

AGENDA ITEM
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11:00 Time Certain

Agenda Item #: 5E-4

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

Meeting Date: July 10, 2012 [] Consent [X] Regular
[] Ordinance [] Public Hearing

Department: Facilities Development & Operations

I. EXECUTIVE BRIEF

Motion and Title: Staff requests Board direction on the approval of an Agreement for Purchase and Sale ("Agreement") with Transit Village, LLC ("TV") for certain interests in the County owned real property commonly known as the Wedge and located within the City of West Palm Beach's Transit Oriented Development (TOD) District.

Summary: Pursuant to the Agreement, TV will develop a transit oriented development ("Project") over and adjacent to the County's Intermodal Transit Center (ITC). TV has six (6) years to commence construction (interim milestones apply) on the Project, at a reduced intensity, of up to; 1) 12,500 sf of civic uses, 2) 400,000 sf of commercial/office, 3) 375 hotel rooms, 4) 150 residential units (student/workforce/market), 5) 150 luxury residential units and 6) 75,000 sf amenity retail. The four critical objectives of the Request for Proposals (RFP) leading up to the Agreement were to; 1) protect the operation of the ITC, 2) ensure that County would not assume any financial risk or liability associated with the development of the Project, 3) ensure that the Project would not consume more than its share of the public infrastructure available for, or otherwise burden, the remainder of the development of the TOD, and 4) fulfill the County's obligations to the South Florida Regional Transportation Authority (SFRTA) with respect to parking. The Agreement is legally sufficient and can be approved today to move this project forward. In relation to the critical objective of protecting ITC operations, it should be noted that the Agreement contains extensive pre-construction and construction requirements to protect ITC operations from the impacts of the Project. However even with these contractual protections, it is not possible to guarantee that ITC operations will not be impacted. The purchase price is \$100,000. The appraised values ranged from \$350,000 to -\$5,000,000 under the sales comparison approach and both appraisals deemed the Project infeasible utilizing the discounted sell-out/land residual valuation approach. The Property Review Committee reviewed the appraisals and the proposed sales price and found the sales price to be reasonable and market oriented. **This Agreement must be approved by supermajority vote (5 Commissioners). (FDO) Countywide (HJF)**

Background & Policy Issues: In early 2010, the County issued a RFP for the development of a TOD project to be constructed on the County-owned Wedge property and site of the operating Intermodal Transit Center (ITC).

(Continued on Page 3)

Agenda Item may be viewed in Minutes

Attachments:

1. Summary of Key Business Terms
2. History of West Palm Beach TOD and RFP for Wedge Property
3. Purchase and Sale Agreement with Transit Village LLC
4. Letter dated June 19, 2012, from Treasure Coast Regional Planning Council
5. Letter dated June 19, 2012, from Southeast Florida Regional Partnership
6. Letter dated June 20, 2012, from South Florida Regional Transportation Authority
7. Letter dated June 21, 2012, from Florida Department of Transportation
8. Letter dated June 25, 2012, from The City of West Palm Beach

Recommended By: _____

Annex Wulf
Department Director

6/26/12
Date

Approved By: _____

County Administrator

Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2012	2013	2014	2015	2016			
Capital Expenditures	_____	_____	_____	_____	_____			
Operating Costs	_____	_____	_____	_____	_____			
External Revenues	_____	_____	_____	_____	_____			
Program Income (County)	_____	_____	_____	_____	_____			
In-Kind Match (County	_____	_____	_____	_____	_____			
NET FISCAL IMPACT	=====	=====	=====	=====	=====			
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____			
Is Item Included in Current Budget:	Yes	_____	No	_____				
Budget Account No:	Fund	_____	Dept	_____	Unit	_____	Object	_____
		Program	_____					

B. Recommended Sources of Funds/Summary of Fiscal Impact:

The \$100,000 purchase price will be received after approval of the Agreement, but will not be available to the County for use until such time that TV secures NEPA and FTA approvals for the project. At that time, the \$100,000 purchase price must be used to off-set the administration of transit related items of the Agreement, however, it is estimated that the costs associated with administration of this Agreement will exceed that number by 5-10 times. In addition, the Agreement requires TV to reimburse the County for all time of the Project Manager and up to \$25,000 in third party expenses associated with the review of the Construction Plan and Constructability Report, but Staff estimates the costs to be 3-4 times that amount. Together the \$575,000-\$1,100,000 in expenses associated with the administration of the Agreement will be borne by the general fund over the term of the Agreement.

C. Departmental Fiscal Review: _____

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development Comments:

OFMB

Contract Development and Control

B. Legal Sufficiency:

Assistant County Attorney

C. Other Department Review:

Department Director

This summary is not to be used as a basis for payment.

Background & Policy Issues (Cont'd)

The RFP was structured to be conducted in two phases; 1) pre-qualifications and general project scope, and 2) detailed project scope and supporting documentation. In February 2010, the County received only one response. Because the developer, Transit Village LLC (TV) was determined by the Selection Committee to be qualified and submitted a proposal which was responsive to the RFP requirements, the Board directed that Staff commence negotiations with TV rather than completing Phase 2 of the RFP process. However, because much of the information that would have been submitted in Phase 2 of the RFP process and have been vetted through the continuation of the competitive process was not obtained as part of the Phase 2 RFP process; negotiations have been protracted as Staff attempted to secure the information and to develop appropriate agreement terms to not only address the County's real estate interest but provide protections to the operation of the existing ITC.

Staff returned to the Board on two occasions since the commencement of negotiations for direction on specific business terms and provided written updates to the Board on several other occasions. Some of the Agreement terms are consistent with County standards, but others are not. The key terms of the Agreement are explained in plain-English in Attachment #1 to this Item. Provisions which contain risk for the County or otherwise deviate substantially from County standards have been italicized and underlined. Altogether, the Agreement represents the best set of terms that Staff was able to negotiate and the Agreement is legally sufficient. The Board can approve this Agreement today to move forward with this Project.

The RFP was issued after approximately four (4) years of discussion by the Board. That discussion started with deciding whether the County should participate and then determining to what extent it would participate and then ultimately issuing an RFP for a portion of the TOD – the Wedge. A summary of the history of the Board's involvement in West Palm Beach Transit Oriented Development and the subsequent development of the RFP for the Wedge Property is included in Attachment #2 to this item. Staff's position has consistently been that while it supports the concept of a transit oriented development, the County should only undertake such an effort pursuant to a specific TOD District wide development plan and not allow for the development of the Wedge in advance of the remainder of the TOD or at a minimum without a plan for the entire TOD being in place.

The City of West Palm Beach Community Redevelopment Agency (CRA), the City of West Palm Beach and Treasure Coast Regional Planning Council (TCRPC) initiated this effort, and the Florida Department of Transportation (FDOT), the Metropolitan Planning Organization (MPO) and the South Florida Regional Transportation Authority (SFRTA) participated in this process. All of our governmental partners were presented with the Agreement and any letters or comments received prior to this item being finalized are included as attachments.

Attachment 1
Transit Oriented Development – Wedge Property
Summary of Key Business Terms
Updated June 26, 2012

1. Intensity of Development

At the January 24, 2012 Board meeting, the Board directed staff to work with TV to reduce the intensity and traffic impacts of the proposed development. The Board was made aware of TV's subsequent revision to the intensity of its Project on February 14, 2012. A comparison of the reduced intensity is illustrated in the following table:

Use	RFP Response	Revised Proposal
Apartment Units	120	150 (+30)
Luxury Condo. Units	40	150 (+110)
Hotel	400 rooms	375 rooms (-25)
Community Center	125,000 sq. ft.	12,500 sq. ft. (-112,500)
Office	600,000 sq. ft.	400,000 sq. ft. (-200,000)
Retail	175,000 sq. ft.	75,000 sq. ft. (-100,000)

The various objectives of the RFP and underlying purpose for selling the property require that the development potential of the site be realized to the maximum extent practical. To assure that realization, the Agreement requires that not less than 90% of the total density/intensity nor greater than 110% of the total density/intensity stated above be included in TV's Site Plan Application to the City of West Palm Beach. County review of that application for compliance with this contractual commitment, as well as the Traffic Circulation Plan and Level 1 Plan, will be required in advance of TV's submission of the application to West Palm Beach.

2. Agreement Milestones and Timing

The Agreement provides up to six (6) years for TV to commence construction, and no milestone for completion of construction. TV has contractually committed to continuously construct the entire project to completion.

The contractual milestones are as follows:

- Obtain FTA and NEPA approval by the end of Year 2 from the execution of this Agreement.
- Submit application for site plan approval to the City of West Palm Beach within 1 year from receipt of the FTA and NEPA approvals.
- Obtain all governmental approvals within 2 years from receipt of the FTA and NEPA approvals.

- Obtain building permits and complete the closing within 5 years from the execution of this Agreement. It should be noted that closing cannot occur until after all the above milestones have been met.
- Commence construction one year after closing or within 6 years from the execution of this Agreement; whichever is first.

In addition, one or any combination of the milestones will be extended for up to a total of one (1) year in the event of unreasonable governmental delay when implementing regulatory responsibilities. This includes actions of governmental entities such as FTA, EPA, SFWMD, State of Florida Department of Health, and the City of West Palm Beach. This includes the County acting in a regulatory capacity (if any) but does not include the County when administering the terms of the Agreement.

The County would have the right to terminate the Agreement if TV does not meet timing milestones.

3. Purchase Price

The purchase price is \$100,000. Staff obtained two appraisals of the Property. The values ranged from \$350,000 to -\$5,000,000 under the sales comparison approach and both appraisers deemed the project infeasible utilizing the discounted sell-out/land residual valuation approach. The Property Review Committee (PRC) reviewed the appraisals and the proposed sales price and found the stated sales price to be reasonable and market oriented.

4. Financial Guarantees

- 4.1 The bonding requirements for the Intermodal Transit Center (ITC) Modifications would be as follows: a) a F.S. Section 255.05 performance bond for 100% of the cost of the required improvements on County property, in addition to b) all requirements of Section 4.2 below.
- 4.2 The financial assurances for the Envelope Construction would be as follows: a) payment and performance bond by TV's Contractor(s) in the amount of 100% of the value of the improvements and b) developer guarantee by TV consisting of a bond, letter of credit or other form of security reasonable acceptable to the County covering 100% of the cost of the improvements. The bonds and developer's guaranty would both be provided 20 days prior to commencement of construction.
- 4.3 The financial assurances for the Commercial Construction are as follows: a) developer guarantee in the amount of 100% of the value of the shell for the Commercial Construction and b) a bond, letter of credit or other form of security in the amount of \$1,000,000. The \$1,000,000 is not sufficient to complete construction of the remainder of the project, so the \$1,000,000 would be acting more as an incentive to complete construction.

In 4.2 or 4.3, if TV's developer obligation is met via a letter of credit, the Agreement allows for that obligation to be reduced by an amount equal to 80% of the value of materials and work in place. At the end of the one year warranty period, the remaining 20% would be returned to TV. The reduction in the

developer obligation would be made after certification by TV, field observation by the County Project Manager and the formula contained in the Agreement. No risk assessment would be performed by the County prior to the reduction which may (or may not) be a cause for the actual completion cost exceeding the amount of money remaining in the third party guarantee in the event that TV defaults.

TV would be permitted to modify the form of financial assurance for the developer guarantee mid project.

5. Traffic Circulation Plan

Traffic engineers representing TV, County and commercial property owners nearby the Wedge Property collaborated to analyze local traffic conditions resulting from the full development contemplated under this Agreement. The Traffic Circulation Plan (Exhibit "D" of the Agreement) documents the technical and methodological assumptions, uses and densities/intensities assumed by TV, and project-related traffic volumes that were collectively relied upon to perform the analysis. The Traffic Circulation Plan also identifies an estimated \$1,000,000 in contractually required improvements to the surrounding roadway network and intersections that would be necessary to sustain appropriate traffic operations for the Intermodal Transit Center (ITC) and nearby private properties upon completion of TV's development proposal. Additionally, the Traffic Circulation Plan provides for enforcement of projected conditions into the future by establishing: 1) parameters for conversion to uses/intensities/densities having an equivalent or lesser amount of traffic generation than has been assumed and 2) the process for requesting changes that could/would have a material impact on traffic operations.

6. Road Impact Fees

Language has been incorporated into the Traffic Circulation Plan (Exhibit "D" of the Agreement) indicating that the cost of improvements made necessary by the Traffic Circulation/Operations Study would not be eligible for Road Impact Fee credits, provided that the approved project is constructed at the intensity level assumed in the traffic study and no changes are made to the background traffic assumed for the remainder of the TOD. If the volume of traffic to be generated by the project is ultimately less than that which was included in the Traffic Circulation/Operations Study or the assumed background traffic is lessened after Agreement approval, TV may seek a determination through the normal process and be subject to whatever protocols are in place at that time for receiving an impact fee credit only for those funded improvements which would not have been required if the changed conditions had been known and analyzed at the time of Agreement approval.

7. Australian Ave Right of Way Acquisition

Representations were previously made that the Agreement would require the County to acquire, including pursuing condemnation if necessary, right of way at an estimated cost between \$100,000 (immediate land area only) and \$1,000,000 (all inclusive) for TV to construct a northbound right turn lane on Australian Avenue approaching Clearwater Place. Upon further review, County Traffic staff has determined that this improvement can be implemented by converting the easternmost northbound through lane on Australian Avenue between Okeechobee Boulevard and Clearwater Place to an

exclusive right turn lane. The two remaining northbound through lanes on Australian Avenue would be sufficient to accommodate existing and forecasted traffic volume and maintain acceptable traffic operations. This alternative approach to delivering a turn lane would be implemented at the County's sole expense since: 1) existing right turning movements on Australian Avenue at Clearwater Place warrant the turn lane, 2) estimated costs are consistent with improvements that are installed as part of annual operating expenditures, and 3) the County would have complete discretion in the design and timely delivery of this alternative turn lane improvement.

8. Workforce/Affordable Housing Requirement

TV may, at its option, make a payment of \$81,500 per workforce/affordable housing unit to the County in lieu of the obligation to construct 20 workforce/affordable housing units. The only exception to the requirement to pay would be if the County consents to the recording of a restrictive covenant before the Closing such that TV would be prohibited from building any residential units on the property and TV is unable to have the restrictive covenant removed through remediation or otherwise. The County agrees to not voluntarily record a restrictive covenant and to only allow the recording of the restrictive covenant if required by a federal or state agency having jurisdiction. While TV has advised the County it intends to construct the units on the property and to remediate any environmental contamination on the property so that this could be accomplished and Staff believes that the contamination is reasonably capable of being remediated, Staff does not believe that TV should be relieved of the obligation to pay the requirement if the units are not constructed on the property for any reason.

9. Preparation of Construction Plan and Constructability Report

The Agreement would require TV to prepare a Construction Plan for County approval prior to commencement of construction. The County shall have an initial review period of 60 days to review the Envelope Construction plan which shall be submitted by TV no later than 120 days prior to its intended construction start date. The Envelope Construction Plan includes the following key elements (Agreement requires additional items, but only certain elements are illustrated here):

- Engineer's Constructability Report which is a report prepared, signed and sealed by TV's structural engineer; a) attesting that the design of the Envelope provides structural stability to allow for continuous operation of the ITC, b) describing the design intent of the Envelope construction as it relates to providing the protection to the ITC during and after construction to permit safe and continuous operation of the ITC, c) attesting to the adequacy of structural protection located outside of the Envelope to be safely and continuously used during the Commercial Construction and d) attesting to the structural ability to construct the Improvements contained in the Commercial construction based on the design of the Envelope;
- Identification of all staging and prosecution of all site and structural work activities to be undertaken within and above the ITC to ensure continuous operation of the ITC;
- Identification of location(s) for employee and contractor parking on and off-site;
- Identification of any on-site locations for staging and/or storage of materials;

- Identification of any engineering and operational assumptions which were submitted to the insurer with respect to the insurance policies;
- Identification of the means/methods, specifications, shop drawings and/or other documents and all physical and/or operational details relating to the contractor's actions to comply with the requirements of the insurance policies issued for the work;
- Schedule for the work; and
- ITC Continuity of Operations Plan (COOP) including the details as to extent and duration of work to be performed within the ITC and operational accommodations being requested by TV which impact the ITC operations.

While the Agreement contains extensive pre-construction and construction requirements to protect ITC operations from the impacts of the Project, enforcement of these terms is practically difficult and the legal remedies are not immediate (the same time frames as the impacts to operations). The Board must understand and be comfortable that the value of the project, the pre-construction contractual requirements and the un-written commitment of the developer is sufficient to move forward. If the Board does not think that is sufficient, then this or any vertical development above the ITC is likely not viable.

TV would be required to submit an updated Construction Plan prior to the start of the Commercial Construction which updates the previously approved Envelope Construction Plan.

The Agreement provides that TV shall be responsible for up to \$25,000 of the County's costs associated with third party reviewers of the Construction Plan and Constructability Report, but Staff believes this amount to be inadequate to cover its costs and believes that the actual costs to be 3-4 times this amount.

10. ITC Deviations

Contained within the Agreement is a Level 1 Site Plan showing changes that TV would make to the existing ITC. These modifications have been thoroughly reviewed by the County for impact to the operation of the ITC and determined to be acceptable. ITC Modifications are defined as changes to the Level 1 Site Plan contained in the Agreement, more specifically: 1) changes to the ingress and egress entrances and exit for Palm Tran vehicles, 2) the parking garage entrance and exits, 3) vehicular and pedestrian surfaces within the ITC, 4) the Palm Tran emergency exit, 5) pedestrian egress and access points from the Envelope/Commercial construction on to the ITC, and/or 6) any other change that impacts the Traffic Circulation Plan.

Any questions or claims concerning what constitutes a deviation from the Level 1 Plan, and/or the approval/denial of a requested ITC Deviation, would be submitted to the County Administrator for resolution. The County Administrator would render his/her determination which shall be considered final and conclusive unless TV files a written protest. In the event of a written protest, the County Administrator would reconsider the request after which the County Administrator's decision on the protest shall be considered final and TV's sole remedy would be to file a cause of action in court.

11. Review of Plans

TV may obtain approval of any item specifically required by the Agreement (including requests for changes) by submitting such request through the Review and Resubmit Process defined in the Agreement. The County would have the greatest of the following durations to review requests for approval; 1) 10 business days, 2) the time frame submitted in the request, 3) the period reasonably requested by the County not exceeding 20 business days if requested within 5 days of receipt of the Request, or 4) a longer period that is agreed to by the TV ("Review Period"). At any time prior to the expiration of the Review Period, the County may request an additional 20 business days to complete its review which TV would be required to grant. If the County requests any further 20 business day extensions on the same request, they must be approved by TV.

After the County has submitted its comments and TV has responded, the County would have a subsequent Review Period to consider the resubmitted request.

If the County does not respond to the initial request or any subsequent resubmitted request, TV would provide the County with a 5 business day notice to respond, and if the County fails to respond, the County approval would be deemed to have been approved.

Requests for ITC Deviations would be made separate from non-ITC deviation requests. To the extent that there is an inconsistency and/or conflict between an ITC Deviation and any other request, the terms of the approved ITC Deviation would prevail and the inconsistent or conflicting portion of any other approval in conflict would be null and void.

The Review and Resubmit Process may continue as many times as TV determines necessary until TV has received the requested approval or elects to terminate the Agreement (termination of the Agreement for this reason can only occur pre-closing).

12. County Agreement and Project Managers

The County would designate the Director of the Property and Real Estate Management Division as the County Agreement Manager. Notwithstanding any other specific provision in the agreement, the Agreement Manager shall: 1) be the County's single point of contact on all matters relating to the Agreement but for those solely assigned to the County Project Manager, 2) have the sole authority and responsibility to grant any administrative approval or make any modification to the Agreement identified as administrative throughout the Agreement, but for those which require the approval of the FDO Director pursuant to Ordinance and/or PPM, and 3) may agree to ITC Deviations. The Agreement Manager would have the ability to seek Board approval on items delegated including changes in the range of allowable intensity/density and/or modifications to the Traffic Circulation Plan.

The County Project Manager will be the Director of the Capital Improvements Division or his/her designee and shall be the single point of contact on the specifically designated construction tasks identified in the Agreement to the extent that any approval does not require an ITC Deviation or other change to the terms of the Agreement.

The Agreement does provide for TV to fund whatever level of involvement TV desires by the Project Manager during the Review and Resubmit Process, and payment for that involvement shall be at the same rate that the County charges County departments.

The Agreement designates that the \$100,000 purchase price be used toward the administration of the transit related items of this Agreement, however, Staff estimates that the Staff costs associated with administration of this Agreement between \$500,000-\$1,000,000 from the time of approval to the completion of construction, and barring any major disputes or regulatory challenges to the project.

13. Exposure for Damages

The Agreement includes language that indicates that in the event of a County default (failure or refusal to perform any term, covenant, or condition of the Agreement) and after a cure period, TV may 1) terminate the Agreement if prior to closing, or 2) seek specific performance as its sole remedy and waives its rights to seek damages.

14. Land Acquisition Grant Repayment

TV acknowledges the existing grant restrictions and covenants and takes full responsibility for complying with those requirements, including repayment of the grant if triggered by the Federal Transit Authority, Florida Department of Transportation, and/or the City of West Palm Beach; each of whom is a funding partner of the County. In the event that repayment is required, TV will have the option to terminate the Agreement or repay the grant.

15. Assignment and Vertical Subdivision

The Agreement acknowledges that TV is permitted to create a special purpose entity in which control would remain with the Purchaser to hold title to, develop, and operate the Property, and that TV may assign any and all rights it possesses to the special purpose entity. TV may also be permitted to admit or remove members or transfer ownership between its members as long as Michael Masanoff remains a manager of the entity. Any other change in ownership prior to closing shall require the County's approval.

