the other's prior written consent or approval to any future similar act or transaction.

Section 23.7 Entire Agreement

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

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.

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Section 23.8 Successors and Assigns

The terms herein contained shall bind and inure to the benefit of Landlord, its successors and assigns, and Tenant, its successors and assigns (including Leasehold Mortgagees and Sublessees as appropriate and applicable), except as may be otherwise provided herein.

Section 23.9 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 23.10 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 23.11 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 23.12 Protest Payments

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

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legally required to pay under the provisions of this Lease; and if at any time a dispute shall arise between the parties hereto as to any work to be performed by either of them under the provisions of this Lease, the party against whom the obligation to perform the work is asserted may perform such work and pay the cost thereof "under protest" and the performance of such work shall in no event be regarded as a voluntary performance and there shall survive the right upon the part of said Tenant and/or Landlord to seek the recovery of the cost of such work, and if it shall be adjudged that there was no legal obligation on the part of said Tenant and/or Landlord to perform the same or any part thereof, said Tenant and/or Landlord shall be entitled to recover the cost of such work or the cost of so much thereof as Tenant or Landlord was not legally required to perform under the provisions of this Lease.

Section 23.13 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 23.14 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.

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Section 23.15 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 23.16 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 23.17 Documents Incorporated and Order of Precedence

Landlord and Tenant acknowledge that Miami-Dade County issued a Request for Proposals for Joint Development of Property Adjacent to the Miami Intermodal Center, that Tenant submitted the Proposal in response to that Request for Proposals and that the Request for Proposals and Tenant's Proposal was the basis for award of this Lease and upon which the Landlord has relied. The Request for Proposals and Tenant's Proposal are incorporated herein by this reference. If there is a conflict between or among the provisions of this Lease, the Request for Proposals and the Proposal, the order of precedence is as follows: (a) the terms of this Lease; (b) the Proposal, (c) the Request for Proposals for Joint Development of Property Adjacent to the Miami Intermodal Center, RFP No. ____.

Section 23.18 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)

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- 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
(as required by the Internal Revenue Service)
- M. FEIN Number or Social Security Number
In order to establish a file, the Contractor's Federal Employer Identification Number (FEIN) must be provided. If no FEIN exists, the Social Security Number of the owner or individual must be provided. This number becomes Contractor's "County Vendor Number". To comply with Section 119.071(5) of the Florida Statutes relating to the collection of an individual's Social

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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 23.19 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 Lease voidable.

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Section 23.20 Time is of the Essence

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

Section 23.21 No Tax Abatement or Other Public Subsidies to Tenant

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

Section 23.22 No Partnership or Joint Venture

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

Section 23.23 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 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.

Section 23.24 Amendments

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

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Section 23.25 No Liability for Approvals or Inspections

Except as may be otherwise expressly provided herein, no approval to be made by Landlord in its capacity as Landlord under this Lease or 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 23.26 Standard of Conduct

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

Section 23.27 No Option

The submission of this Lease for examination does not constitute a reservation or option for the Demised Premises, and this Lease shall become effective only upon execution and delivery thereof by the parties.

Section 23.28 No Waiver of Sovereign Immunity

No provision of this Lease, or of any other agreement related to this Lease or the Demised Premises and Improvements thereon, whether read separately or in conjunction with any other provision, shall be intended, deemed, interpreted, or construed to waive the sovereign immunity of the County, as such immunity is guaranteed by the Eleventh Amendment to the Constitution of the United States and as may be limited by Section 768.28 of the Florida Statutes.

Section 23.29 Landlord Representatives Not Individually Liable

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

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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 MIC Central Station on a daily basis. The parties acknowledge that service disruptions occur occasionally and such disruptions shall not be considered termination of service under this Lease. If the MIC Central 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.

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

Non-Discrimination

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

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contracts the source of income, and will take affirmative action to ensure that employees and applicants are afforded equal employment opportunities without discrimination. Such action shall be taken with reference to, but not limited to: recruitment, employment, termination, rates of pay or other forms of compensation, and selection for training or retraining, including apprenticeship and on the job training; and

- 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: _____

Print Name: _____

Title: _____

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:

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Schedule 1.1
Real Property Description