Post closing, TV claims it will need the ability to transfer ownership of portions of the development (vertical subdivision) in order to construct, market and sell the project. The Agreement requires all future owners to be subject to the requirements of the Agreement, particularly compliance with the Traffic Circulation Plan. However, compliance enforcement (and potentially property management) will become the responsibility of the County unless a strong property, condominium association or equivalent mechanism is established and funded and has the authority to enforce compliance and take action against those not in compliance. Language was added to the Agreement to address the need for a recorded declaration of covenants (or equivalent instrument) to be agreed upon by TV and the County prior to closing.

Attachment 2
History of the West Palm Beach Transit Oriented Development (TOD)
& Request for Proposals (RFP) to Purchase or Lease the Wedge Property
Updated June 20, 2012

The following summarizes actions of the Board of County Commissioners (Board) from July 18, 2006 through December 15, 2009, which lead to the issuance of the RFP to Purchase or Lease the County's Wedge Property in December 2009.

July 18, 2006 Workshop

On July 18, 2006, the Board discussed amendments to the City of West Palm Beach Downtown Master Plan, Government Hill Master Plan, and the East Central Regional Service Center (a/k/a Airport Center) Master Plan through the Year \pm 2025. At the Workshop, the Board confirmed its future need for County governmental facilities at Government Hill in downtown West Palm Beach and indicated support to consider meeting that need through the creation of a "public use block" on the State's Dimick Block, which is bound by Tamarind Avenue, Clematis Street, Sapodillo Avenue and Datura Street.

December 5, 2006 Regular Agenda Item

In follow-up to the July 18, 2006 Workshop, Staff requested Board direction on whether to: 1) continue with the approach and specific direction previously provided, or 2) modify that direction, at the request of the County's Metropolitan Planning Organization (MPO), to allow the Treasure Coast Regional Planning Council (TCRPC) to assist in preparing the RFP in light of the likely financial risks associated with the County's ongoing participation in the TOD.

The Board, having been provided the projected additional County funding requirements as part of the agenda item (see excerpt on the following page), directed Staff to move forward with its participation in the TOD as previously directed. Specifically, the Board's direction was to; 1) fund the \$2,900,000 shortfall for the Department of Health (DOH) facilities on the Dimick Block, 2) implement the Palm Tran Intermodal (ITC) project on the County's Wedge Property utilizing a design that would both allow for further site development in support of the TOD and memorialize the relationship with SFRTA by supporting transit patron parking, and 3) continue to participate in the implementation of the TOD by undertaking the following action items in the order listed: a) negotiate the terms of a land transaction with the State of Florida to locate/consolidate the County's future governmental facilities on the Dimick Block; thereby allowing for the sale of the County's ownership interests on the blocks to the south in support of the TOD, b) participate in land use and development code amendments by the City of West Palm Beach to facilitate the development of the TOD, and c) prepare a RFP for the disposal of the County's property on the block of the TOD between Evernia Street and Datura Street.

December 5, 2006 Regular Agenda Item Excerpt:

It should also be noted that the DOH Facility funding deficit is estimated by the State to be \$2,900,000. Staff's recommendation is that the County not provide additional funding to the DOH. However, the Board's ultimate decision on funding can be independent of its consideration of the County's continued participation in the TOD, and is therefore not included in the following table.

Preliminary Minimum County Funding Requirements
in the West Palm Beach Transit Oriented Development

Cost Category	Most Favorable	Least Favorable
<i>Net Revenue From Disposition of County Block and partial purchase of the Dimick Block. See note 1 for assumptions.</i>	\$ 5,380,000	\$ 2,208,000
<i>Other costs associated with the partial purchase of the Dimick Block. See note 2 for assumptions.</i>	\$ 0	\$ (5,055,000)
<i>Costs associated with relocation of Community Services prior to scheduled relocation in 2015-2020. See note 4 for assumptions.</i>	\$ (7,402,000)	\$ (10,600,000)
<i>Costs associated with accelerating remainder of facilities to accommodate Community Services in larger County facility. See note 4 for assumptions.</i>	\$ 0	\$ (46,000,000)
Projected Shortfall	\$ (2,022,000)	\$ (13,447,000)
Projected Accelerated Costs	\$ 0	\$ (46,000,000)

Notes:

1. The value of the County's 6.68 acre holdings (not including the Wedge Property) is estimated to be \$600,000/acre assuming current zoning and land development regulations and \$1,000,000/acre for property with zoning and land development regulations appropriate to support TOD style mixed use development and with requirements for the incorporation of workforce housing. The value of the Dimick Block property is estimated to be the same. The most favorable analysis assumes only 1.3 acres of Dimick are purchased and the least favorable analysis assumes that 3 acres of Dimick are purchased.
2. The State's proposal delineated terms for the State's participation in the TOD. The most favorable analysis assumes that Staff's recommendations are realized and the least favorable analysis assumes that the State's proposal is accepted. The differences between the State proposal and Staff's recommendation are discussed in detail in the Evaluation Terms 3, 4 and 5 and attached as Exhibit A.
3. The Community Services Building is a 36,000 sf building and 120 parking spaces currently located on the County block. The building was constructed in the 1970s, but has had all of its major building systems rehabbed or replaced in the last five to ten years in anticipation of another 15-20 years of service. The Airport Center Master Plan contemplates that the Community Services function would be relocated to Airport Center when those buildings are required in 2015-2020. If the development of the TOD requires an early relocation of this building the investment in the existing building will be lost. The most favorable analysis assumes move and relocation costs and a rental rate consistent with "throw away" build-out. The least favorable analysis assumes that the County would have to relocate its facilities into space fit up to County standards. Both are for ten years (2008-2017) until the buildings at Airport Center are available.
4. If the needs of the Community Services Department grows faster than that of the Courts or constitutional officers or the interim period exceeds 7-10 years, the County will need to commit the funding necessary to construct the entire 175,000 sf at Airport Center as that property can only be built in one additional phase due to physical property constraints and the impacts on existing operations. The most favorable analysis assumes that no costs are accelerated and the least favorable analysis assumes that the costs of a 139,000 sf facility and 580 parking spaces (difference between 175,000 sf and 700 cars and 36,000 sf and 120 cars) would be accelerated. For comparison purposes all construction costs are shown in current dollars and not escalated to the actual year of construction.

December 11, 2007 Workshop

The purpose of this Workshop was again to receive Board direction on whether to; 1) continue with the approach and specific direction previously provided or 2) modify that direction, at the request of the MPO, to allow TCRPC to assist in preparing the RFP and that direction be given to County Staff to prioritize the work on this project.

Staff strongly recommended continuing with the previous Board direction in the order specified. Staff recommended against elevating the priority of this project since Staff believed that the TOD as envisioned was not viable in the current market and that the viability of a proposed tax increment financing approach was questionable.

The Board concurred with Staff recommendation to continue with the approach as previously directed. The Board authorized Staff to meet with State representatives of DOH, Department of Environmental Protection/State Lands (DEP), and Department of Management Services (DMS) to determine the specific structure of an agreement between the State and the County that would: 1) result in the County owning sufficient land on the State's Dimick Block to accommodate future County governmental facilities and 2) support the sale of the County's property on the blocks to the south for private development as part of the TOD.

March 11, 2008 Regular Agenda Item

The purpose of this item was to update the Board on the results of discussions with the aforementioned State agencies as directed by the Board on December 11, 2007. Staff reported that a meeting had been successful in terms of identifying: 1) a structure and approach to the transaction containing no fatal flaws from legal or technical perspectives, and 2) the next steps to develop the detailed terms that would be contained in the agreement.

With those action items identified, a work plan and schedule was developed to prepare the agreement for representation to and approval by the State Trustees and the Board. The County/FDO was to take the lead in the development of the agreement itself. The County and City also had key roles in the DOH/DMS assigned tasks. This work would also require demonstration that the County's pre-conditions to successful implementation of the TOD could be met.

Staff recommended that the County continue to participate in the manner previously directed and described above, including not considering an RFP for the disposal of the Wedge Property ahead of the remainder of the TOD as to do so would; 1) jeopardize the County's ability to meet its long term facilities requirements at Government Hill, 2) increase the County's financial participation in the TOD, and 3) undermine the long term success of the TOD. The Board concurred with Staff's recommendation.

March 17, 2009 Regular Agenda Item

The purpose of this item was to: 1) conceptually approve a land exchange consisting of a portion of the County's holdings on the block between Evernia Street and Fern Street for private holdings on the block

between Datura Street and Evernia Street, and 2) request direction regarding the issuance of a RFP for the development of just the Wedge Property and not the entire TOD.

The Board had received multiple presentations over the years on development scenarios for the TOD. The proposed land exchange was seen by Staff as being in the County's long term interest because it would create a more usable piece of County property, and was therefore being recommended by Staff. At the same time, Staff thought economic conditions made it unlikely that the financial benefits of proceeding with the entire TOD, as projected by the most active development interest (Michael Masanoff), would be realized. Staff was also continuing to pursue the land transaction agreement with the State to consolidate governmental ownership onto the Dimick Block, which is an essential pre-condition to the County being able to sell the remainder of its Government Hill holdings for TOD development. Due to the length of time it was taking to effectuate the consolidation of government ownership onto a single public use block (i.e. Dimick block), Mr. Masanoff requested a new project structure involving less land that could proceed more quickly.

Staff expressed concern that changing the approach would result in the County having to accept unknown impacts for such participation in the TOD, such as; 1) the County having to build all of its space at one time on the Dimick Block as opposed to options to phase construction, 2) the operational and cost impacts of having to build parking garages in lieu of surface parking, 3) funding an estimated net cost of between \$2M and \$12M (depending on how much of the impact could/would be passed on to the developer) for participating in the TOD in this manner, and 4) funding an estimated \$46M to accelerate the relocation of Community Services.

Staff further explained the need to conclude the land transaction agreement with the State prior to any disposition in order to assure; 1) the County's ownership of sufficient property for its future governmental facilities on Government Hill, 2) the form of the agreement, timing of pre-conditions and compensation to the State for use of its property, and 3) that the transaction maintains flexibility to address any changes in the objectives of the State and the County over the next 20 years. Staff found this approach to be significant to the success of the larger TOD in that; 1) the County must have sufficient property to meet its future needs so that it can actually offer any surplus property for sale, 2) the minimum compensation requirements for the land being disposed had not been identified, and 3) the minimum parking requirements that would have to be incorporated into the TOD for the future public uses had not been identified; each of which has potential to create a funding shortfall to the County. Accordingly, failure to address any of these issues could lead to the County not disposing of its property or a development plan which is not financially or physically viable. The Board was also reminded that, except for developing the Wedge Property, Staff has never endorsed the overall TOD because of potentials costs, future governmental needs and the Staff time required to further the TOD.

The Board directed Staff to expedite the development of an RFP for the disposition of the Wedge Property in a manner that attempted to assure that the development of Wedge Property would not unduly compromise the development potential for the remainder of the TOD.

October 20, 2009 Regular Agenda Item

Staff brought forward a receive and file status report on the development of a traffic model that would provide the capability to analyze various scenarios for development of the TOD and flexibility to evaluate different potential development and intensity patterns.

November 17, 2009 Regular Agenda Item

In order to complete the RFP preparation, Staff required direction on two specific issues; 1) the incorporation of a requirement for workforce and/or affordable housing, and 2) the weighting of selection criteria.

The Board provided the direction required and further directed that the draft of the RFP be brought to the Board for consideration prior to advertisement.

December 15, 2009 Regular Agenda Item

As directed by the Board on November 17, 2009, Staff brought forward a two phase RFP for approval and also requested that the Board focus its attention on; 1) the incorporation of a requirement for workforce and/or affordable housing, and 2) the scope of the Financial Feasibility and Market Approach Analysis recommended by Staff as a Phase 1 submittal requirement. The RFP had been circulated and approved by the Staff of all governmental partners prior to presentation.

The first area of attention was whether the Board wanted to proceed with the application of existing workforce/affordable housing policy to this particular project or modify the approach for this specific property. The Board directed Staff to apply the policy consistent with its application in the unincorporated area as to do so: 1) supports the Board's efforts towards affordable housing, 2) delivers a use that supports transit ridership, and 3) furthers an appropriate mix of uses that contribute to the ultimate success of the TOD.

Regarding the second area of attention, Staff believed that evaluating the financial feasibility of the project was a critical element for consideration at the beginning of the selection process and therefore included a Feasibility Analysis as part of a Phase 1 submittal, including market demand for and projected absorption of the proposed uses, pro forma analysis of costs, sources of project revenue, and overall assumptions as to profitability. The CRA requested that the Phase 1 requirements present this issue in a more narrative format with the specific, detailed analysis being deferred to the Phase 2 submittal when the more detailed development plan would be submitted. Staff concurred that the Analysis to be provided in Phase 1 would be preliminary and subject to change based upon data provided as part of a Phase 2 submittal. However, Staff felt strongly that the uses proposed and "locked in" as part of a Phase 1 submittal must be supported by an analysis of the historical absorption and current market conditions.

The Board directed Staff to make the Phase 1 submittal requirements significantly more conceptual in terms of developer qualifications, site plan for development, and transit benefits. The Phase 2 submittal would then contain the more detailed and refined information.

The RFP was issued in December 2009 and a sole response was received from Transit Village, LLC in February 2010.

AGREEMENT FOR PURCHASE AND SALE

between

TRANSIT VILLAGE, LLC,

a Florida limited liability company, as Purchaser

and

PALM BEACH COUNTY,

a political subdivision

of the State of Florida, as Seller

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AGREEMENT FOR PURCHASE AND SALE

This Agreement for Purchase and Sale is made as of _____, 2012 by and between PALM BEACH COUNTY, a political subdivision of the State of Florida and TRANSIT VILLAGE, LLC, a Florida limited liability company.

RECITALS

WHEREAS, the transit-oriented development district in the City of West Palm Beach, Florida surrounding the West Palm Beach Intermodal Transit Center has been the subject of land use and transportation planning for approximately 20 years; and

WHEREAS, the TOD District is situated within the Eastward Ho! area where the goal is to create sustainable communities in Southeast Florida; and

WHEREAS, the TOD District is within an urban infill area and developing infill areas is a primary principle of smart growth, promoting the betterment of city centers, promoting the use of mass transit, reducing traffic congestion and creating more livable communities; and

WHEREAS, it has been determined that developing the TOD District as a transit-oriented development will further promote the use of public transportation in Palm Beach County; and

WHEREAS, the County owns Property located in the TOD District; and

WHEREAS, the County issued a Request For Proposals Number RFP NO. 2009-104-RCH; and

WHEREAS, as a result of the RFP process, Purchaser was selected by the County to negotiate the terms on which the County will sell and the Purchaser will purchase the Property; and

WHEREAS, the County will continue to own the ITC Property and to operate the Intermodal Transit Center on the ITC Property; and

WHEREAS, the Purchaser will accept the Property subject to the terms and conditions contained herein; and

WHEREAS, environmental reports, assessments, documents, correspondence and communications relating to the Property and its environmental contamination included within the RFP indicate that the Property may be environmentally contaminated; and

WHEREAS, the Purchaser desires to develop, construct and operate a commercial mixed use project on the Property consistent with Purchaser's response to the RFP.

NOW THEREFORE, for and in consideration of the foregoing true and accurate Recitals all of which are incorporated herein, the mutual covenants contained herein and the sum of Ten and no/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, do hereby agree as follows:

WITNESSETH:

1. **DEFINITIONS.** The following terms as used herein shall have the following meanings:

- 1.1. **"Agreement"** or **"Agreement for Purchase and Sale"** shall mean this instrument, together with all exhibits, addenda, and property amendments hereto.
- 1.2. **"Approved Site Plan"** shall mean the Site Plan that has been approved by the City in accordance with the City-mandated procedure.
- 1.3. **"Building Permit" or "Building Permits"** shall mean the required building permit(s) and license(s) to be issued by the City's Construction Services Department or any other city governmental division or unit having jurisdiction over the Property and/or Purchaser necessary to commence construction of at a minimum the Envelope Construction in accordance with the Approved Site Plan. The definition of "Building Permit" or "Building Permits" shall be limited to include site construction and structural construction only for the Shell and shall not include permits for work related to non-site work or non-structural work, such as interior construction, mechanical, electrical or plumbing, etc.
- 1.4. **"Certificate of Completion"** means a certificate of completion issued in accordance with Section 106.2 and related provisions of the Florida Building Code or a Certificate of Substantial Completion in the form promulgated by the Florida Department of Management Services or the American Institute of Architects, whichever is first issued.
- 1.5. **"City"** shall mean the City of West Palm Beach, a certain city body politic of the State of Florida.
- 1.6. **"City Approval"** shall mean the confirmation by the City, as a result of the transactions contemplated by this Agreement that the County shall not be required to return any funds previously provided by the City for the acquisition of the ITC Property or the Property or construction of the ITC.
- 1.7. **"Closing"** shall mean the consummation of the transaction contemplated hereby which shall be held in accordance with Section 3.7 of this Agreement.
- 1.8. **"Commercial Construction"** shall mean all construction of Improvements listed on the Site Plan (excluding the Envelope Construction) undertaken by the Purchaser on the Property. Commercial Construction shall be subject to the applicable requirements of Sections 2 and Article 5.
- 1.9. **"Commercial Construction Plan"** means a plan and sequencing schedule for the construction of the Shell for the Commercial Construction that shall include:
 - 1) if necessary, identification of any additional Easements or Licenses requiring execution prior to or during the Commercial Construction;
 - 2) the Engineer's Constructability Report-Updated;
 - 3) identification of the stages of major structural construction activities/equipment on the ITC property in a manner which permits the continuous operation of the ITC;
 - 4) identification of any elements of site and structural work to be performed within and above the ITC during the Commercial Construction;

- 5) identification of any location(s) for employee and contractor parking on and off-site;
 - 6) identification of any on-site locations for staging and/or storage of construction materials;
 - 7) the updated COOP including details as to extent and duration of any work to be performed within the ITC, operational accommodations being requested by the Purchaser of the County or SFRTA, or which otherwise impact the ITC operation;
 - 8) copy of plans to be and/or submitted with Building Permit applications;
 - 9) identification of the means/methods, specifications, shop drawings and/or other documents and all physical and/or operational details relating to the Contractor's actions to comply with the requirements of the insurance policies issued for the work,
 - 10) a schedule for the work prepared in accordance with the requirements of Schedule 6, GC 26; and
 - 11) identification of any engineering and operational assumptions which were submitted to the insurer with respect to the insurance policy(ies).
- 1.10. **"Construction Plans"** shall mean the Envelope Construction Plan and the Commercial Construction Plan.
- 1.11. **"Continuous Construction"** shall mean the Purchaser pursuing the ongoing planning activities and construction work of the Envelope Construction and the Commercial Construction of all Improvements set forth on the Site Plan in accordance with the timelines set forth in the Construction Plans, including, but not limited to, any delays or temporary breaks as provided in the Construction Plans.
- 1.12. **"Contractor"** shall mean a legal entity licensed as a general contractor in the State of Florida, including any subcontractors, hired directly by the Purchaser to be responsible for all construction services pursuant to this Agreement.
- 1.13. **"County"** or **"Palm Beach County"** shall mean Palm Beach County, a political subdivision of the State of Florida.
- 1.14. **"Cooperate"** or **"Cooperation"** when used with respect to County, the term shall mean that the County is obligated to: 1) acknowledge the existence of this Agreement and provide documents to those requesting same, 2) support the Purchaser's rights and obligations under this Agreement, 3) not interfere with the Purchaser's efforts under, and consistent with, this Agreement, and 4) not act inconsistent with the terms of this Agreement. To the extent that the County desires to do more to cooperate, it is done at the County's sole discretion but in no instance is obligated or required to do more.
- 1.15. **"County Agreement Manager"** shall mean the person that the County appoints and directs to perform its obligations hereunder. The County hereby initially designates the Director, FDO/Property and Real Estate Management Division as the County Agreement

Manager. The County reserves the right to change this designation from time to time upon prior notice to the Purchaser, provided any such change shall not affect any prior actions by any prior County Agreement Manager, and the Purchaser, and its assigns, shall have the right to rely on all prior decisions of any then effective County Agreement Manager. The County's Agreement Manager, subject to the authority of the County Administrator pursuant to Section 1.36: 1) is the County's single point of contact on all matters relating to the Agreement but for those which are solely assigned to the County Project Manager, 2) has sole authority and responsibility to grant any administrative approval or make any modification to the Agreement identified as administrative throughout the Agreement but for those which require the approval of the Director Facilities Development and Operations pursuant to ordinance and/or the County Policies and Procedures Manual, and 3) may agree to ITC Permitted Modifications, whether such deviation is granted on a condition specific or blanket basis. Any work performed by the Purchaser without proper authorization, is performed at the Purchaser's risk and the County shall have no obligations or liability resulting from the Purchaser proceeding without proper authorization. The Purchaser shall have no obligation to reimburse the County for expenses associated with the County Agreement Manager.

- 1.16. **"County Parking Spaces"** shall mean the use of 40 parking spaces that will be provided by the Purchaser upon completion of the Envelope Construction for the use by County and/or SFRTA employees in connection with their employment by the County and/or SFRTA and the operational procedures related thereto in accordance with the terms of the agreement provided for in Section 2.6.
- 1.17. **"County Project Manager"** Upon the County's receipt of notice of the Kick-Off Meeting required by Section 2.2, the County Agreement Manager shall designate an employee from within the FDO/Capital Improvement Division assigned to monitor, review and provide comment on government approvals, design and construction of the Project and who, subject to the authority of the County Agreement Manager pursuant to Section 1.15: 1) is the County's single point of contact on all matters relating solely to Section 2.4, Section 5 and Schedule 6, 2) has the sole authority and responsibility to coordinate and timely submit all approvals and comments required of County pursuant to Sections 2.4, Section 5 and Schedule 6 of the Agreement which are not inconsistent with the remainder of the requirements of this Agreement, and 3) can agree to changes in the requirements of Schedule 6. To the extent that an approval or comments item pursuant to Sections 2.4, Section 5, and/or Schedule 6 is inconsistent with another portion of the Agreement or requires a change to the Agreement and/or the County Agreement Manager's approval is also required, the County Project Manager shall advise Purchaser in writing as soon as reasonably practicable that the County Project Manager intends to seek County Agreement Manager's approval. Any work performed by the Purchaser for which County approval is required and is without proper authorization, is performed at the Purchaser's risk and the County shall have no obligations or liability resulting from the Purchaser proceeding without proper authorization. Within 30 days of receipt of an invoice from the County, the Purchaser shall reimburse the County for the documented time spent by the County Project Manager at the same hourly rate that it charges County departments for the services of a Project Manager. In addition, the Purchaser shall be responsible for the reasonable time spent by the County Project Manager at the same hourly rate that it charges County

departments for the services of a Project Manager, for the County Project Manager's review of reports as required during the Commercial Construction. The Purchaser shall also be responsible for the reasonable third party costs of the County's construction manager to independently review the Engineer's Constructability Report, provided, however, that Purchaser's obligation shall be limited to a maximum of \$25,000 for third party costs for the Envelope Construction and a maximum of \$25,000 for third party costs for the Commercial Construction unless otherwise agreed to by Purchaser. Other than for these two categories of costs, the Purchaser shall not be responsible for any other costs of the County during the Review and Resubmit Process.

- 1.18. **"Current Funds"** shall mean immediately available funds drawn against a public banking institution located in the State of Florida.
- 1.19. **"Deposit"** shall mean \$100,000 in cash or letter of credit.
- 1.20. **"Easements"** shall mean those permanent encumbrances on the land related to access, utilities and/or drainage requested by Purchaser to construct, reconstruct, repair, maintain or operate the Property or the Improvements.
- 1.21. **"Effective Date"** shall mean the date this Agreement has been approved by the Board of County Commissioners of Palm Beach County.
- 1.22. **"Engineer"** shall mean any engineering, architectural, survey, landscape architecture, testing lab or other professional services firm regulated pursuant to F.S.S. 287, including all sub-consultants, directly hired by the Purchaser and licensed in the State of Florida responsible for design services required by the Agreement.
- 1.23. **"Engineer's Constructability Report"** shall mean a report that is prepared, signed and sealed by Purchaser's structural Engineer: a) attesting that the design of the Envelope provides the structural ability to construct the proposed Envelope Construction and the Commercial Construction while allowing the continuous operation of the ITC, b) describing the design intent of the Envelope Construction as it relates to providing the protection of the ITC Property and the ITC during and after construction so as to permit safe and continuous operation of the ITC, c) if the Minimum Parking Level(s) are located outside of the Envelope, then attesting to an adequate level of structural protection of the Minimum Parking Level(s) to allow the parking spaces to be safely used during the Commercial Construction, and d) attesting to the structural ability to construct the Improvements contained in the Commercial Construction based on the design of the Envelope Construction.
- 1.24. **"Engineer's Constructability Report-Updated"** shall mean a report that is prepared, signed and sealed by Purchaser's structural Engineer with respect to the Commercial Construction: a) describing the design intent of the Commercial Construction as it relates to the protection of the ITC Property and the ITC during and after construction of the Commercial Construction so as to permit continuous operation of the ITC, b) describing any changes from the Engineer's Constructability Report and c) attesting to the structural ability to construct the Commercial Construction.

- 1.25. **"Envelope"** shall mean the building structure that includes the Envelope Construction Improvements, such that when completed, the ITC and the ITC Property shall be contained within the Envelope and the Envelope shall provide structural protection to the ITC as provided in the Engineer's Constructability Report.
- 1.26. **"Envelope Construction"** shall mean (i) all of the site work on the ITC Property and the Property required to be within the Envelope by Purchaser's Site Plan; (ii) the Required ITC Modifications, (iii) a portion of the parking garage which portion shall at a minimum consist of the Minimum Parking Levels, (iv) any Improvements required for the Envelope and ingress and egress ramps to such parking level(s) so as to complete construction of the Improvements of the level immediately above the ITC Property; (v) any liner Improvements required to be within the Envelope in the Approved Site Plan, provided that if required by the City in the Building Permit process to be constructed as part of the structural component of the Envelope or by the Engineer's Constructability Report, the Envelope Construction shall be constructed in a manner to line the façade of the garage along Banyan and Clearwater Drive in accordance with the Approved Site Plan.
- 1.27. **"Envelope Construction Completion"** shall be deemed to have occurred when the Purchaser has: (i) completed all construction contract and general conditions required for the Improvements included in the Envelope Construction, (ii) received a Certificate of Completion for the Envelope Construction Improvements, and (iii) provided Record Drawings of the constructed Improvements for the Envelope Construction to the County.
- 1.28. **"Envelope Construction Plan"** means a construction plan and sequencing schedule for the Envelope Construction and the Required ITC Modifications that shall include all material details related to the site development and structural construction to be performed in accordance with the Approved Site Plan and Building Permits for the Envelope Construction and the Required ITC Modifications that the County shall review and approve pursuant to the Review and Resubmit Process. The Envelope Construction Plan shall include:
- 1) identification of all required Licenses requiring execution prior to or during the Envelope Construction and the Required ITC Modifications;
 - 2) identification of any Easement requiring execution prior to or during the Envelope Construction and the Required ITC Modifications;
 - 3) the Engineer's Constructability Report;
 - 4) identification of the staging of major structural construction activities/equipment on the ITC Property in a manner which permits the continuous operation of the ITC;
 - 5) identification of all elements of site and structural work to be included within the Envelope and the Commercial Construction and performed within and above the ITC during the Envelope Construction and the Required ITC Modifications;
 - 6) identification of location(s) for employee and contractor parking on and off-site;

- 7) identification of any on-site locations for staging and/or storage of construction materials;
 - 8) identification of the location and dimensions of pilings and any other structures that are to be located within the ITC;
 - 9) identification of the means/methods, specifications, shop drawings and/or other documents and all physical and/or operational details relating to the Contractor's actions to comply with the requirements of the insurance policies issued for the work,
 - 10) a schedule for the work prepared in accordance with the requirements of Schedule 6, GC 26;
 - 11) identification of any engineering and operational assumptions which were submitted to the insurer with respect to the insurance policy(ies);
 - 12) the ITC Continuity of Operations Plan (the "COOP") including details as to extent and duration of work to be performed within the ITC, operational accommodations being requested by the Purchaser of the County or SFRTA, or which otherwise impact the ITC operation;
 - 13) the Personalty Plan which identifies the Personalty to be permanently or temporarily removed, relocated or impacted in any way during construction and identifies any temporary accommodations (physical or operational) which will be required of PalmTran or SFRTA for the COOP;
 - 14) demonstrating that the design and construction of the Improvements are presented in an integrated plan; and
 - 15) identifying the backup documentation and submitting the certification forms, to be submitted, pursuant to Section 5.3.3.1 and required for acceptance of the Envelope Construction by the County and the reduction of Purchasers Financial Assurances.
- 1.29. **"FDOT Approval"** shall mean the confirmation by FDOT that as a result of the transactions contemplated by this Agreement, that neither the County nor the City shall be required to return any funds previously provided for the acquisition of the ITC Property or the Property or construction of the ITC.
- 1.30. **"FTA"** shall mean the Federal Transit Administration.
- 1.31. **"FTA Approval"** shall mean approval or written indication of no objection, request for modification or amendment, of the terms of this Agreement by the Federal Transit Administration in accordance with the FTA Grant Agreement with Obligation Date of March 29, 1991 and the FTA Grant Agreement with Obligation Date of June 29, 1992 and the confirmation by FTA that, as a result of the transactions contemplated by this Agreement, that neither the County nor the City shall be required to return any funds previously provided for the acquisition of either the ITC Property, the Property or construction of the ITC, and that Purchaser can proceed with the project as contemplated by this Agreement.

- 1.32. **"Government Approvals"** shall mean all land use, zoning, utility, environmental and other permits, licenses and approvals from any federal, state, County, City or other governmental or quasi-governmental agency, utility or private party, other than Building Permits, necessary to commence construction of both the Envelope Construction and the Commercial Construction as set forth on the Approved Site Plan.
- 1.33. **"Housing Payment Option"** means Purchaser's option to make a payment of \$81,500 per workforce/affordable housing unit to the County in lieu of the obligation to construct 20 workforce/affordable housing units on the Property, except if the County consents to the recording of a restrictive covenant before the Closing such that the Purchaser will be prohibited from building any residential units on the Property and the Purchaser is unable to have the restrictive covenant removed through remediation or otherwise, then the Housing Payment Option shall be \$0.00 (zero dollars). The County agrees to not voluntarily record a restrictive covenant and to only allow recording of the restrictive covenant if required by a federal or state agency having jurisdiction over the Property. The Purchaser has advised the County that it intends to construct such units on the Property and to remediate any environmental contamination on the Property so that this can be accomplished.
- 1.34. **"Improvement" or Improvements"** shall mean the land preparation or excavation, landscaping, hardscaping, structural components, exterior parking areas, exterior sidewalks, exterior fences, exterior walls, exterior driveways, major exterior drainage areas, major exterior drainage pipes and drainage outfalls, exterior signs within the ITC Property and any other structural construction on the Property by the Purchaser to complete the applicable Shell as per the Government Approvals and the Building Permits as may be obtained from time to time. The term "Improvements" specifically includes both the improvements included in the Envelope Construction and the Commercial Construction and all later structural changes or alterations to the aforesaid items.
- 1.35. **"ITC"** shall mean the Intermodal Transit Center located on the ITC Property and as further set forth in Exhibit "B-2", as may be modified from time to time.
- 1.36. **"ITC Deviations"** shall mean Purchaser's request to modify the ITC or the ITC Property, which shall require the County's prior approval through the Review and Re-Submit Process. Requests for ITC Deviations cannot be combined in the same Review and Re-submit request with other non-ITC Deviations. ITC Deviations shall be requested and approved in advance if the subject matter being included in a Review and Resubmit Process submittal is dependent on an ITC Deviation that has been submitted for approval.

Any questions or claim of the Purchaser concerning the County Agreement Manager's decision as to: 1) what constitutes a deviation from the Level 1 Plan, and/or 2) the approval or denial of a requested deviation, shall be submitted to the County Administrator (or designee) for resolution. The County Administrator will render his/her determination concerning such resolution, which determination shall be considered final and conclusive unless the Purchaser files a written protest. The protest shall state clearly and in detail the basis thereof. The County Administrator will consider the Purchaser's

protest and render his/her decision thereon within twenty (20) calendar days. The County Administrator's decision on the protest shall be the final County decision, and the Purchaser's sole remedy shall be to file a cause of action in the appropriate court challenging the decision.

- 1.37. **"ITC Permitted Modification"** shall mean any ITC Deviation which is granted by the County Agreement Manager, County Project Manager, or the County Administrator on a condition specific or blanket basis. County shall have the right, at its option and in its sole and absolute discretion, to approve ITC Permitted Modifications at any time during the term of this Agreement, to grant such ITC Permitted Modifications on a blanket basis, and to add additional ITC Permitted Modifications without having received a request from the Purchaser. Such right may be exercised administratively through written notice to Purchaser. The County shall not be permitted to delete any existing and/or approved ITC Permitted Modifications without the prior written consent of Purchaser.
- 1.38. **"ITC Property"** shall mean the property on which the ITC is located and that will continue to be owned and operated by the County up to a height of not less than 21 feet 4 inches above finished grade (until it reaches the height of the floor to be constructed above the ITC) and shall exclude the areas of the subsurface footers and supporting structures to be set forth and as shown on the attached Exhibit "B-3" as may be modified by the Construction Plan, which subsurface footers and supporting structures are to be included in the Property. The ITC Property is further described on Exhibit "B-1" and Exhibit "B-2" attached hereto and made a part hereof.
- 1.39. **"Licenses"** means those temporary encumbrances on the land related to construction and access as may be reasonably necessary for Purchaser to construct, reconstruct, repair or maintain the Property or the Improvements.
- 1.40. **"Level 1 Plan"** shall mean the proposed Improvements to be constructed on the first level of the ITC Property and the Property shown on the concept drawing attached hereto as Exhibit "C", as same may be modified from time to time in accordance with this Agreement.
- 1.41. **"Milestone Effective Date"** shall mean the date of receipt of the latter of FTA Approval and NEPA Approval.
- 1.42. **"Minimum Parking Level" or "Minimum Parking Levels"** shall include those parking levels constructed in the Envelope Construction and which levels shall be capable of permitting the County Parking Spaces and the SFRTA Parking Spaces to be located thereon and shall also include at least one level above the uppermost level on which any of the County Parking Spaces and the SFRTA Parking Spaces may be located until completion of construction of the Improvements. If the Minimum Parking Levels are outside of the Envelope, then the Engineer's Constructability Report shall describe the protection provided to such parking during the Commercial Construction. If the Minimum Levels are relocated prior to the completion of the Commercial Construction, then to the extent that the relocation is not adequately described in the Engineer's Constructability Report, then the Purchaser shall provide a revised Engineer's Constructability Report with respect to the protection to be provided. The County

Parking Spaces and the SFRTA Parking Spaces may be relocated upon completion of subsequent parking levels in accordance with the agreements with the County with respect to the County Parking Spaces and with the SFRTA with respect to the SFRTA Parking Spaces.

- 1.43. **"NEPA"** shall mean the National Environmental Policy Act.
- 1.44. **"NEPA Approval"** shall mean any approvals or written indication of no objection, request for modification or amendment that may be required under the existing NEPA approvals and/or exemptions applicable to either the ITC Property or the Property, and so that Purchaser can proceed with the project as contemplated by this Agreement and if any conditions are imposed as a condition of same, then the date on which the County and/or Purchaser, as applicable, agree to undertake to satisfy the conditions shall be deemed to be NEPA Approval on the date thereof, provided that such conditions shall not impose any additional financial or other obligations on the County, without the prior written agreement of the County which agreement may be withheld in the County's sole discretion.
- 1.45. **"Palm Tran"** shall mean the bus system currently operated by Palm Beach County and its successors and assigns utilizing the ITC.
- 1.46. **"Permitted Exceptions"** shall mean only those exceptions to the title of the Property listed on Schedule 1.
- 1.47. **"Personalty"** shall mean any items of personal property, signs, poles, fences, hardscape, gates, trees, shrubbery, or other landscape vegetation located upon the ITC Property at Closing that are to be relocated or removed and as identified in the Construction Plan and for which County, City, and/or SFRTA approval shall have been received if required. These items shall be considered as Personalty even though secured, installed or planted on the ITC Property.
- 1.48. **"Property"** or **"Real Property"** shall mean the real property legally described in Exhibit "A" attached hereto and made a part hereof, which Property excludes the ITC Property. The Property also includes the areas of the subsurface footers and supporting structures set forth within the boundaries of the ITC Property as set forth on Exhibit "B-3" as may be modified by the Envelope Construction Plan.
- 1.49. **"Purchase Price"** shall mean, after taking into account restrictions and obligations that offset the value of the Property, \$100,000.
- 1.50. **"Purchaser"** or **"Transit Village"** shall mean Transit Village, LLC, a Florida limited liability company or its permitted successors and/or assigns.
- 1.51. **"Record Drawings"** shall mean a complete set of marked-up as-builts for the ITC Property and the Required ITC Modifications with "RECORD" clearly printed on each sheet. Record drawings may be in hard copy or electronic format.
- 1.52. **"Required ITC Modifications"** shall mean those approved modifications to the ITC in the areas indicated on Exhibit "B-3" as required to be modified or constructed at the Purchaser's sole cost and expense. The Required ITC Modifications shall also include

the additional traffic-related improvements listed on Exhibit "D" to be provided at the times set forth in Exhibit "D," County shall permit Purchaser to make improvements to right of way owned by County, without charge for such right of way. Any required right-of-way acquired by the County through condemnation shall be made available to Purchaser by the County at a cost no greater than that incurred by the County. The Required ITC Modifications are intended in part to permit the vacating of the use of the existing southern ITC entrance so that that portion of the ITC Property may be included in the Property being conveyed by the County to the Purchaser. The Required ITC Modifications are ITC Permitted Modifications.

- 1.53. **"Review and Resubmit Process"** shall mean the process in which Purchaser will obtain approval of the County of any item specifically required under this Agreement. The Purchaser shall submit the proposed item for which approval is required for the County's review and the County shall have the time period set forth below ("Review Period") to provide its approval, or provide all corrective suggestions or comments for any item for which the County has not provided its approval. The Review Period for review shall equal to the greatest of: (i) ten (10) business days; (ii) the time period set forth in the submission; and (iii) the period reasonably requested by the County within five (5) business days of submission to complete its review, but not greater than twenty (20) business days, unless a longer period is agreed to by Purchaser, (iv) a different time frame is specified elsewhere in this Agreement, or (v) or a different timeframe is required as a matter of law. The Purchaser shall promptly provide any additional information reasonably requested by the County that the County deems reasonably necessary to conduct its review during the Review Period.

If requested by Purchaser, the County shall then promptly meet with Purchaser to resolve any such item for which the County has not provided its approval and Purchaser shall thereafter submit Purchaser's response to each such comment to address the County's comments and return it to the County for its review and approval. The County shall then have a subsequent Review Period commencing on the receipt thereof to review and approve the revised version of the item.

If the County does not respond to either the initially submitted version of the item or the revised version thereof within the Review Period, and upon the Purchaser sending a written notice of the failure of the County to respond to the Purchaser and providing the County five (5) business days to respond, and the County having failed to timely respond, the County shall be deemed to have approved for the purpose of this Agreement such version of the item.

At any time prior to the expiration of a Review Period, the County may request an additional twenty (20) business days to complete its review, provided that if the Review Period has already been extended once, any additional extension shall require Purchaser's approval, such approval to not be unreasonably withheld.

The Review and Resubmit Process shall continue as many times as the Purchaser deems necessary until Purchaser has received the requested approval or elects to terminate this Agreement. Notwithstanding the foregoing, Purchaser shall have no right to terminate this Agreement after Closing.

To the extent that there is: 1) an inconsistency or conflicts between an ITC Deviation and the approval granted pursuant to this paragraph, the terms of the approved ITC Deviation shall prevail and the portion of the approval that is determined to be inconsistent or in conflict shall be null and void.

The County acknowledges with respect to any review and approvals that it is required to provide under the Review and Resubmit Process, that time is of the essence for such review and that the County will not unreasonably withhold or delay the County's review of any item.

While the Purchaser may submit to the County under the Review and Resubmit Process various items for County comment, for any item submitted for which County approval is not specifically required pursuant to this Agreement, any advice and/or comments shall not be binding on the County and only approvals for required items shall be binding on the County.

1.54. **"RFP"** shall mean the Request For Proposals Number RFP NO. 2009-104-RCH issued by the County.

1.55. **"Shell"** shall mean the exterior portion of any Improvements such that the completion of such Improvement will, when viewed from street level, appear to be complete and ready for occupation, even though the interior may not be complete, and shall be secured and meet the requirements to obtain a Certificate of Completion, and specifically exclude any tenant improvements, HVAC, mechanical, electrical and plumbing systems, fire protection systems, elevators and similar items to be situated in the interior of the building.

1.56. **"SFRTA"** shall mean the South Florida Regional Transportation Authority and its successors and assigns.

1.57. **"SFRTA Parking Spaces"** shall mean the use and the operational procedures related thereto of 250 parking spaces for use by SFRTA patrons in connection with their use of the ITC.

1.58. **"Site Plan"** shall mean a site plan detailing the uses set forth in Section 2.3.2, Improvements, buildings, parking structures, traffic circulation, landscaping and water detention/retention improvements proposed to be developed by Purchaser on the Property and on the ITC Property in such detail as required by the City's zoning and site plan approval process, or this Agreement, whichever is more inclusive.

1.59. **"TOD District"** shall mean the Transit Oriented Development zoning district as currently designated by the City's Downtown Master Plan.

1.60. **"Traffic Circulation Plan"** shall mean the Traffic Study and Traffic Circulation Plan attached hereto as Exhibit "D" to this Agreement.

2. **DEVELOPMENT REQUIREMENTS.**

2.1. **Initial Items.** Promptly after execution of this Agreement, Purchaser shall concurrently commence to obtain the following items:

- 2.1.1. **FTA Approval.** Purchaser shall seek to obtain FTA Approval.
- 2.1.2. **NEPA Approval.** Purchaser shall seek to obtain NEPA Approval or acknowledgement of no objection to this Agreement.
- 2.1.3. **FDOT Approval.** Purchaser shall seek to obtain FDOT Approval.
- 2.1.4. **City Approval.** Purchaser shall seek to obtain the City Approval.
- 2.1.5. **County Cooperation.** While the Purchaser has the primary obligation to seek the above approvals, the County shall Cooperate to the extent reasonably requested by Purchaser. Nothing herein shall prevent the County from requesting clarification or additional information with respect to any such approvals.
- 2.2. **Kick-Off Meeting with County Project Manager.** Purchaser shall schedule a kick-off meeting with the County Agreement Manager and County Project Manager to discuss the level of involvement of the County Project Manager as provided in Section 2.4, and Section 5 of this Agreement and which will be requested by the Purchaser from time to time ("County Project Manager Work Plan"). After the Kick-Off Meeting, the Purchaser shall prepare the County Project Manager Work Plan that shall define the amount of time and associated costs to the Purchaser for the County Project Manager's time, and Purchaser shall submit same to County for review and approval under the Review and Resubmit Process.
- 2.3. **Preparation of Site Plan**
- 2.3.1. Purchaser and the County acknowledge that the Level 1 Plan attached hereto as Exhibit "C", is approved by the County. Purchaser shall cause the ITC and the ITC Property to be modified as part of the Required ITC Modifications as a change from the existing layout of the ITC and the ITC Property. Any further changes to the Level 1 Plan that are not an ITC Permitted Modification to the ITC and the ITC Property or as otherwise set forth in the Level 1 Plan shall be considered to be ITC Deviations and shall be submitted pursuant to the Review and Resubmit Process.
- 2.3.2. Purchaser shall prepare the Site Plan for submission to the City. The proposed Site Plan Application shall be submitted to the County pursuant to the Review and Resubmit Process prior to submission to the City. The Site Plan will include (i) up to 12,500 square feet of civic uses (learning center/cultural center/education), (ii) up to 400,000 square feet of commercial/office, (iii) up to 375 hotel rooms, (iv) up to 150 residential units (student/workforce/market), including the 20 workforce and/or affordable units (unless the Housing Payment Option is exercised), (v) up to 150 luxury residential units and (vi) up to 75,000 square feet of amenity retail. The Purchaser shall design the site so as to maximize the development potential of the site and may vary the foregoing proposed uses and densities/intensities within the range of 90% to 110% of the total density/intensity of such amounts without County approval so long as it remains in conformity with the traffic intensity of total peak hour trips set forth in the Traffic Circulation Plan and the Level 1 Plan. The Site Plan submitted to the City shall also provide for (a) the

SFRTA Parking Spaces, and (b) the County Parking Spaces. The Purchaser may meet the 90% requirement by agreeing to place a portion of the above minimum density/intensity requirements on property presently owned by the City immediately east of the CSX tracks and provide for parking for those uses within the parking garage on the Property so long as the uses are included in the Traffic Circulation Plan and do not exceed the maximum permitted trips as permitted in Exhibit D.

- 2.3.3. Purchaser shall submit the Site Plan to the City-mandated process and seek final approval of the Site Plan by the City ("Site Plan Approval").
- 2.3.4. Purchaser shall pay the necessary filing fees relating thereto (if any) in its efforts to obtain the Site Plan Approval and shall diligently prosecute all such applications required to obtain the Site Plan Approval.
- 2.3.5. To the extent that any reviewing authority provides comments to the Site Plan, such response shall not be deemed a denial and the Purchaser shall have the opportunity to revise and resubmit the Site Plan to the City for further review. The Purchaser shall not be permitted to change the following items as shown on the Level 1 Plan without the County's prior consent, all of which shall be considered to be ITC Deviations: the ingress and egress entrance and exit for Palm Tran vehicles, the parking garage entrance and exits, vehicular and pedestrian surfaces within the ITC, the Palm Tran emergency exit, or pedestrian egress and access points (i.e., stairs, elevator towers and exits) from the Improvements onto the ITC Property. Notwithstanding anything herein to the contrary, the Purchaser will not make a final submission for approval of the Site Plan by the City that is an ITC Deviation, which is not an ITC Permitted Modification(s) or which otherwise affects the Traffic Circulation Plan without complying with the requirements of this Agreement pertaining to ITC Deviations and the associated Review and Resubmit Process.
- 2.3.6. As part of the Site Plan Approval process, Purchaser shall have the right to modify the Level 1 Plan, due to comments during the regulatory review process (e.g., the fire marshal). The Purchaser shall resubmit any revisions to the Site Plan, whether during or after the Site Plan Approval process, to the County for approval under the Review and Resubmit Process.

At any time that the Site Plan Application is provided to the County pursuant to the Review and Resubmit Process, the County's review shall be limited to: (i) the Site Plan's conformity with the ITC Permitted Modifications (ii) the Site Plan's conformity to the Level 1 Plan, (iii) inclusion of at least the minimum level and maximum levels of development required under Section 2.3.2 above, (iv) ITC Deviations, and (v) the Traffic Circulation Plan.

2.4. Government Approvals and Building Permits.

- 2.4.1. **Purchaser to Diligently Pursue Government Approvals.** The Purchaser agrees to diligently and continuously proceed at its sole cost and expense to obtain the Government Approvals and to keep the County Project Manager informed as to

the status of obtaining the Government Approvals by providing the County with the reports as agreed upon by the Purchaser and County Project Manager in the County Project Manager Work Plan, relating to its progress in obtaining the Government Approvals. The Purchaser shall provide the County Project Manager with copies of all applications filed in conjunction with the Government Approvals promptly after submission.

- 2.4.2. **Purchaser to Diligently Pursue Building Permits.** Upon receipt of the Government Approvals, Purchaser shall apply for Building Permits. Purchaser agrees to file for and diligently and continuously proceed at its sole cost and expense to obtain Building Permits and to keep the County reasonably informed as to the status of obtaining Building Permits by providing the County with reports relating to its progress in obtaining Building Permits as provided in the County Project Manager Work Plan. As a condition to Closing Purchaser shall be required to file for and receive Building Permits for at least the Required ITC Modifications and for the Envelope Construction. Building Permits for any portion of the Commercial Construction not obtained at that time shall be obtained as provided in the Envelope Construction Plan and/or the Commercial Construction Plan at the discretion of Purchaser.
- 2.4.3. **Name on Applications.** The Purchaser shall make applications for Government Approvals and Building Permits in its name to the extent permitted. To the extent that the application is required to be in the owner's name, the County hereby authorizes Purchaser to make application for any such Government Approvals and Building Permits in Purchaser's name as a contract purchaser of the Property. Except as required by Section 2.3 and for the Required ITC Modifications, which shall be submitted pursuant to the Review and Resubmit Process, Purchaser shall not be required to submit to County for County's prior written approval each and every application for Government Approvals or Building Permits prepared for submittal to any Federal, State or local agency but at the same time bears all the risk of any type associated with the County later taking issue with (including potential finding of default) the information contained in the Government Approvals or Building Permits application or represented to a governmental entity without having first secured the County's prior written approval. To the extent required for any Government Approval or Permit application, the County will execute any consent of owner submitted to the County by Purchaser.
- 2.4.4. **Purchaser Solely Responsible for Conditions.** Purchaser shall be solely responsible for all conditions which are imposed in conjunction with the Government Approvals and Building Permits. Notwithstanding the above, any condition(s) of approval that is recommended by any governmental entity (including Palm Beach County acting in other than its proprietary role) for issuance of a Government Approval or Building Permit to Purchaser which involves the dedication of land, easements or otherwise impacts (either physically, legally and/or operationally) the County's title to the ITC Property or use of the ITC, shall require the County's prior written approval authorizing acceptance of such a condition(s).

- 2.4.5. **County Reserves Right to Withdraw Authorizations.** The County hereby reserves the right to withdraw its authorization allowing Purchaser to make application for Government Approvals or Building Permits in the name of the County without the express written consent of the County at any time and for any reason deemed by the County to be in its best interest, provided that the County and Purchaser shall develop a mechanism for Purchaser to make future applications for Governmental Approvals or Building Permits.
- 2.4.6. **Comments Not Deemed Denial.** To the extent that the reviewing authority provides comments or requests additional information for the materials filed for FTA Approval and/or NEPA Approval, such response shall not be deemed a denial and the Purchaser shall have the right to resubmit and/or respond and to request further review from such reviewing authority.
- 2.4.7. **Prior Notice of Communications with Agencies Granting Governmental Approvals with Respect to FTA Approval and NEPA Approval.** The County and the Purchaser shall provide each other reasonable notice and the opportunity to participate in any substantive conference or meeting, whether in person or by telephone or other electronic medium, and to provide to each other non-binding comments to any written submission to FTA or the appropriate regulatory agencies responsible for FTA Approval and/or NEPA Approval with respect to this Agreement. The County recognizes that it is the Purchaser's responsibility to obtain FTA Approval and NEPA Approval and, accordingly, the Purchaser shall be the lead and contact party for this process.
- 2.5. **Traffic Circulation Plan.** At any time, the Purchaser may request to revise the Traffic Circulation Plan in response to a proposed change of use, density and/or intensity as herein permitted. The Purchaser shall submit any requested revisions to the Traffic Circulation Plan to the County pursuant to the Review and Resubmit Process, provided that in reviewing any requested revisions, the County shall not have the right to require a change from the then-effective Traffic Circulation Plan or otherwise require changes to the physical location or use of any component of then-approved Traffic Circulation Plan. If the Purchaser proposes a change in uses, density and/or intensity, it shall provide a conversion matrix based on the then-accepted Institute of Traffic Engineers (ITE) conversion ratios and analyze the traffic based on the changed uses, density and/or intensity. If additional net trips are generated, then the Purchaser shall submit the updated Traffic Circulation Plan under the Review and Resubmit Process, provided that the County shall not have any obligation to allow the Purchaser any increased trips from the level set forth in Exhibit D. Upon approval by the County and the Purchaser, the revised Traffic Circulation Plan shall be attached to the Agreement and Exhibit "D" and shall supersede the then-approved Traffic Circulation Plan. The County, for itself and Palm Tran, and the Purchaser agree to cooperate with the implementation of the then-effective Traffic Circulation Plan. The County shall have the right to request revisions to the Traffic Circulation Plan resulting from additional buses using the ITC, provided that the number of net trips allocated to Purchaser shall not be reduced and the cost of any further required improvements (offsite or onsite) as a result of such additional trips shall be paid by the County.

2.6. **County Parking Spaces.** Not later than ninety (90) days after receipt of FTA Approval and NEPA Approval, the Purchaser shall submit to the County under the Review and Resubmit Process a proposed agreement governing the County Parking Spaces to be effective on the Closing.

2.7. **SFRTA Parking Spaces.** At any time after the Effective Date, the Purchaser shall commence negotiations of an agreement with the SFRTA governing the SFRTA Parking Spaces.

2.8. **Construction Plans.**

2.8.1. **Preparation of Construction Plans.** At least one hundred twenty (120) days prior to the scheduled Closing date, Purchaser shall submit to the County its Envelope Construction Plan and its Commercial Construction Plan, including the COOP and the Engineer's Constructability Report, under the Review and Resubmit Process, with an initial Review Period of up to sixty (60) days, provided that the County shall not have any liability resulting from its comments or lack of comments to the Construction Plans or from the construction methods utilized by Purchaser. Purchaser shall submit to the County any material amendments or modifications thereto, promptly following their preparation for the County's review and approval pursuant to the Review and Resubmit Process. The County's review of the Construction Plans shall be limited to its review of conformity with the requirements set forth in Sections 1.9 and 1.28 and the Construction General Conditions attached as Schedule 6 hereto.

2.8.2. **COOP Requirements.** Purchaser acknowledges that the County has advised Purchaser that Palm Tran has requested that the COOP address the following Palm Tran requests during the duration of the Envelope and Commercial Construction as it relates to the ITC:

2.8.2.1. During the hours of 0600-0900 and 1400-1800 (Peak Hours), the Purchaser's COOP shall, except as specifically provided in the COOP: 1) provide for no unauthorized temporary physical presence or unauthorized temporary impediment within the ITC; 2) not cause any cumulative delay of greater than 60 seconds to transit vehicles entering and/or exiting the ITC; and 3) not cause any cumulative delay of greater than five (5) minutes to transit vehicles traveling between the Australian Avenue/Clearwater Place intersection and the ITC.

2.8.2.2. During the hours of 0500-2200 (excluding Peak Hours that are provided for in Section 2.8.2.1 above), the Purchaser's COOP shall: 1) allow for a physical presence and/or temporary impediments within the ITC as provided in the COOP; and 2) not cause any cumulative delay of greater than five (5) minutes to transit vehicles traveling between the Australian Avenue/Clearwater Place intersection and the ITC.

2.8.2.3. Except as provided in this Section, the Purchaser's COOP may provide for use of the ITC without restriction providing that the COOP shall require Purchaser: 1) to suspend all work activities within the ITC, and return the site to safe, operations-ready condition no later than 0500 hours daily; and 2) sufficient details

about the nature of the work to allow the County to reasonably confirm the Purchaser's ability to return the site to operations-ready condition.

- 2.8.2.4. When reviewing the COOP and the Construction Plans, the County shall consider reducing the definition of Peak and Operating Hours on Saturday, Sunday and holidays.

2.9. Design of Purchaser's Improvements

- 2.9.1. **Purchaser's Access to the Property.** Until the Closing, Purchaser and its engineers, surveyors, agents and representatives shall have access to the Property and the ITC Property for purposes of surveying, testing, inspecting and/or performing environmental testing and remediation. All surveys, tests, inspections and/or environmental testing and remediation shall be conducted by Purchaser at its expense, and shall be performed by licensed persons or firms dealing with the respective areas or matters. All such surveying, testing, inspecting and/or performing environmental testing and remediation shall be done in a non-intrusive manner so as to not interfere with the continuous operation of the ITC. Purchaser shall restore the Property and the ITC Property to the condition in which it existed prior to such inspections, using materials of like kind and quality. Nothing contained herein shall be construed to prohibit Purchaser from disclosing the results of said inspections as may be required by applicable law.

Purchaser shall ensure that Purchaser or any contractor that performs surveying, testing, inspecting and/or environmental testing and remediation on the Property or the ITC Property shall maintain, public liability and property damage insurance insuring the Purchaser and the County against all liability arising out of any such entry or inspections pursuant to the provisions hereof. Each such insurance policy shall be in the amount of One Million Dollars (\$1,000,000.00) combined single limit for injury to or death of one or more persons in an occurrence, and for damage to tangible property (including loss of use) in an occurrence. The policy(ies) maintained, or caused to be maintained, pursuant to this Section shall insure the contractual liability of Purchaser covering the indemnities herein and shall: (i) name the County as an additional insured and (ii) contain a provision that the insurance provided thereunder shall be primary and noncontributing with any other insurance available to the County. Purchaser shall provide the County with its certificate of insurance or other evidence of such insurance coverage prior to any entry or inspection by Purchaser or any of its contractors. Purchaser shall repair any damage caused by any entry onto the Property or the ITC Property by the Purchaser or any of its contractors. Purchaser shall indemnify and hold the County harmless from and against any claims arising out of or relating to any entry on the Property or the ITC Property by Purchaser or any of its contractors. The foregoing indemnity shall survive the Closing, or, if the Closing does not occur, survive the termination of this Agreement. The County shall give Purchaser prompt notice of any claims that the County may assert subject to indemnification under the preceding sentence.

Prior to entering on to the Property when owned by the County, and prior to entering upon the ITC Property at any time, the Purchaser shall provide the County with reasonable advance notice of the timing and the procedures to be performed.

2.9.2. **Access to County Consultants.** The Purchaser shall have the right to consult with and retain any third-party consultants previously retained by the County with respect to the Property, and the County will approve such if contacted by the consultant, provided that any consultation will be at no cost to the County. At Purchaser's request, the County shall request each consultant to provide Purchaser with all requested information relating to the Property and the County consents to Purchaser's use of all such information in connection with the development of the Property.

2.9.3. **Design Development.** The Purchaser is solely responsible for the design of the Purchaser's Improvements. Without changing, broadening or contracting the provisions of any other provision of this Agreement, specifically Sections 1.17, 1.52, 1.53 or 2.2, the Purchaser may request that the County Project Manager participate in the design process as much or as little as the Purchaser desires. The level of on-going participation by the County Project Manager in the design process shall be discussed at the Kick-off Meeting provided for in Section 2.2 and documented in the County Project Manager Work Plan required by Section 2.2.

2.9.4. **Continuity of Design Team.** The Purchaser will select a design team of Engineers and Architects to prepare its Site Plan(s) and Construction Plans and will direct its design team to provide an integrated plan of the various uses contained within the Site Plan and to ensure its constructability. To the extent that the Site Plan and Construction Plans are prepared by different firms, the Purchaser will insure that such firms prepare plans consistent with those previously submitted to the County or if not consistent, submit them to the County under the Review and Resubmit Process.

2.10. **No Impairment of Title.** Between the Effective Date and the Closing, except for any Easements and Licenses mutually acceptable to the County and the Purchaser and which shall be recorded immediately before, on or after the date of the Closing, County shall take no action which would impair or otherwise affect title to any portion of the Property, and shall record no documents in the public records which would affect title to the Property, without the prior written consent of the Purchaser.

2.11. **Purchaser to Designate Lead Contractor and Architect.** The Purchaser will designate to the County the Contractor and the Design Professional (either a single firm or joint venture) that have responsibility for the Envelope and that shall be a primary point of contact for the County for the design of the Envelope and the Envelope Construction. The Purchaser shall have the right to change the primary firm for the Improvements, other than the Envelope, from time to time by providing the County with written notice of the newly designated primary firm, provided that the Purchaser shall use reasonable efforts to not change the Contractor or Design Professional until at least after completion of the Envelope Construction. The primary firm for the Envelope shall only be changed with the consent of the County which consent shall not be unreasonably

withheld or delayed. All design and construction contracts for the Envelope Construction shall specifically identify the County as an intended third party beneficiary for the work to be performed under those contracts.

2.12. Miscellaneous

2.12.1. **County to Execute Grant Applications.** To the extent required at any time, the County will execute applications relating to the Property and presented by Purchaser and relating to Purchaser's Improvements meeting the requirements set forth herein for tax increment revenue or abatement financing assistance mechanisms, grants, contributions and/or other sources, such as Affordable Housing Tax Credits, New Market Tax Credits, tax-exempt financing mechanism and other federal, state, County, City or other governmental or quasi-governmental agency and private grants or financial assistance programs that can be considered for each element of the Purchaser's proposed plan. Any such grant applications/agreements/financing mechanisms shall have no recourse against County and/or the Property and ITC Property and shall not result in any use restrictions and/or operating conditions encumbering the Property prior to closing, or the ITC Property at anytime. Nothing herein shall in any way entitle the Purchaser to seek tax increment revenue from the County with respect to the Property.

2.12.2. **Signage.** At any time after the Effective Date, Purchaser shall have the right to install signage on the Property announcing its intended use, provided that prior to the Closing, the County shall have the right to approve the message, format and placement of the signage under the Review and Resubmit Process.

2.12.3. **Notice of Contract.** Prior to the Closing, the County shall prepare for execution by the Parties and record in the public records a Notice of Contract in a form reasonably acceptable to the Purchaser which notice shall indicate the existence and availability of a copy of this Agreement to interested parties at their cost and that certain obligations and restrictions contained herein survive Closing and run with the land.

2.13. **Future Site Plans.** Any modifications to the Site Plan after Site Plan Approval (including but not limited to after completion of construction of the Improvements contemplated in Section 2.3.2) shall require submission to and approval of the County under the Review and Resubmit Process in accordance with the provisions of Section 2.3.

3. SALE AND PURCHASE OF PROPERTY.

3.1. **Sale and Purchase of Property.** In consideration of the mutual covenants herein contained, and various other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, County agrees to sell and convey to Purchaser and Purchaser agrees to purchase from County the Property and the Personalty and all right, title, interest, privileges, estates, tenements, hereditaments, and appurtenances appertaining to the Property and the Personalty, including, without limitation all easements, accesses, and rights of way appertaining thereto.

3.2. Purchase Price.

- 3.2.1. Determination of Purchase Price. The Purchase Price was agreed upon by the parties after taking into account restrictions and obligations that offset the value of the Property, which obligations have not been specifically valued and may change from time to time.
- 3.2.2. Payment of Purchase Price. On the Closing Date, Purchaser shall pay the Purchase Price by the credit of the Deposit previously paid. If due to any adjustments, credits, prorations, and fees as herein provided an amount greater than the Deposit is due and payable at Closing, then the Purchaser shall pay such additional amount in Current Funds.
- 3.2.3. Purchase Price to be Used for Transit Purposes. The County will apply the Purchase Price to offset costs related to the implementation and enforcement of the transit-related provisions of this Agreement and/or other transit-related purposes.
- 3.3. Deposit. Within three (3) business days of the Effective Date, Purchaser shall deliver the Deposit to the County. Except as provided in Sections 7.2, 7.6 and 7.7, upon receipt of FTA Approval and NEPA Approval, the Deposit shall be nonrefundable. At Closing, the Deposit shall be applied against the Purchase Price.

3.4. Title.

- 3.4.1. Purchaser obtained and provided to the County a copy of an owner's title insurance commitment, issued by a title insurance company agreeing to issue to the Purchaser, upon the recording of the County Deed to the Property, an owner's title insurance policy, insuring the marketability of the fee title of the Purchaser to the Property. The cost of said title insurance commitment and title insurance policy and any premium therefor shall be borne by Purchaser. Schedule 1 contains the Permitted Exceptions in the title insurance commitment.
- 3.4.2. At Closing, County shall cause the title insurance commitment to be endorsed to remove, without the inclusion of any additional exceptions to coverage, any and all requirements or preconditions to the issuance of an owner's title insurance policy other than the Permitted Exceptions.
- 3.5. Survey. Purchaser acknowledges that the County has provided the Purchaser with: (a) a survey, conforming to ALTA standards and showing thereon all improvements, utilities, easements, rights of way, etc. thereon; and (b) as-built drawings for the ITC and the existing SFRTA temporary parking lot. Purchaser shall have the right to obtain an updated survey at its expense and to have the existing survey re-certified to Purchaser and its assigns, the title company, the Purchaser's lenders, financial institutions and attorneys. The County does not have any continuing obligations with respect to the Survey other than consent to the re-certification of the survey to Purchaser and the title insurance company.

3.6. Conditions Precedent to Closing.

3.6.1. Conditions Precedent to the County's Obligation. The following are conditions precedent to County's obligation to close the sale of the Property:

- 3.6.1.1. Purchaser shall have performed all of the covenants and obligations under this Agreement that it is obligated to perform at or prior to Closing.
- 3.6.1.2. Purchaser's representations and warranties set forth in Section 4.2 of this Agreement shall be true and correct.
- 3.6.1.3. Purchaser shall have entered into an agreement with the SFRTA for the construction, operation and maintenance of the SFRTA Parking Spaces and delivered a copy of said Agreement to the County.
- 3.6.1.4. The Purchaser has submitted and the County has approved the Envelope Construction Plan, the COOP, the Engineer's Constructability Report and the Commercial Construction Plan.
- 3.6.1.5. Purchaser has committed to comply with the Engineer's Constructability Report as it relates to the Commercial Construction.

3.6.2. Conditions Precedent to the Purchaser's Obligation. The following are conditions precedent to Purchaser's obligation to close upon its purchase of the Property:

- 3.6.2.1. County shall have performed all of the covenants and obligations under this Agreement that it is obligated to perform at or prior to Closing.
- 3.6.2.2. County's representations and warranties set forth in Section 4.1 of this Agreement shall be true and correct.
- 3.6.2.3. There shall have been no material adverse change in the condition of the Property or the status of title to the Property, other than as specifically permitted by this Agreement.
- 3.6.2.4. The County shall have completed and executed the Easements and Licenses identified in the approved Construction Plan, in a form suitable for recording.

3.6.3. Mutual Conditions Precedent. The following are conditions precedent to both the County's and Purchaser's obligation to close upon its purchase of the Property:

- 3.6.3.1. Purchaser shall have obtained FTA Approval.
- 3.6.3.2. Purchaser shall have obtained NEPA Approval.
- 3.6.3.3. Purchaser shall have obtained FDOT Approval.
- 3.6.3.4. Purchaser shall have obtained City Approval.
- 3.6.3.5. Purchaser shall have obtained all Government Approvals.

- 3.6.3.6. Purchaser shall have obtained Building Permits necessary for construction of the Envelope Construction and the Required ITC Modifications.
- 3.6.3.7. The County and Purchaser shall have entered into an agreement with respect to the County Parking Spaces.
- 3.6.4. **Waiver of Conditions.** The conditions precedent set forth in Section 3.6.1 may be unilaterally waived by the County. The conditions precedent set forth in Section 3.6.2 may be unilaterally waived, deferred or delayed until after Closing by the Purchaser. The conditions precedent set forth in Section 3.6.3 may be waived by agreement of both the County and Purchaser. However, neither party may be required or compelled to waive, in whole or part, any condition precedent.
- 3.7. **Closing.** The Closing of the Property shall be consummated as follows:
- 3.7.1. **Place of Closing.** The Closing shall be held at a location in Palm Beach County, in the West Palm Beach, Florida area as may be reasonably agreed, in order to facilitate the Closing. If the Parties cannot agree on the place of Closing, Closing shall take place at the Purchaser's attorney's office located within Palm Beach County.
- 3.7.2. **Closing Date.** The Closing shall take place within one hundred twenty (120) days after satisfaction of all of the conditions precedent set forth in Section 3.6, unless extended by the terms of this Agreement, or at such other date as is mutually agreed upon by the parties. Purchaser shall provide reasonable notice to the County of the date it anticipates Closing but in all events Purchaser shall provide the County twenty (20) days' advance notice of the date of Closing. Upon Purchaser providing such notice of the Closing Date to the County, the Purchaser may not be declared to be in default as a result of any action or inaction or other delay by the County in Purchaser proceeding to the Closing.
- 3.7.3. **Closing Documents.** Purchaser shall be responsible for preparation of all Closing documents and/or such other instruments as are necessary or reasonably required to consummate the transactions herein contemplated including, without limitation, if applicable, such documents as the County, Purchaser or the title company may require evidencing the County's and/or Purchaser's existence, good standing, power and authority to enter into this Agreement and to consummate the transactions herein contemplated. Purchaser shall submit copies of same to County no less than ten (10) days prior to Closing. If necessary, closing documents prepared by the Purchaser to be executed by the County shall be subject to the Review and Resubmit Process.
- 3.7.4. **Cash Due at Closing.** If the Purchaser is required to deliver any funds in addition to the Deposit, the Purchaser shall deliver such required funds at Closing in Current Funds. If the Housing Payment Option is exercised, the Purchaser will deliver to the County at Closing the amount due, if any, in Current Funds.

- 3.7.5. **County's Obligation.** At Closing, in addition to any items as may be required per Section 3.7.3, the County shall deliver, or cause to be delivered, to Purchaser the following:
- 3.7.5.1. **Deed.** A County Deed in the form attached hereto as Exhibit "E-1".
- 3.7.5.2. **Easements and Licenses.** Any required Easements and Licenses set forth in the Construction Plan in a form suitable for recording.
- 3.7.5.3. **Bill of Sale.** A bill of sale for any Personalty being conveyed to Purchaser by the County.
- 3.8. **Possession.** At Closing, the County shall deliver full, complete, and exclusive possession of the Property and the Personalty to the Purchaser, subject only to the Permitted Exceptions.
- 3.9. **Expenses.**
- 3.9.1. **Purchaser Expenses.** Purchaser shall pay for the following expenses at Closing. (a) The cost of recording the County Deed, (b) Documentary Stamps, if required, to be affixed to the County Deed; and (c) all costs and premiums for the owner's title insurance commitment and policy.
- 3.9.2. **County Expenses.** County shall pay all costs necessary to cure title defect(s) or encumbrances arising after the Effective Date, other than the Permitted Exceptions or those caused by Purchaser and any costs associated with the County's performance under this Agreement, including any costs associated with its Review and Resubmit Process, except as provided per Section 1.15 of this Agreement. Except as otherwise specifically provided in this Agreement, the County shall not be required to repair any condition existing on the Property as of the Effective Date.
- 3.9.3. **Each Party to Bear Own Attorneys' Fees.** The Purchaser and County shall each pay their own attorney's fees.
- 3.10. **Prorations.**
- 3.10.1. **Taxes.** There shall be no prorations for taxes.
- 3.10.2. **Assessments.** Purchaser shall be responsible for all lawful assessments against the Property due and payable after the year of the Closing. Any County assessments or charges have been imposed against the Property or any part thereof which are, or which may become payable in the year of the Closing and that shall be deemed to be due and payable and to be a lien upon the premises affected thereby, shall be paid and discharged by the County on or before the Closing Date. Any assessments by any governmental authority other than the County shall be deemed to be payable by the Purchaser. The County shall promptly provide the Purchaser notice and all information related to same or any new assessment on the Property prior to the date of the Closing and Purchaser shall have the right, but not the obligation, to protest any such new assessment.

- 3.11. **Financial Assurances.** Prior to and as a condition to the commencement of construction, Purchaser is required to provide the County with bonds and guarantees for 100% of the cost of the Required ITC Modifications, and the Improvements in the Envelope Construction as provided in Section 5.3 below. Section 7.4 below also provides that if the Purchaser defaults after Closing but prior to commencement of construction, that the County has the right to cause Purchaser's Special Warranty Deed to be released from escrow to the County with the Property in the same condition it was in at the Closing, including the status of title. These protections are designed to insure that the Purchaser will have sufficient financing to construct the Required ITC Modifications and the Envelope Construction Improvements.
- 3.12. **Memorandum of Agreement.** At the Closing, the County and Purchaser shall execute a Memorandum of Agreement suitable for recording. The Memorandum shall provide notice of Purchaser's obligations under the Agreement relating to maintenance, insurance, obligations upon casualty and such other items determined by the parties.
- 3.13. **County to Place Release of Reverter in Escrow.** At the Closing, the County shall execute and deliver to the County Clerk, to be held in escrow pursuant to an Escrow Agreement in the Form of Exhibit E-4, the Release of Reverter substantially in the Form of Exhibit E-2, such document to be promptly released to the Purchaser for recordation upon the commencement of construction by Purchaser.
- 3.14. **Purchaser to Place Reverter Deed in Escrow.** At the Closing, the Purchaser shall execute and deliver to the County Clerk, to be held in escrow pursuant to an Escrow Agreement in the Form of Exhibit E-4, Purchaser's Special Warranty Deed substantially in the Form of Exhibit E-3 such document to be promptly recorded by the County upon the exercise of the Reverter by the County or returned to the Purchaser unrecorded with the Release of Reverter as provided in Section 5.12 of this Agreement.

4. REPRESENTATIONS AND WARRANTIES.

- 4.1. **Representations and Warranties of County.** As a material inducement to Purchaser to enter into this Agreement, County hereby acknowledges, represents and warrants to Purchaser as of the date hereof and at all times through the Closing as follows:
- 4.1.1. There are no judicial or administrative actions, suits, judgments or injunctions affecting the Property or the ITC Property pending, or to the knowledge of County threatened, which relate to or adversely affect County's ability to perform its obligations under this Agreement, including, without limitation, those relating to any laws, ordinances, rules, or regulations of any governmental authority having jurisdiction of the Property or the ITC Property.
- 4.1.2. There are no environmental, zoning or other land-use regulations proceedings, either instituted or planned to be instituted by County, with regard to the Property or the ITC Property.
- 4.1.3. All documents executed or to be executed by County which are to be delivered to the Purchaser at Closing will be legal, valid and binding obligations of County.

- 4.1.4. There are no service contracts affecting the Property which will survive Closing, except those that apply only to the ITC, do not affect the Property and will remain the responsibility of the County after Closing.
 - 4.1.5. County has entered into no other contracts for the sale of any portion for the Property or the ITC Property which remain in force.
 - 4.1.6. County has not used, is not currently using and will not in the future (for so long as County owns the same) use the Property or the ITC Property for the handling, storage, transportation or disposal of hazardous materials.
 - 4.1.7. No changes to the materials attached as Exhibits G through L to the RFP have been made. The County does not have any knowledge that such Exhibits are inaccurate in any material respect and Purchaser acknowledges that such materials are the work product of third party consultants. The County is not making any representations as to the accuracy of such materials that are the work product of third parties.
- 4.2. **Representations and Warranties of Purchaser.** As a material inducement to County to enter into this Agreement, Purchaser hereby acknowledges, represents and warrants to County as of the date hereof and at all times through the Closing as follows:
- 4.2.1. There is no litigation, investigation, or proceeding pending, or to the knowledge of Purchaser threatened, which relates to or adversely affects Purchaser's ability to perform its Closing obligations under this Agreement.
 - 4.2.2. All documents executed or to be executed by Purchaser which are to be delivered to the County at Closing will be legal, valid and binding obligations of Purchaser.
 - 4.2.3. The Purchaser acknowledges that the County has advised the Purchaser that on or prior to the Effective Date, the Property may contain environmental contamination and that upon the Closing, the Purchaser will be taking the Property subject to such notice that the Property may contain this environmental contamination at Closing and in consideration of the conveyance of the Property by the County, Purchaser hereby unconditionally and irrevocably waives any claim against the County arising from the presence of hazardous substances, materials or wastes (as those terms may be defined by applicable federal or state law, rule or regulation) on the Property.
- 4.3. **Limitation on Representations and Warranties by the County.** Except as specifically set forth in Section 4.1 of this Agreement and in any closing documents delivered by the County at Closing, the County has not made and shall not be required to make any warranties or representations concerning any of the Property or any component thereof, including, without limitation, the operation or the costs or results of the operation thereof, the existence, location, quantity, or condition of the Property, the completion, status of completion, or soundness of any improvements thereon, the zoning or other land use restrictions affecting the Property, the compliance of the Property or any part thereof with any laws, statutes, rules, ordinances, decrees, judgments or orders applicable thereto, or the use or existence or prior use or existence of any hazardous

substances therein or thereon. Purchaser represents that it is purchasing the Property in its present condition, the Purchaser having made its own inspection and examination of the Properties and all components thereof. Buyer will accept the Property in an "AS IS" condition. EXCEPT AS SPECIFICALLY SET FORTH IN SECTIONS 8.2 HEREOF AND IN ANY CLOSING DOCUMENTS DELIVERED BY THE COUNTY AT CLOSING, THERE ARE NO EXPRESS OR IMPLIED WARRANTIES GIVEN TO PURCHASER IN CONNECTION WITH THE SALE OF THE SUBJECT PROPERTY. THE COUNTY DOES HEREBY DISCLAIM ANY AND ALL WARRANTIES OF MERCHANTABILITY AND FITNESS THAT MAY BE DUE FROM THE COUNTY TO PURCHASER, WHETHER IN REGARD TO THE BUILDINGS, PERSONAL PROPERTY CONTAINED THEREIN, OR THE FIXTURES CONTAINED THEREIN. This Section 4.3 shall expressly survive the Closing.

5. CONSTRUCTION PHASE

5.1. Purchaser's Construction Rights and Obligations.

- 5.1.1. Purchaser shall construct the Improvements in accordance with the Approved Site Plan, Building Permits, Envelope Construction Plan, Commercial Construction Plan and the requirements of Schedule 6. Any requirement or obligation of the Purchaser specifically set forth in Schedule 6 may be performed in whole or part by the Purchaser or a Contractor, architect, Engineer, or another party designated by Purchaser to fulfill with or without conditions. In the event that the Purchaser chooses to assign in whole or part any or all of the requirements and obligations of Schedule 6, it must notify the County in writing. The County Agreement Manager and the County Project Manager shall only have the authority to change any of the requirements or obligations of Schedule 6 as set forth herein or if same has been previously agreed to by the Purchaser.
- 5.1.2. It is the Purchaser's intention to engage in the Continuous Construction of the Improvements such that once construction commences, the Improvements will be constructed as expeditiously as reasonably practical towards completion and occupancy. Purchaser will: (i) ensure that sufficient manpower and materials are deployed throughout the development and construction of the Improvements, (ii) proceed with all necessary diligence towards the completion of the development and completion of the Improvements, and (iii) once construction commences, engage in the Continuous Construction of the Improvements.
- 5.1.3. Purchaser shall construct the Improvements in accordance with the Building Permits and City's building code and all other laws, rules, regulations, orders, codes, and requirements of all governmental authorities having jurisdiction over Purchaser or the Property. Purchaser shall be responsible for timely payment of all applicable permitting, licensing, utility connection and similar fees and charges in connection with the design and construction of the Improvements.
- 5.1.4. Work shall be performed in accordance with the Construction Plans. The County shall allow Purchaser and its Contractors access to the ITC Property for construction, reconstruction, repair and maintenance purposes as identified in the

Construction Plans and approvals provided pursuant to Section 2.4 and Schedule 6.

5.1.5. Purchaser shall construct the Improvements (excluding the parking garages) to meet the United States Green Building Council (USGBC) Leadership in Energy and Environmental Design (LEED) rating system, the green building Initiative's Green Globes rating system, the Florida Green Building Coalition standards, Environmental Protection Agency's EnergyStar, International Code Council's Green Building Code, or a nationally recognized, high-performance green building rating system. Certification by one of the above rating systems is not mandatory, however, demonstrated evidence of compliance to the applicable minimum standard shall be provided to the County.

5.1.6. To the extent requested by Purchaser, the County will Cooperate with Florida Power and Light, South Florida Water Management District and any other utilities in locating and relocating any utilities on the ITC Property. Any such location or relocation shall be at no cost to the County or cause any material service interruption.

5.2. **Obligation to Maintain Insurance During Construction.** During all periods of construction of the Improvements and until a Certificate of Completion or certificate of occupancy (whichever is issued first) is issued, the Purchaser shall obtain and maintain in full force and affect the following insurance coverages:

5.2.1. **Contractor Insurance.** Purchaser shall ensure that its contractors provide contractor liability insurance in accordance with the requirements of Schedule 2, provided that the Purchaser may provide the Builder's Risk coverage.

5.2.2. **Developers Insurance.** Purchaser shall provide developers insurance in accordance with the requirements of Schedule 3.

5.2.3. **Design Professionals Insurance.** Purchaser shall ensure that its design professionals provide design professionals insurance in accordance with the requirements of Schedule 4.

5.2.4. **Certificate of Insurance.** With respect to the insurance to be obtained, the Purchaser shall provide to County not less than ten (10) calendar days prior to commencement of construction on the Property, certificates of such applicable insurance evidencing the insurance coverage as specified above. If the initial insurance would expire prior to the completion of the improvements, renewal certificates of insurance shall be furnished ten (10) calendar days prior to the date of their expiration. Insurance shall not be canceled, modified, or restricted, without thirty (30) calendar days prior written notice to County.

5.2.5. **Right to Review.** County, by and through its Risk Management Department, in cooperation with the contracting/monitoring department, reserves the right to review, modify reject or accept (i) any insurer providing coverage because of its poor financial condition or failure to operate legally, and (ii) any required policies

of insurance, including limits, coverages, or endorsements, herein from time to time until completion of construction of the Improvements.

- 5.2.6. **No Limitation of Liability.** The r limits, as well as County's approva not intended to and shall not in an obligations assumed by Purchaser un as to types and maintained are e liabilities and

5.3. **Bonding and Other Financial Assurances**

- 5.3.1. **255.05 Bond for Required ITC Mo** no later than twenty (20) days prior to the commencement of construction of the Required ITC Modifications by Purchaser, and as a condition to the commencement of construction, Purchaser shall furnish to the County, on the County's general forms, a Construction Bond pursuant to Florida Statutes 255.05 in the amount of 100% of the construction cost of the Required ITC Modifications in the form of Schedule 7, naming Contractor as Principal and County as an obligee. Such Construction Bond shall incorporate by reference the applicable terms and conditions of the construction contract for the Required ITC Modifications. The County shall inspect the Required ITC Modifications within twenty (20) days of delivery by Purchaser of a Certificate of Completion.

- 5.3.2. **Contractor Payment and Performance Bond(s) for Construction of Envelope Construction.** The Purchaser shall insure that its Contractor(s) furnish a payment and performance bond(s), or other form of security reasonably acceptable to the County, covering the faithful performance of its construction agreement with the Contractor and the payment of all obligations arising thereunder, such bond(s) to be effective for 100% of the cost of the Improvements of the Envelope Construction naming Contractor as Principal and Purchaser and County as obligees (less the amount of the 255.05 Construction Bond provided with respect to the Required ITC Modifications). Bonds may be secured through each such Contractor's usual sources provided the Surety is authorized to do business in the State of Florida. The form of the aforesaid bond(s) shall be provided no later than twenty (20) days prior to the commencement by Purchaser of construction of the Envelope Construction Improvements with the applicable bond(s) being provided to the County not less than two (2) days prior to the commencement of such construction. For bonding and Finance Assurances purposes, any liner on or abutting the ITC Property (i.e. on Clearwater) shall be included within the Envelope and any liner on the Property shall only be included within the bonding and Financial Assurances for purposes of this Section 5.3.2 if either the City in the Building Permit process or the Engineer's Constructability Report requires that the liner be constructed as an integral part of the structural component of the Envelope simultaneously with the Envelope Construction.

- 5.3.3. **Developer Guarantee and Financial Assurances for Envelope Construction.** The Purchaser shall provide the County a Developer Guarantee, substantially in accordance with the form attached hereto as Schedule 5. In addition to the bonds

provided in Section 5.3.1 and 5.3.2, and as security for Purchaser's obligations under this Agreement and Developer Guarantee 2, the Purchaser shall provide the County a bond, letter of credit or other form of security reasonably acceptable to the County, or a combination thereof ("Financial Assurances"), covering 100% of the costs of the Improvements of the Envelope Construction. The form of the aforesaid Financial Assurances shall be provided no later than twenty (20) days prior to the commencement by Purchaser of construction of the Envelope Construction with the applicable Financial Assurances being provided to the County not less than two (2) days prior to the commencement of such construction.

5.3.3.1. In the event that Purchaser provides County with a Financial Assurance, other than a bond, the Financial Assurances shall be reduced and released as follows. Purchaser and Contractor shall provide County, on a quarterly basis, with backup documentation and certifications, satisfactory to County, demonstrating and certifying amounts paid by Purchaser and received by Contractor for work completed and in place on the ITC Property and Property for the Envelope Construction. Provided that Purchaser is not otherwise in material breach of this Agreement and County receives satisfactory backup documentation and certifications from Purchaser and Contractor, County shall, on a quarterly basis, agree to a reduction in the amount of Purchaser's Financial Assurances by an amount equal to eighty percent (80%) of the amounts paid by Purchaser and received by Contractor for work completed and in place on the ITC Property and Property for the Envelope Construction. At no time, prior to release of Purchaser's Financial Assurances, shall the amount of Purchaser's Financial Assurances be reduced below twenty percent (20%) of the original amount of such Financial Assurances.

5.3.3.2. Upon the expiration of the last of the warranties for the Envelope Construction, or completion of the last of the warranty work on the Envelope Construction, whichever occurs last, and provided any and all claims between County and Purchaser relating to the Envelope Construction have been finally resolved, County shall release the balance of Purchaser's Financial Assurances for the Envelope Construction.

5.3.4. **Developer Guarantee and Financial Assurances for Commercial Construction.** The Purchaser shall provide the County a Developer Guarantee, substantially in accordance with the form attached hereto as Schedule 5, such guaranty to be effective until delivery by the Purchaser to the County of a Certificate of Completion of the Shell for the Commercial Construction. Purchaser shall secure its performance of its obligations under this Agreement and the Developer's Guarantee by providing County with a bond, letter of credit or other form of security reasonably acceptable to the County, or a combination thereof ("Commercial Construction Financial Assurances"), in the amount of One Million Dollars (\$1,000,000). County shall be entitled to immediately draw down the full amount of such Commercial Construction Financial Assurance if Purchaser suspends or abandons Continuous Construction of the Commercial Construction. If Purchaser breaches its obligations under the Commercial

Construction Plan, its Developer Guarantee, or its other obligations under this Article V, then the County shall be entitled to draw down from Purchaser's Commercial Construction Financial Assurances. Upon the first anniversary of delivery by the Purchaser to the County of a Certificate of Completion of the Shell for the Commercial Construction, County shall release the Purchaser's Commercial Construction Financial Assurances.

- 5.3.5. **Developer Right to Cure.** Prior to the County calling on any Financial Assurance, the County shall provide the Purchaser with written notice of the alleged default and the Purchaser shall have the opportunity to cure. The Purchaser shall cure the alleged default within thirty (30) days, provided that if such cure cannot be completed within thirty (30) days, and Purchaser commences the cure within such period and thereafter diligently pursues such cure and completes it as soon as commercially feasible, then Purchaser shall have a commercially reasonable time within which to cure such default.
- 5.3.6. **Requirement for Surety.** Any surety company for any bond required by Section 5.3.1 or 5.3.2 or any the Financial Assurances required during the Envelope Construction and Commercial Construction, in addition to the above requirements, shall be currently listed with the United States Department of Treasury for an amount greater than the contract amount. The contractor, or Purchaser, as appropriate, at the time of its execution of the contract, shall provide, with its Contract Bond(s) or Financial Assurance, a copy of such surety company's current valid Certificate of Authority issued by the United States Department of the Treasury under SS 31, U.S.C. 9304-9308.
- 5.3.7. **Limitation of Bonding Requirement.** Except as set forth above, the Purchaser will not be required to furnish the County any Financial Assurances for any additional Improvements or other improvements on the Property.
- 5.3.8. **Subordination to Lender.** To the extent requested by Purchaser's construction lender(s), the County will enter into an agreement on customary commercial terms pursuant to which the County's right to draw on any Financial Assurance (other than the Commercial Construction Financial Assurances, which shall not be subordinated) to complete construction shall be subordinated to the rights of such lender(s). Such agreement shall provide (a) that the County will give the Purchaser and its lender(s) designated by Purchaser written notice of any default and the opportunity to cure and if the default is not cured by Purchaser, then the lender shall use funds drawn on the Financial Assurances to cure such default, (b) the lender to provide notice to the County of its intent to cure, and (c) if the default is not cured and lender does not use the funds towards the cure of such default, then the County may draw on the Financial Assurances to cure the default.
- 5.4. **Easements and Similar Rights.** At the Closing and as identified in the Envelope Construction Plan or the Commercial Construction Plan:

- 5.4.1. The County will reserve in the County Deed an Easement across the Property as shown on the Level 1 Plan for the emergency exit from the ITC Property to Clearwater Drive.
- 5.4.2. Purchaser shall be granted an Easement to install on the ITC Property sewer, water and other utilities, poles, lines of poles, supporting structures, cables, crossarms, overhead and underground wires, guys, braces, communication facilities, all related above-ground and underground facilities, appurtenances, equipment, signs, and elements, all as required in the Traffic Circulation Plan, the Envelope Construction Plan or the Commercial Construction Plan. The Purchaser shall use reasonable efforts to minimize the location of utilities under the road within the ITC so as to lessen any disruption during construction, after construction or otherwise to the operation of the ITC. To the extent feasible, commercially reasonable and without significant additional costs, the Purchaser shall cause the design of its utilities to be within the ceiling or above the ceiling of the ITC, however, the parties recognize that this provision may not be possible for all utilities and that certain utilities will be required to cross or be within the roadways.
- 5.4.3. Purchaser shall have the right to place support pilings, supporting structures, security gates and railings, architectural features, signage and similar items within the ITC Property in strict accordance with locations, dimensions and specifications included in the approved Construction Plan. The County will grant Purchaser a temporary encroachment Easement and License to install such structures, provided that such structures shall be the sole property of Purchaser.
- 5.4.4. The Purchaser shall be responsible for the preparation and costs associated with all surveys and legal descriptions required for such requested easements. The location and form of any such Easements shall be reasonably acceptable to the County and the Purchaser. Such Easements shall not interfere with the continuous operation of the ITC. Easements require the approval of the Board of County Commissioners and the County staff will place the requested Easement on the Board agenda as promptly as practicable. All such Easements shall not impose any cost upon County.
- 5.4.5. The County shall have the right to approve any Easement and/or License that is not contained in the Construction Plan pursuant to the Review and Resubmit Process.
- 5.4.6. The County will not impose any unusual or extraordinary condition on the grant of any License or Easement as a result of its proprietary role. The County will not charge the Purchaser for granting any approved Easement.
- 5.4.7. After the Closing, the Purchaser may request the County to grant additional Easements by Purchaser making a request to the County Agreement Manager and the County shall grant any request that does not interfere with the continuous operation of the ITC.

5.5. Licenses.

- 5.5.1. The County will grant and/or join in any Licenses requested by Purchaser which are identified in the Construction Plans and are necessary for the construction of Purchaser's Improvements, provided that the location and form of such Licenses shall be reasonably acceptable to the County. The Purchaser shall be responsible for the preparation and costs associated with all surveys and legal descriptions required for such requested licenses. To the extent possible and within then-existing County guidelines on staff authority, Licenses shall not require approval of the Board of County Commissioners.
- 5.5.2. The County will grant Purchaser a license with limited right to encroach upon the ITC Property for the purpose of constructing the columns and footers to be located within the ITC Property as further set forth on Exhibit "B-3". When construction of the Envelope Construction Improvements is completed, the Purchaser and County will exchange deeds as further provided in Section 5.9, such that the Purchaser will own the columns and footers in fee simple and County will own the remainder of the ITC Property in fee simple.
- 5.5.3. After the Closing, the Purchaser may request the County to grant additional Licenses by Purchaser making a request to the County Agreement Manager and the County shall grant any request that does not interfere with the continuous operation of the ITC.
- 5.6. **Utilities.** The Purchaser shall, at its expense, arrange for, develop and maintain utilities in work areas to meet the requirements of the Construction Plans including but not limited to; 1) telephone service for the Contractor's use, 2) construction power as required at each point of construction, and 3) water as required throughout the construction. Upon completion, the Purchaser shall remove all temporary utilities.
- 5.7. **Work Hours.** All work shall be accomplished as required by the applicable City code and as provided in the Construction Plan. Notwithstanding any approval for the Purchaser to proceed with work outside daylight hours on weekdays, the Purchaser shall be solely responsible for addressing any complaints by adjacent property owners or related fines by regulatory agencies.
- 5.8. **Patent Indemnity.** Purchaser hereby indemnifies and shall defend and hold County harmless from and against all claims, losses, costs, damages and expenses, including attorney fees, incurred by the County as a result of or in connection with any claims or actions based on infringement or alleged infringement of any patent and arising out of the use of the equipment or materials furnished under this Agreement by Purchaser or Contractor, or out of the processes or actions employed by, or on behalf of Purchaser or Contractor in connection with the performance of this Agreement. Purchaser, shall at its sole expense, promptly defend County against any such claim or action unless otherwise directed by the County, provided that County shall have notified Purchaser upon becoming aware of such claim or actions. Purchaser shall have the right, in order to avoid such claims or actions and at its sole election, to substitute at its expense non-infringing equipment, materials or processes, or to modify such infringing equipment,

materials and processes so they become non-infringing, or obtain the necessary licenses to use the infringing equipment, material or processes.

5.9. Adjustment to Property Description During or After Construction.

5.9.1. Provided Purchaser constructs substantially in accordance with the Construction Plan, at any time upon completion of construction of the first level, floor and walls for the Improvements in the Envelope Construction and the subsurface footers and supporting structures, if necessary due to de minimis deviations, the Purchaser shall prepare and the County and Purchaser shall exchange and record deeds pursuant to which the County and Purchaser will convey to each other the portions of the ITC Property and the Property that was affected by the construction of the Envelope Construction such that the County would then own the ITC Property up to the boundary walls and excluding subsurface footers and supporting structures within the boundary of the ITC Property and the Purchaser will own the Property (including the boundary walls and including subsurface footers and supporting structures within the boundary of the ITC Property).

5.9.2. Any such County Deed shall be subject to the same representations of the County as contained in Section 4.2 of this Agreement and any such Purchaser's deed shall be subject to the requirements of Section 7.4. Until such time as such deeds are recorded, the County shall not take any action to change the condition of the Property or the status of title to the Property, other than as specifically permitted by this Agreement.

5.10. **Delivery of Commercial Construction Plan.** At least ninety (90) days prior to the scheduled commencement of construction of the Commercial Construction, the Purchaser shall deliver to the County the Commercial Construction Plan for the County's review under the Review and Resubmit Process. The County's review shall be limited to (i) conformity to the Traffic Circulation Plan, (ii) consistency with the Engineer's Constructability Report-Updated and (iii) impairment to the continuous operation of the ITC.

5.11. **Temporary Staging on County Property.** If requested by the Purchaser, with reasonable advance notice to the County and provided same is otherwise available for use, the County shall make available at no cost, from its land holdings on the "North County Block", areas to provide space for temporary storage and construction activities of the Purchaser. The Purchaser shall indemnify the County for any activity performed on the North County Block to the same extent as the ITC Property.

5.12. **Release of Reverter Upon Commencement of Construction.** Upon the Purchaser commencing construction of the Improvements, the Purchaser shall provide the County Project Manager with evidence of such commencement of construction and upon receipt, the County Project Manager shall instruct the County Clerk to release the Release of Reverter from escrow and record same in the public records and to return the Purchaser's Special Warranty Deed to the Purchaser.

5.13. **Estoppel Certificate.** The Purchaser also has the right to request, and the County Agreement Manager shall promptly deliver an estoppel certificate to Purchaser

indicating the Construction has commenced and that the County's right to request re-conveyance of the Property is no longer applicable.

6. POST CONSTRUCTION OBLIGATIONS

- 6.1. **Declaration or Other Instruments Governing Property.** Prior to the conveyance of any portion of the Property by Purchaser, the County and Purchaser will mutually cooperate in the drafting and execution of a declaration of covenants, conditions and restrictions and/or condominium regime documents. These documents shall cover all parties' obligations with respect to, among other things, entity structure, management, funding, maintenance, change of uses restrictions in compliance with Exhibit D peak hour trip limitation requirements, future site plans, obligations upon casualty and shall appoint Purchaser and its successors and assigns as the designated agent and point of contact with the County. The declaration shall refer to the surviving obligations of Purchaser and Seller under this Agreement.
- 6.2. **Casualty, Rebuilding and Restoration.** In the event of a casualty to the Improvements, the Purchaser agrees to comply with all applicable laws relating to removal of debris, rebuilding and restoration of the Improvements.
- 6.3. **Operation of ITC.** The County shall have the continuing right to operate the ITC and Palm Tran (or any successor) on the ITC Property at all times. The Purchaser will not interfere with the continuous operation of the ITC and Purchaser shall strictly comply with the Traffic Circulation Plan, the Construction Plan and the COOP and maintain that portion of the Palm Tran emergency entrance on the Property as provided in the Level 1 Plan. Nothing herein shall require the County to continuously operate the ITC
- 6.4. **County Responsibilities in Operating ITC.** After the Closing, the County shall, at its sole cost and expense, be responsible for obtaining, paying for, and maintaining current, and fully complying with, any and all permits, licenses and other governmental authorizations, however designated, as may be required at any time by any Federal, State, County or local government entity having jurisdiction over the County or the County's operation and activities, for the ITC and any other activity of the County conducted on the ITC Property and for any and all operations conducted by the County including ensuring that all legal requirements, permits and licenses necessary for or resulting, directly or indirectly, from the County's operations and activities on the ITC Property have been obtained and are in full legal compliance. Upon the written request of Purchaser, the County shall provide to Purchaser certified copies of any and all permits and approvals which Purchaser may request. The County shall diligently perform all work hereunder to completion. The County shall construct or reconstruct, or cause to be constructed or reconstructed, and maintain, any improvements constructed at the County's sole cost and expense within the confines of the ITC Property in accordance with the approved plans and all permits related thereto and applicable statutes, codes, rules, regulations, and ordinances and shall diligently pursue such improvements to completion. Notwithstanding the foregoing, the Purchaser shall not have the right to declare the County to be in default under this Agreement as a result of the failure to so maintain, construct, reconstruct, or cause to be constructed or reconstructed the ITC Property.

7. DEFAULT AND TERMINATION.

7.1. **Defaults by Purchaser Prior to Closing.** In the event that the County believes in good faith that the Purchaser has failed or refused to perform any term, covenant, or condition of this Agreement, the County shall provide the Purchaser with written notice of such alleged default. The Purchaser shall then have a reasonable time to commence to cure such alleged default. If such default is not then cured or if the Purchaser has not commenced to cure such default within such period or is not continuously prosecuting such cure in good faith, then upon sixty (60) days prior notice to Purchaser and provided such default has not been cured or the Purchaser has not commenced to cure such default, the County shall have the right to terminate this Agreement by written notice to Purchaser, in which event the County shall be entitled to the Deposit and any other monetary damages specifically set forth in this Agreement and the parties shall be released from all obligations hereunder other than those which specifically survive termination of this Agreement.

7.2. **Defaults by County.** In the event that Purchaser believes in good faith that the County has failed or refused to perform any term, covenant, or condition of this Agreement, the Purchaser shall provide the County with written notice of such alleged default. The County shall then have a reasonable time to commence to cure such alleged default. If such default is not then cured or if the County has not commenced to cure such default within such period, then upon sixty (60) days prior notice to County and provided such default has not been cured or the County has not commenced to cure such default or is not continuously prosecuting such cure in good faith, the Purchaser shall have the right to: (a) if the Closing has not occurred, terminate this Agreement by written notice to County, in which event the Deposit shall be returned to the Purchaser and the parties shall be released from all obligations hereunder other than those which specifically survive termination of this Agreement; or (b) seek specific performance of the term of this Agreement. NOTWITHSTANDING THE FOREGOING OR ANYTHING IN THIS AGREEMENT TO THE CONTRARY, THE PARTIES HEREBY EXPRESSLY AGREE (i) THAT UNDER NO CIRCUMSTANCES SHALL COUNTY BE LIABLE FOR INDIRECT, CONSEQUENTIAL, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES, WHETHER IN CONTRACT OR IN TORT, INCLUDING, BUT NOT LIMITED TO, LOSS OF REVENUE OR ANTICIPATED PROFITS AND (ii) THE MAXIMUM DAMAGES PURCHASER SHALL BE ENTITLED TO RECOVER FROM COUNTY IN THE EVENT OF DEFAULT BY COUNTY SHALL BE THE AMOUNT OF THE DEPOSIT/PURCHASE PRICE.

7.3. **Default for Failure to Meet Milestones.** The County shall have the right to declare the Purchaser in default of this Agreement upon the following:

7.3.1. **Failure to Meet Milestones.** Purchaser has failed to meet any of the following milestones:

7.3.1.1. Obtain FTA Approval and NEPA Approval within two (2) years of the Effective Date;

7.3.1.2. Submit application for Site Plan Approval to the City in accordance with Section 2.3 hereof within one (1) year after the Milestone Effective Date;

- 7.3.1.3. Obtain the Governmental Approvals, excluding Building Permits, within three (3) years after the Milestone Effective Date;
- 7.3.1.4. Obtain the Building Permits and complete the Closing within five (5) years after the Effective Date;
- 7.3.1.5. Commence construction of the Improvements for the Envelope Construction and the Required ITC Modifications within one (1) year after the Closing.

Notwithstanding the foregoing, Purchaser shall be granted an extension of up to one (1) cumulative year on one or any combination of the above milestones in the event that Purchaser is delayed in fulfilling its obligations as a result of actions of any governmental agency in improperly refusing to issue, or unreasonable delay in issuing, a required Governmental Approval (with respect to the County, only to the extent that the County is acting in a regulatory capacity). The milestone in Section 7.3.1.4 will be extended by the same amount of time as time extensions granted by the County. The provisions of this subparagraph shall also apply to the provisions of Section 7.7 regarding extending the eighteen (18) month period within which Purchaser can terminate this Agreement.

- 7.3.2. **Failure to Pursue Approvals.** If the Purchaser is not diligently pursuing the approvals required in Section 3. In such event, in order to invoke this provision, the County shall send Purchaser written notice of its default.

7.4. Remedy Upon Default By Purchaser After Closing.

7.4.1. Upon a default by the Purchaser after Closing for failure to commence construction of any of the Improvements within the time period provided in Section 7.3.1.5 above, the County shall provide the Purchaser with written notice of such alleged default. The Purchaser shall then have a reasonable time to commence to cure such alleged default. If such default is not then cured, then upon sixty (60) days prior notice to Purchaser, the County shall have the right to terminate this Agreement and request the Escrow Agent to record the Purchaser's Special Warranty Deed to re-convey the Property to the County. Notwithstanding such termination, the Purchaser shall be obligated to cause such re-conveyance to the County in the same condition the Property was in at Closing, including the status of title and free from any and all liens, encumbrances, conditions, restrictions or other matters other than those existing as of the date of Closing. The County shall be entitled to retain the Purchase Price. All of Purchaser's plans, Government Approvals and Building Permits shall remain the sole property of Purchaser. In such case, all Bonding and Other Financial Assurances shall be released to Purchaser.

7.4.2. In the event of a default other than for the failure to commence construction of any of the Improvements within the time period provided in Section 7.3.1.5 by Purchaser, the County shall provide the Purchaser with written notice of such alleged default. The Purchaser shall then have a reasonable time to commence to cure such alleged default. If such default is not then cured, then upon sixty (60) days prior notice to Purchaser and provided such default has not been cured, the County shall be entitled to demand and seek specific performance of the terms of this Agreement.

- 7.5. **Dispute Resolution.** Prior to the declaration of any default hereunder and as a condition precedent to declaring a default under this Agreement, at any time that the Purchaser and the County are unable to resolve any dispute through the Review and Resubmit Process or alleged or asserted default under this Agreement and either party declares an unresolved dispute ("Dispute"), the parties agree to submit any Dispute to a mediator selected by the parties as soon as reasonably possible but no later than sixty (60) days after notice. The mediator shall be selected based on the nature of the Dispute (i.e., for a dispute related to traffic, the mediator shall have relevant traffic expertise). Any such mediation shall be conducted under the Commercial Mediation Rules of the American Arbitration Association and shall be non-binding.

If the Dispute is not resolved by mediation, either party shall have the right to pursue the remedies available pursuant to this Agreement. During the pendency of any such mediation and until such mediation is conducted, the time period to request any of the remedies provided by any asserted default shall be tolled.

- 7.6. **Termination of Agreement for Failure to Obtain Approvals.** This Agreement may be terminated as follows:

7.6.1. **Failure to Obtain FTA Approval or NEPA Approval.** To the extent that the Purchaser does not obtain FTA Approval or NEPA Approval pursuant to the terms of this Agreement within two (2) years of the Effective Date, then either party shall have the right to terminate this Agreement, and in such case, the Deposit will be returned to Purchaser, in which event the parties shall be released from all further obligation hereunder, except those obligations which expressly survive termination of this Agreement.

7.6.2. **Failure to Obtain Site Plan Approval.** To the extent that the City notifies Purchaser that it will not approve the Site Plan without modifications or such approval is subject to conditions which are not satisfactory to Purchaser in its sole and absolute discretion, the Purchaser shall then promptly notify the County and then either party shall have the right to terminate this Agreement, such right to be exercised within sixty (60) days of the date such notice is received, and in such case, the Deposit will be retained by the County, in which event the parties shall be released from all further obligation hereunder, except those obligations which expressly survive termination of this Agreement.

7.6.3. **Purchaser Provides Notice of Abandonment.** If the Purchaser provides notice to the County of its abandonment of its pursuit of FTA Approval, NEPA Approval or other Government Approvals, then this Agreement shall terminate and, and in such case, the Deposit will be returned to Purchaser, in which event the parties shall be released from all further obligation hereunder, except those obligations which expressly survive termination of this Agreement.

7.6.4. **Termination Resulting from Requirement to Repay Grants.** TV acknowledges that the ITC Property and a portion of the Property were acquired and the ITC was constructed using grant funds provided by among others, the FTA, FDOT and the City. If the terms of this Agreement require TV to repay any of the grants, then prior to Closing, TV shall have the option to agree to pay such sum or to terminate this

Agreement, and in such case, the Deposit will be returned to Purchaser, in which event the parties shall be relieved of all further obligations hereunder, except those obligations which expressly survive termination of this Agreement.

- 7.7. **Other Termination by Purchaser Due to Property Condition.** The Purchaser also shall have the right to terminate this Agreement within eighteen (18) months of the Effective Date of this Agreement in the event that any inspection performed pursuant to Section 2.9.1 of this Agreement shall reveal a condition and/or deficiency in the Property, as determined by Purchaser in its sole and absolute discretion, by giving written notice thereof to County, and in such case, the Deposit will be returned to Purchaser, in which event the parties shall be relieved of all further obligations hereunder, except those obligations which expressly survive termination of this Agreement.

8. **GENERAL TERMS.**

8.1. **Eminent Domain.**

- 8.1.1. **County to Not Use Powers.** The County agrees that it will not use its eminent domain powers over any portion of the Property or this Agreement prior to the Closing.

- 8.1.2. **By Others.** In the event that all or any part of the Property shall be acquired or condemned for any public or quasi-public use or purpose other than by or for the County, or if any acquisition or condemnation proceedings shall be threatened or begun prior to the Closing, Purchaser shall have the option to either (a) permit this Agreement to remain in full force and effect, or (b) to proceed immediately to Closing, in which case all conditions precedent to the Closing shall become conditions subsequent and the Purchaser shall receive any and all damages, awards, or other compensation arising from or attributable to such acquisition or condemnation proceedings. Purchaser shall have the right to participate in such proceedings.

- 8.2. **Real Estate Broker.** Purchaser represents and warrants to County that it has not dealt with any broker, salesmen, agent, or finder in connection with this transaction. County represents and warrants to Purchaser that it has not dealt with any broker, salesmen, agent, or finder in connection with this transaction. The terms of this Section shall survive the Closing or termination of this Agreement.

- 8.3. **Estoppel Certificates.** From time to time either party may request of the other and the other party shall deliver an estoppel certificate indicating that this Agreement is in full force and effect and that there are no defaults outstanding being asserted by the certifying party, or if there are defaults being asserted by the certifying party, a statement describing such default, when it occurred or was first asserted, and such other items as the certifying party shall believe to be pertinent.

- 8.4. **Capitalized Terms.** Capitalized terms, including those contained in the Recitals herein set forth below, shall have the meanings set forth in Section 1 of this Agreement for Purchase and Sale.

8.5. **Notices.** All notices and elections (collectively, "notices") to be given or delivered by or to any party hereunder shall be in writing and shall be (as elected by the party giving such notice) hand delivered by messenger, courier service, or national overnight delivery service and emailed, or alternatively shall be sent by United States Certified Mail, with Delivery Confirmation. The effective date of any notice shall be the later of the date of delivery of the notice if by personal delivery, courier services, national overnight delivery service or the date the email is sent, or if mailed by United States Certified Mail, with Delivery Confirmation, upon the date which the return receipt is signed or delivery is refused or the notice designated by the postal authorities as non-deliverable, as the case may be. The parties hereby designate the following addresses as the addresses to which notices may be delivered, and delivery to such addresses shall constitute binding notice given to such party:

County:

Palm Beach County
Property & Real Estate Management Division
Attention: Director
2633 Vista Parkway
West Palm Beach, Florida 33411-5605
Email: rhering@pbcgov.org

And to:

County Attorney's Office
301 N Olive Avenue, Suite 601
West Palm Beach, Florida 33401
Attention: Howard Falcon, Esquire
Email: hfalcon@pbcgov.org

Capital Improvements Division
2633 Vista Parkway
West Palm Beach, FL 33411-5604
Attn: Mr. John Chesher, Director
Email: jchesher@pbcgov.org

Purchaser:

Transit Village, LLC
2000 Glades Road, Suite 300
Boca Raton, Florida 33431
Email: mdm@transitvillagewpb.com

Any party may from time to time change the address at which notice under this Agreement shall be given such party, upon three (3) days prior written notice to the other parties.

8.6. **Governing Law and Venue.** This Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Florida. Venue in any actions, suit or proceeding in connection with this Agreement shall be in a state court of competent jurisdiction in Palm Beach County, Florida.

- 8.7. **Waiver of Jury Trial.** THE COUNTY AND PURCHASER HEREBY MUTUALLY KNOWINGLY, WILLINGLY AND VOLUNTARILY WAIVE THE RIGHT TO TRIAL BY JURY, AND NO PARTY NOR ANY ASSIGNEE, SUCCESSOR, HEIR OR LEGAL REPRESENTATIVE OF THE PARTIES (ALL OF WHOM ARE HEREINAFTER REFERRED TO AS THE "PARTIES") SHALL SEEK A JURY TRIAL IN ANY LAWSUIT, PROCEEDING, COUNTERCLAIM OR ANY OTHER LITIGATION PROCEEDING BASED UPON OR ARISING OUT OF THIS AGREEMENT OR ANY OF THE TRANSACTIONS RELATED THERETO, OR ANY COURSE OF ACTION, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS RELATING TO THIS TRANSACTION. THE PARTIES ALSO WAIVE ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED, WITH ANY OTHER ACTION IN WHICH A JURY TRIAL HAS NOT BEEN WAIVED. THE PROVISIONS OF THIS PARAGRAPH HAVE BEEN FULLY NEGOTIATED BY THE PARTIES. THE WAIVER CONTAINED HEREIN IS IRREVOCABLE, CONSTITUTES A KNOWING AND VOLUNTARY WAIVER AND SHALL BE SUBJECT TO NO EXCEPTION. NEITHER THE COUNTY NOR THE PURCHASER HAS IN ANY WAY AGREED WITH OR REPRESENTED TO THE OTHER OR ANY OTHER PARTY THAT THE PROVISIONS OF THIS PARAGRAPH WILL NOT BE FULLY ENFORCED IN ALL INSTANCES. THE PROVISIONS OF THIS PARAGRAPH SHALL SURVIVE CLOSING OR EARLIER TERMINATION OF THIS AGREEMENT.
- 8.8. **Binding Effect.** This Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective legal representatives, successors, and assigns.
- 8.9. **Time of Essence; Good Faith.** Time is of the essence with respect to the performance of each and every provision of this Agreement where a time is specified for performance. The parties shall act in good faith in performing their obligations hereunder.
- 8.10. **Assignment.** The County acknowledges and agrees that prior to Closing, Purchaser shall be permitted to create a special purpose entity in which control remains with Purchaser to hold title to, develop and operate the Property, and that Purchaser may assign any and all rights it possesses hereunder to such special purpose entity. The Purchaser shall also be permitted to admit or remove members and/or permit its members to transfer ownership interests among themselves, so long as Michael D. Masanoff remains a manager of the entity. Any other change in ownership prior to Closing shall require the County's approval. As a condition to any assignment hereunder, the assignee must specifically recognize and accept the obligations of Purchaser being assumed and the Purchaser must provide the County with written notice of such assignment. Further, no assignment by the Purchaser shall relieve Purchaser of any responsibility or obligations under this Agreement unless specifically approved by County, which approval may be granted, conditioned or withheld by County in its sole and absolute discretion.
- 8.11. **Integration.** This Agreement constitutes the entire understanding and Agreement between the parties with respect to the subject matter hereof, and may not be modified or

amended, except in a writing signed by all of the parties hereto. Exhibits attached hereto and referenced herein shall be deemed to be incorporated into this Agreement by reference. This Agreement supersedes and replaces Purchaser's response to the RFP.

- 8.12. **Headings.** The paragraph headings or captions appearing in this Agreement are for convenience only, are not part of this Agreement, and are not to be considered in interpreting this Agreement.
- 8.13. **Non-Discrimination.** The parties agree that no person shall, on the grounds of race, color, sex, age, national origin, disability, religion, ancestry, marital status, familial status, sexual orientation, or gender identity or expression, be excluded from the benefits of, or be subject to any form of discrimination under any activity carried out by the performance of this Agreement.
- 8.14. **Construction.** No party shall be considered the author of this Agreement since the parties hereto have participated in extensive negotiations and drafting and redrafting of this document to arrive at a final Agreement. Thus, the terms of this Agreement shall not be strictly construed against one party as opposed to the other party based upon who drafted it. In the event that any section, paragraph, sentence, clause, or provision hereof is held by a court of competent jurisdiction to be invalid, such shall not affect the remaining portions of this Agreement and the same shall remain in full force and effect. In the case of conflict, the most restrictive term of this Agreement shall prevail.
- 8.15. **Survival.** At the request of either the County or the Purchaser, at Closing, the Purchaser and the County will execute an agreement restating those agreements and covenants set forth in this Agreement that shall survive consummation of the transaction contemplated by this Agreement.
- 8.16. **Waiver.** No waiver of any provision of this Agreement shall be effective against any party hereto unless it is in writing and signed by the party waiving such provision. A written waiver shall only be effective as to the specific instance for which it is obtained and shall not be deemed a continuing or future waiver.
- 8.17. **Modification of Certain Documents.** Unless expressly stated herein, any modification of the Traffic Circulation Plan, the Level 1 Plan, the Construction Plan or the COOP that is approved by the County pursuant to the terms of this Agreement shall not be deemed an amendment to this Agreement and shall not require approval of the Board of County Commissioners but shall not preclude obtaining same. The deeds to be delivered pursuant to Section 5.9 shall require approval of the Board of County Commissioners.
- 8.18. **Amendment.** Except as provided in Section 8.17, this Agreement may be modified and amended only by written instrument executed by the parties hereto.
- 8.19. **Time Computation.** Any references in this Agreement to time periods of less than six (6) days shall, in the computation thereof, exclude Saturdays, Sundays and federal or state legal holidays; any time period provided for in this Agreement that shall end on a Saturday, Sunday, or federal or state legal holiday shall extend to 5:00 p.m. (EST) of the next day that is not a Saturday, Sunday, or federal or state legal holiday.

- 8.20. **Radon Gas.** Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon testing may be obtained from the County public health unit.
- 8.21. **Force Majeure.** Either party hereto shall be excused from performing any of its respective obligations or undertakings provided in this Agreement, excepting any of its respective obligations or undertakings to pay any sums of money under the applicable provisions hereof, for so long as the performance of such obligations are prevented or delayed, retarded or hindered (plus such additional time that is mutually consented to by the parties) by act of God, weather of unusual severity, fire, earthquake, flood, hurricane, explosion, action of the elements, war (declared or undeclared), invasion, insurrection, riot, mob violence, sabotage, malicious mischief, inability to produce or general shortage of labor, equipment, facilities, materials or supplies in the open market, failure of transportation, strikes, lockouts, action of labor unions, other non-party governmental action or any other cause, failure of regular financial markets such that the ability to obtain construction financing is materially impaired, whether similar or dissimilar to the foregoing, not within the reasonable control of the respective party if such party hereto gives notice of such delay to the other party within twenty (20) days of the good faith recognition that such occurrence will have an effect on the ability of such party to perform its obligations hereunder.
- 8.22. **Americans With Disabilities Act.** Notwithstanding anything to the contrary contained herein, Purchaser, at its sole cost and expense, shall cause all of Purchaser's alterations, additions, improvements and repairs to the ITC Property and the Property performed by or on behalf of Purchaser to comply with the provisions of the Americans with Disabilities Act ("ADA") and other similar federal, state, and local laws and regulations, including, without limitation, any alterations required under ADA for the purposes of "public accommodations" (as that term is used in the ADA).
- 8.23. **No Partnership Relationship.** It is understood and agreed that the County shall in no event be construed or held to be a partner or associate of Purchaser in the conduct of Purchaser's business, nor shall the County be liable for any debts incurred by Purchaser in the conduct of Purchaser's business, but it is understood and agreed that the relationship is and at all times shall remain that of seller and purchaser.
- 8.24. **Non-liability of County Officials and Employees.** No member, official or employee of the County or any other governing body (including, without limitation, the County Commissioners) shall be personally liable to Purchaser, or any successor in interest, in the event of any default or breach by the County for any amount or of any obligation which may become due to Purchaser under the terms of this Agreement; and any and all such personal liability, either at common law or in equity or by constitution or statute, or arising out of any and all such rights and claims against, every such person, or under or by reason of the obligations, covenants or agreements contained in this Agreement, or implied therefrom are expressly waived and released as a condition of, and as a consideration for, the execution of this Agreement.

- 8.25. **Limitation of Liability of Purchaser and Affiliates.** No present or future partner, member, director, officer, shareholder, trust, trustee, employee, advisor, affiliate or agent of Purchaser or any affiliate of Purchaser shall be personally liable to the County, in the event of any default or breach by the Purchaser for any amount or obligation which may become due to the County under the terms of this Agreement; and any and all such personal liability, either at common law or in equity or by constitution or statute, or arising out of any and all such rights and claims against, every such person, or under or by reason of the obligations, covenants or agreements contained in this Agreement, or implied therefrom are expressly waived and released as a condition of, and as a consideration for, the execution of this Agreement.
- 8.26. **Performance of Government Functions.** Notwithstanding anything in this Agreement to the contrary, nothing contained in this Agreement shall in any way stop, limit or impair the County from exercising or performing any regulatory, policing, legislative, governmental or other powers or functions that it may have with respect to the Property nor shall anything in this Agreement constitute or imply approval or special handling and/or consideration for or exemption from any permit by any regulatory authorities of the County.
- 8.27. **Improvements to be Private Property.** The County expressly acknowledges that the Property is being acquired by the Purchaser for private purposes and that after the acquisition of the Property by the Purchaser, that except for any area that may be specifically noted on the Site Plan that are public transit access points, that the Property and the Improvements will be private property and not a public forum; provided that nothing shall affect the declaration of whether the ITC is a public forum.
- 8.28. **Inspector General Review.** Palm Beach County's Office of Inspector General is authorized to review past, present and proposed County contracts, transactions, accounts and records. The Inspector General's authority, includes, but is not limited to, the power to audit, investigate, monitor, and inspect the activities of entities contracting with the County, or anyone acting on their behalf, in order to ensure compliance with contract requirements and to detect corruption and fraud.
- 8.29. **Indemnification.** Purchaser shall, indemnify, hold harmless and defend the County and its respective administrators, officers, officials, directors and employees against any and all claims, losses, liabilities, and expenditures of any kind, including reasonable attorneys' fees and costs at both the trial and appellate levels, court costs, and expenses, caused by negligent or intentional acts or omissions of Purchaser, its employees, contractors, subcontractors, consultants, agents, invitees, servants, or officers, or accruing, resulting from, or related to Purchaser's use and/or occupancy of the ITC Property or Property or breach of Purchaser's obligations under this Agreement including, without limitation, any and all claims, demands, or causes of action of any nature whatsoever resulting from injuries or damages sustained by any person or property.

Purchaser further agrees to pay all fees, costs and expenses in defending against any claims made against such indemnified parties with counsel appointed by Purchaser and reasonably acceptable to the County in connection with this Agreement, recognizing

that such counsel must be competent and not have a conflict of interest in connection with the matter as reasonably determined by the County and Purchaser. In connection with any defense by Purchaser, the County shall have the right to consent to any settlement of same; provided that such consent shall not be unreasonably withheld and provided further that no such consent is required if the settlement does not involve any liability for the County or any further action by the County. Purchaser and the County shall give prompt and timely notice of any claim made or suit instituted which, in any way, directly or indirectly, contingently or otherwise, affects or might affect either party.

The provisions of this Section shall survive the expiration or earlier termination of this Agreement until the expiration of any applicable statute of limitations for any such claim, demand, cause of action or proceeding of any kind.

- 8.30. **Disclosure of Beneficial Interest.** Purchaser represents that simultaneously with Purchaser's execution of this Agreement, Purchaser has executed and delivered to County, the Purchaser's Disclosure of Beneficial Interests attached hereto as Schedule "8" (the "Disclosure") disclosing the name and address of every person or entity having a 5% or greater beneficial interest in the ownership of the Purchaser. Purchaser warrants that at Closing, Purchaser shall provide County with a Disclosure that accurately discloses the beneficial interests in the ownership of the Purchaser at the time of Closing regardless of whether or not the information contained therein has changed from the date of execution of the original Disclosure. The County acknowledges that the Disclosure of Beneficial Interests may indicate different disclosures of Beneficial Interest based upon new investors, transactions among investors and redemptions and that any change otherwise permitted under this Agreement shall not constitute a default hereunder.


REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

IT WITNESS WHEREOF, the parties have caused this Agreement to be executed in their respective names on the dates set forth below.

Signed, sealed, and delivered
in the presence of:

As to Purchaser:

Date of Execution by Purchaser:



Witness Signature

June 21, 2012
TRANSIT VILLAGE, LLC
"PURCHASER"

Michael Karsch

Print Witness Name

By: _____
Signature



Witness Signature

Michael D. Masloff

Print Signatory's Name

Steven Belson

Print Witness Name

Its: Manager

(SEAL)

COUNTY SIGNATURES ON NEXT PAGE

As to County:

Date of Execution by County:

_____, 2012

ATTEST:

SHARON R. BOCK
CLERK & COMPTROLLER

PALM BEACH COUNTY, a political
subdivision of the State of Florida

By: _____
Deputy Clerk

By: _____
Shelley Vana, Chair

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

APPROVED AS TO TERMS
AND CONDITIONS

By: _____
County Attorney

By: Keith Anthony Wolf
Department Director

INDEX TO EXHIBITS AND SCHEDULES

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EXHIBIT "E-1"	COUNTY DEED
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EXHIBIT "E-4"	ESCROW AGREEMENT

Schedule 1	Permitted Exceptions
Schedule 2	Contractors Insurance
Schedule 3	Developers Insurance
Schedule 4	Design Professionals Insurance
Schedule 5	Form of Guarantee
Schedule 6	Construction General Conditions
Schedule 7	Form of Contractor Bond
Schedule 8	Disclosure of Beneficial Interest

EXHIBIT "A"

LEGAL DESCRIPTION OF PROPERTY

A DRAWING OF THE PROPERTY IS ATTACHED HERETO AS EXHIBIT B-2. PRIOR TO THE CLOSING, THE PURCHASER SHALL PREPARE A METES AND BOUNDS DESCRIPTION OF THE PROPERTY DERIVED FROM AN UPDATED SURVEY AND THE LEGAL DESCRIPTION WILL BE ATTACHED TO THE DEED AND THE LEGAL DESCRIPTION IN THIS EXHIBIT A WILL BE UPDATED TO THAT DESCRIPTION.

EXHIBIT "B-1"

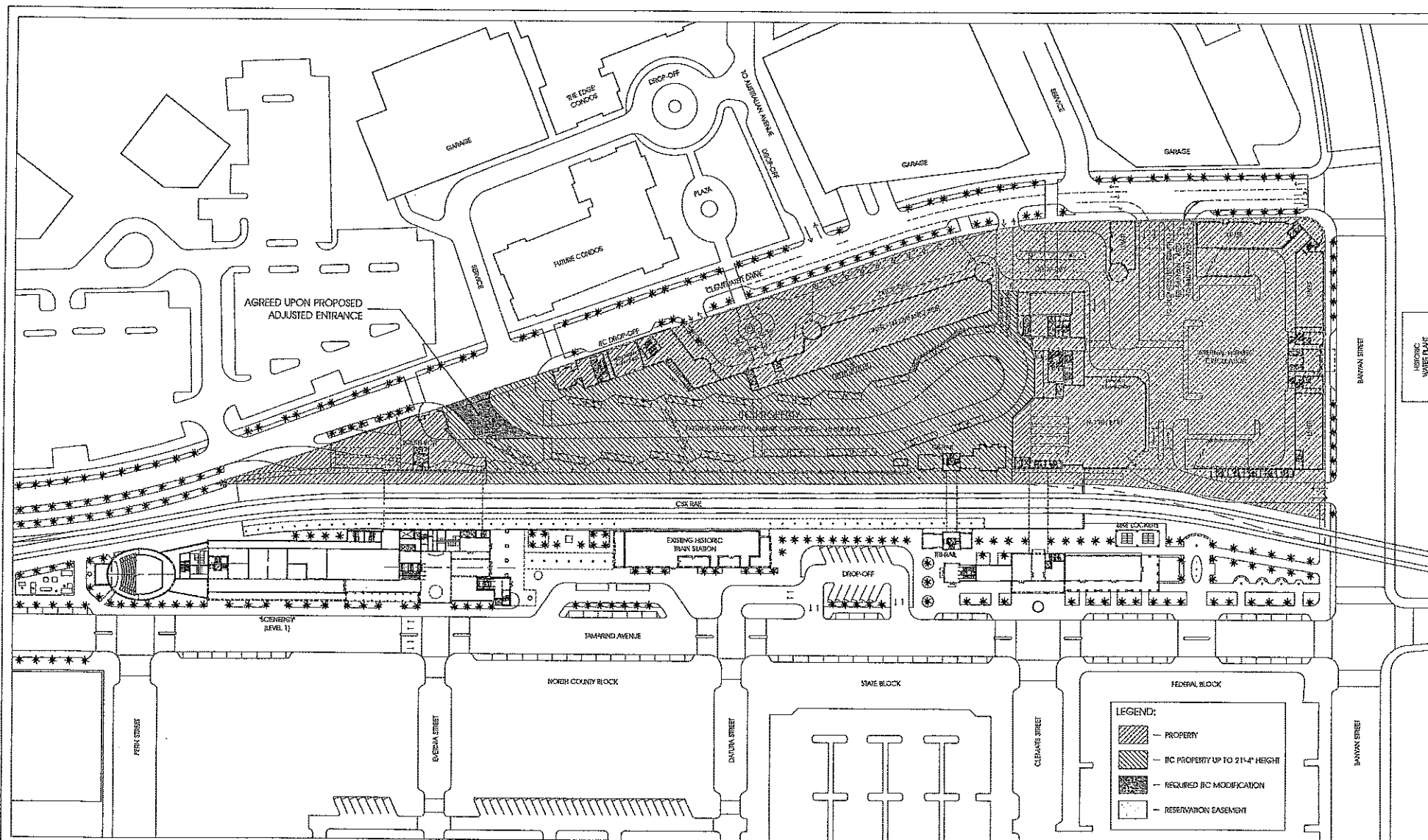
LEGAL DESCRIPTION OF ITC PROPERTY

A DRAWING OF THE ITC PROPERTY IS ATTACHED HERETO AS EXHIBIT B-2. PRIOR TO THE CLOSING, THE PURCHASER SHALL PREPARE A METES AND BOUNDS DESCRIPTION OF THE ITC PROPERTY DERIVED FROM AN UPDATED SURVEY AND THE LEGAL DESCRIPTION IN THIS EXHIBIT WILL BE UPDATED TO MATCH THAT DESCRIPTION.

EXHIBIT "B-2"

SKETCH OF PROPERTY, ITC PROPERTY AND REQUIRED ITC MODIFICATIONS

(As Modified By Exhibit "B-4" attached hereto)



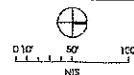
PROPERTY
ITC PROPERTY
REQUIRED ITC MODIFICATIONS

WEST PALM BEACH TRANSIT VILLAGE
SUBMITTED BY TRANSIT VILLAGE LLC

FLORIDA LICENSE: NAGA (AA 0002009) / REG (AA 0002047)

M G A
341 PASSAIC STREET
PRINCETON, NJ 08540
TEL: 609 924 6409

R E G
807 EVERNA SE, 4TH FLOOR
WEST PALM BEACH, FL 33401
TEL: 561 459 2383



OCTOBER, 2011

EXHIBIT "B-3"

LOCATION OF PILINGS ON ITC PROPERTY

EXHIBIT "B-4"

SKETCH OF ADDITIONAL REQUIRED ITC MODIFICATIONS ON ITC PROPERTY

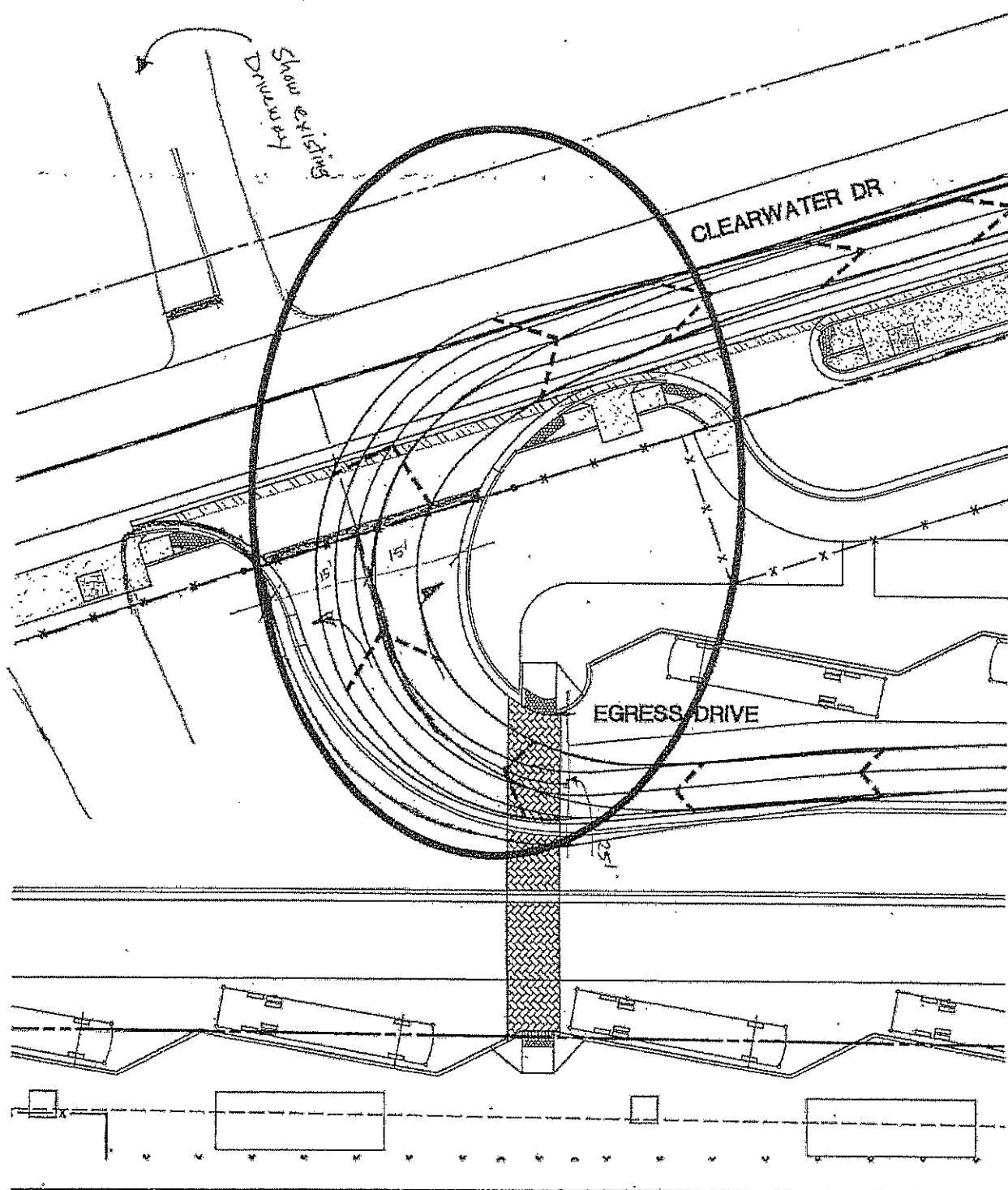


EXHIBIT "C"

APPROVED LEVEL 1 PLAN

(As Modified By Exhibit "B-4" attached hereto)

EXHIBIT "D"

TRAFFIC CIRCULATION PLAN

1. Preamble: The County and Transit Village, LLC ("TV") together acknowledge that sound ITC operating conditions is a core objective of the County and fundamental requirement by the County for entering into this Agreement. The County and TV mutually acknowledge and agree that ITC operations are inherently sensitive to traffic performance on the local roadway network in the vicinity of the ITC. To this end a *Traffic Study and Traffic Circulation Plan* dated August 2011 was prepared by TV. The County, in collaboration with traffic engineers representing TV and interested property owners nearby the Wedge Property, prepared a refined Synchro analysis and traffic simulation related thereto during development of this Agreement to forecast operating conditions of the local roadway network and impact of same on ITC and private property operations upon the addition of vehicular traffic that the County believes is reasonably associated with the Project.
2. Project Traffic: Based upon the *Traffic Study and Traffic Circulation Plan*, as well as the refined analysis and simulation related thereto that was supplied to the aforementioned traffic engineers on April 20, 2012 and is hereby incorporated by reference, this Agreement is being entered into by the County with the understanding that traffic volume to be generated by the Project and parking garage related thereto (which includes traffic that is equivalent to 290 public use parking spaces in background traffic counts):
 - a. will not exceed 870 AM peak hour trips consisting of 601 ingress trips; and,
 - b. will not exceed 1,121 PM peak hour trips consisting of 697 egress trips.
3. Project Assumptions: The traffic volumes presented in 2.a. and 2.b. of this Exhibit have been derived under, but are not necessarily limited to, the following base assumptions:
 - a. Institute of Transportation Engineer's (ITE) *Trip Generation Manual* (8th edition) yields a representative volume of traffic trips for the Project when trip generation and internal capture rates are applied to the full intensity of each proposed use. The following Project principal uses and intensities have been assumed:
 - i. 150 Apartment Units, and supporting accessory uses related thereto such as, but not necessarily limited to, Fitness Center, Laundry and Spa for resident/guest use (ITE Code 220)
 - ii. 150 Luxury Condominium/Townhouse Units and supporting accessory uses related thereto such as, but not necessarily limited to, Fitness Center and Spa for resident/guest use (ITE Code 233)

- iii. 375 Room Hotel, and supporting accessory uses related thereto such as, but not necessarily limited to, Restaurant, Fitness Center and Spa for guest use and Conference/Meeting/Banquet Center uses (ITE Code 310)
- iv. 12,500 sq. ft. gross floor area (GFA) of Community Center, which includes all square footage supporting Community Center accessory uses such as, but not necessarily limited to, Cafeteria, Restaurant and Retail uses (ITE Code 495)
- v. 400,000 sq. ft. gross floor area (GFA) of Office, which includes all square footage supporting Office accessory uses such as, but not necessarily limited to, Cafeteria, Retail, and Personal Services uses (ITE Code 710)
- vi. 75,000 sq. ft. gross floor area (GFA) of General Retail, which excludes all Retail square footage that is provided as an accessory use within a principal use (ITE Code 820)

For purposes of this Exhibit, accessory facilities and uses are intended to be incidental and subordinate to a principal use. With the exception of a Conference/Meeting/Banquet Center that is accessory to a hotel as contemplated in 3.a.iii. of this Exhibit, accessory facilities and uses are generally characterized by: 1) an orientation, placement and design having no outward evidence of existence; 2) no separate dedicated entrance for ingress/egress by the general public; 3) no wall signage on an exterior facade; and/or 4) functional integration into the proximate building area. Palm Beach County shall retain the exclusive right and sole discretion during performance of County reviews and approvals in accordance with the *Review and Resubmit Process* of this Agreement to classify principal and accessory uses based upon such considerations as well as traffic engineering best practices, placement, size, configuration, pedestrian ingress/egress, design, form and function of all building areas categorized by TV to be an accessory facility or use.

- b. internal capture between uses results in a reduction of total Project traffic trips by 2.3% in the AM peak hour and 10.1% in the PM peak hour;
 - c. non-vehicular trips account for 9% of total Project traffic trips;
 - d. utilization of mass transit accounts for 9% of total Project traffic trips; and,
 - e. in addition to the required 290 public use parking spaces, the Project and parking garage related thereto will provide not more than the number of parking spaces required by the City of West Palm Beach for the uses and intensities/densities identified in 3.a. of this Exhibit or other mix of uses and intensities/densities as actually constructed and thereafter occupied that collectively generate not more than the traffic volumes established in 2.a. and 2.b. of this Exhibit.
4. Methodological Assumptions: The following further assumptions were applied by the *Traffic Study and Traffic Circulation Plan* and/or to produce the Synchro analysis and traffic simulation as refined by the County:

- a. Project traffic is distributed upon the local roadway network as 68% south, 20% east and 12% north;
 - b. Project traffic assigned to the shared drive between One Clear Lake Center and The Edge is 12% for approaching traffic and 0% for departing traffic originating from the Project and parking garage related thereto in the peak hour;
 - c. no reduction is applied for pass-by traffic trips;
 - d. ITC default vehicle type is primarily buses of 40 feet in length, which is added to a 2% default heavy vehicle population;
 - e. Saturation Flow Rate is 1,950 vph;
 - f. Project build-out is not later than 2025;
 - g. background traffic accounts for; i) 2011 traffic counts, ii) 261 un-built multi-family units of "The Edge" project, iii) the uses and intensities of the TOD blocks on the east side of Tamarind Avenue as included in the refined Synchro analysis and traffic simulation that was supplied to the aforementioned traffic engineers on April 20, 2012, which were consistent with those envisioned by a TCRPC charrette conducted in 2005, iv) 290 public parking spaces within Project and assigned to the Project garage driveway connection to Clearwater Drive, v) 2025 Palm Tran projection of ITC operations, and vi) a 0.5% compounded annual traffic growth rate applied through a 2025 build-out;
 - h. left turns exiting the Project parking garage onto Clearwater Drive account for 68% of all PM peak hour egress trips;
 - i. ingress and egress to the Project parking garage is exclusively from Clearwater Drive; and
 - j. ingress and egress lanes of the Project parking garage connecting to Clearwater Drive are in the amounts shown by the approved Level 1 Plan.
5. Improvements Required by TV Prior to First CO: TV shall fully fund and complete the following to the complete satisfaction of the County and all applicable standards prior to issuance of a Certificate of Occupancy (CO) for any of TV's occupiable improvements:
- a. three-way stop control on Clearwater Drive at the ingress/egress of the Project parking garage;
 - b. three-way stop control on Clearwater Drive at the ingress/egress of the ITC;
 - c. mast-arm signalization at the intersection of Banyan Blvd. and Clearwater Drive;
 - d. northbound right turn lane on Clearwater Drive at the approach to the Project parking garage; and
 - e. Clearwater Drive as a four-lane section (southbound through, southbound left, northbound left and northbound right) between Banyan Blvd. and the ingress/egress of the Project parking garage.

6. Improvements Required by TV Prior to Latter CO: TV shall fully fund and complete the following to the complete satisfaction of the County and all applicable standards not later than the issuance of a Certificate of Occupancy (CO) for development generating more than 261 total and/or 180 ingress AM peak hour trips, and/or more than 363 total and/or 209 egress PM peak hour trips, as demonstrated by a traffic statement prepared, signed and sealed by an engineer licensed in the State of Florida and submitted to the County Agreement Manager by TV prior to receipt of each CO until such traffic threshold is exceeded:
 - a. four-way signalization at the intersection of Clearwater Park Drive and Clearwater Place; and,
 - b. construct Clearwater Place as a three-lane section (one eastbound travel lane and two westbound travel lanes) from Clearwater Park Drive to Clearwater Drive.
7. Improvement Requiring County Performance: Palm Beach County shall convert the easternmost northbound through lane on Australian Avenue approaching Clearwater Place to an exclusive right turn lane prior to issuance of a Certificate of Occupancy (CO) for any of TV's occupiable improvements. Such conversion shall include, but not be limited to, the following:
 - a. striping, other customary pavement markings and appropriate signage to designate a dedicated right turn lane south of Clearwater Place; and
 - b. a northbound right turn signal (i.e. overlap) incorporated into the existing traffic signal at the intersection of Australian Avenue and Clearwater Place.
8. Modifications: Nothing within this Exhibit is intended by the County to prevent TV from: i) changing uses; ii) reallocating square footage/density amongst and between uses; iii) providing a driveway connection to Banyan Avenue for exclusive use by service/delivery vehicles; and/or iv) utilizing the Project and parking garage related thereto to provide required parking spaces for uses and intensities/densities located off-site (only to the extent that such spaces are required by the City of West Palm Beach and the cumulative traffic generation of all on-site and off-site uses and intensities/densities for which required parking is to be provided by the Project and/or parking garage related thereto does not exceed 2.a. and 2.b. of this Exhibit), following execution of this Agreement. However, any change in use(s) and/or increase in intensity/density as compared to those set forth in 3.a.i. through 3.a.vi. of this Exhibit, which shall also apply to and include any off-site uses and intensities/densities for which required parking is to be provided by the Project and/or parking garage related thereto, shall require advance review and approval by the County in accordance with Section 9 (*Procedure*) of this Exhibit, solely for the purpose of confirming that such change(s) will not exceed the Project traffic thresholds established in 2.a. and/or 2.b. of this Exhibit. Any and all change to the number of Clearwater Drive ingress and

egress lanes to, from and/or within the Project parking garage as shown by the approved Level 1 Plan, and/or an ingress/egress to Banyan Blvd. that is not otherwise addressed herein, shall require prior review and approval by the County in accordance with the provisions of the Agreement to verify adherence to the results and integrity of the refined Synchro analysis and traffic simulation related to the *Traffic Study and Traffic Circulation Plan*.

9. Procedure: Any change that is contemplated by Section 8 of this Exhibit (*Modifications*) shall be submitted to the County in written form and supported by letter correspondence prepared, signed and sealed by an engineer licensed in the State of Florida attesting to the effect of such change on Project traffic. In the event that changes are made to the number of Clearwater Drive ingress and egress lanes for the Project parking garage as described above and as compared to the approved Level 1 Plan, professionally prepared proposed plans and/or other such graphic material(s) shall accompany the required written correspondence. The County shall complete its review of a sufficient submission of such written and graphic materials in accordance with the *Review and Resubmit Process* of this Agreement and prior to TV making application for Building Permit for such use, intensity and/or density, and/or configuration, as applicable.

Any review performed by the County in accordance with this Section that concludes with a finding that Project traffic volume will exceed the thresholds established in 2.a. and/or 2.b. of this Exhibit, based upon the trip generation rates/equations contained within the latest edition of the *ITE Trip Generation and Informational Report* or applicable publication of the County Engineer, shall be further analyzed by the County using the aforementioned Synchro analysis and traffic simulation as refined by the County. Any result(s) having the effect of necessitating an improvement(s) that is not established in Section 5 (*Improvements Required by TV Prior to First CO*), Section 6 (*Improvements Required by TV Prior to Latter CO*) and/or Section 7 (*Improvement Requiring County Performance*) of this Exhibit and/or that otherwise materially affects congestion or travel/delay times upon the study area roadway network, as determined at the County's sole and absolute discretion, shall be subject to an approval by the Board of County Commissioners as an amendment to the Agreement, which approval may be granted or denied at the sole and absolute discretion of the Board of County Commissioners. Conversely, any change in use or increase in intensity/density that exceeds the thresholds established in 2.a. and/or 2.b. of this Exhibit but demonstrates no material effect on the study area roadway network or need for any improvement other than those that are established in Section 5 (*Improvements Required by TV Prior to First CO*), Section 6 (*Improvements Required by TV Prior to Latter CO*) and/or Section 7 (*Improvement Requiring County Performance*) of this Exhibit, as determined at the County's sole and absolute discretion, shall not be subject to an approval by the Board of County Commissioners as an amendment to the Agreement as herein contemplated.

10. Stipulations: The County and TV together acknowledge that assumptions, methodologies and professional practice to analyze traffic impact are not necessarily static. The County and TV therefore each reserve the right, in its sole and absolute discretion, to implement further adjustments to the refined Synchro model and traffic simulation related to the *Traffic Study and Traffic Circulation Plan*, which may deviate from the assumptions established in Section 3 (*Project Assumptions*) and Section 4 (*Methodological Assumptions*) of this Exhibit, upon performance of any review that is required by Section 9 (*Procedure*) of this Exhibit for any proposed change that is initiated by TV and subject to Section 8 (*Modifications*) and Section 9 (*Procedure*) of this Exhibit. However, any and all such adjustment(s) shall be:

- a) in response to a physical change in the roadway network, traffic management infrastructure and/or operating condition that has occurred subsequent to preparation of the refined Synchro analysis and traffic simulation related to the *Traffic Study and Traffic Circulation Plan*; and/or,
- b) in response to widely accepted change in industry standards for traffic engineering practice; and,
- c) deemed acceptable to and appropriate by the County in its sole and absolute discretion.

In the absence of a modification to uses and/or densities/intensities by TV that would exceed the net trips referenced in 2.a. and 2.b. of this Exhibit, the County shall not require the number of net trips referenced in 2.a. and 2.b. of this Exhibit to be involuntarily reduced at any time or hold TV responsible for improvements (off-site or on-site) other than those set forth in Sections 5 and 6 of this Exhibit.

Furthermore, no improvement required of TV as set forth in Sections 5 and 6 of this Exhibit shall be eligible for a credit against road impact fees *unless*: i) the projected traffic generation of the Project and parking garage related thereto as ultimately approved by the County upon administering this contract is less than that referenced in 2.a. and 2.b. of this Exhibit, and/or ii) the background traffic for the remainder of the TOD (as referenced in 4.g.iii. of this Exhibit and included in the refined Synchro analysis and traffic simulation that was supplied to the aforementioned traffic engineers on April 20, 2012) is demonstrated to the complete satisfaction of the County to have formally been reduced, subsequent to the approval of this Agreement. Only in the event of such a committed reduction(s) in traffic generation shall TV be permitted to make application to the County for road impact fee credit, which application shall be: 1) subject to all applicable policies, procedures and regulations in place at the time of making application and 2) limited to those improvements that would not have been contractually required, as determined by the County in its sole and absolute discretion, if those conditions affecting projected traffic generation had been known and analyzed prior to the approval of this contract. Nothing herein shall be construed as a promise, guarantee or commitment that improvements made by TV in accordance with Sections 5 and 6 of this Exhibit will be eligible for road impact fee credit.

EXHIBIT "E-1"

COUNTY DEED

PREPARED BY AND RETURN TO:

PALM BEACH COUNTY
PROPERTY & REAL ESTATE MANAGEMENT DIVISION
2633 VISTA PARKWAY
WEST PALM BEACH, FLORIDA 33411
PROPERTY CONTROL NUMBER:

COUNTY DEED

This Deed is made _____, 201_, by PALM BEACH COUNTY, a political subdivision of the State of Florida, whose legal mailing address is 301 North Olive Avenue, West Palm Beach, Florida, 33401-4791 ("County"), and TRANSIT VILLAGE, LLC, a Florida limited liability company, whose legal mailing address is 2000 Glades Road, Suite 300, Boca Raton, Florida 33431 ("Grantee").

WITNESSETH:

That the County, for and in consideration of the sum of \$10.00 to it in hand paid by the Grantee, the receipt and sufficiency of which is hereby acknowledged, has granted, bargained and sold to the Grantee, its successors and assigns forever, the following described land lying and being in Palm Beach County, Florida:

See Exhibit "A" attached hereto and made a part hereof ("Property").

County hereby reserves, excepts, and lesses out a perpetual easement in favor of County upon, over and through the real property legally described on Exhibit B attached hereto and made a part hereof for an emergency exit from County's retained property to Clearwater Drive, together with the right to construct and maintain such emergency exit.

The following provisions of this paragraph are referred to as the "Reverter." In the event Grantee has not commenced construction of the Improvements within the time period provided in Section 7.3.1.5 of the Agreement, the County shall have the right to terminate the Agreement and request the Escrow Agent to record Purchaser's Special Warranty Deed to re-convey the Property to the County. The Reverter may be released by the County by the filing of a release executed by the County.

IN WITNESS WHEREOF the County has caused these presents to be executed in its name by its Board of County Commissioners acting by the Chairperson or Vice Chairperson of said Board, the day and year aforesaid.

ATTEST:

SHARON R. BOCK
CLERK & COMPTROLLER

PALM BEACH COUNTY, a political
subdivision of the State of Florida

By: _____
Deputy Clerk

By: _____, Chair

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

By: _____
Assistant County Attorney

(OFFICIAL SEAL)

EXHIBIT A

LEGAL DESCRIPTION

***THE LEGAL DESCRIPTION TO BE INCLUDED IN EXHIBIT A TO THE DEED WILL
BE ATTACHED TO THE DEED PRIOR TO CLOSING.***

EXHIBIT B

LEGAL DESCRIPTION

***THE LEGAL DESCRIPTION TO BE INCLUDED IN EXHIBIT B TO THE DEED WILL
BE ATTACHED TO THE DEED PRIOR TO CLOSING.***

EXHIBIT E-2

RELEASE OF REVERTER

PREPARED BY AND RETURN TO:

PALM BEACH COUNTY
PROPERTY & REAL ESTATE MANAGEMENT DIVISION
2633 VISTA PARKWAY
WEST PALM BEACH, FLORIDA 33411
PROPERTY CONTROL NUMBER:

RELEASE OF REVERTER

This Release of Reverter is made _____, 201_, by PALM BEACH COUNTY, a political subdivision of the State of Florida, whose legal mailing address is 301 North Olive Avenue, West Palm Beach, Florida, 33401-4791 ("County"), and TRANSIT VILLAGE, LLC, a Florida limited liability company, whose legal mailing address is 2000 Glades Road, Suite 300, Boca Raton, Florida 33431 ("Grantee").

WITNESSETH:

That the County, for and in consideration of the sum of \$10.00 to it in hand paid by the Grantee, the receipt and sufficiency of which is hereby acknowledged, has granted, bargained and sold to the Grantee, its successors and assigns forever, the following described land lying and being in Palm Beach County, Florida:

See Exhibit "A" attached hereto and made a part hereof ("Property").

The Reverter set forth in the County Deed recorded in Official Book _____/_____ and in that certain Agreement For Purchase and Sale between the County and the Grantee regarding the Property dated _____, 2012 is hereby released.

IN WITNESS WHEREOF the County has caused these presents to be executed in its name by its Board of County Commissioners acting by the Chairperson or Vice Chairperson of said Board, the day and year aforesaid.

ATTEST:

SHARON R. BOCK
CLERK & COMPTROLLER

PALM BEACH COUNTY, a political
subdivision of the State of Florida

By: _____
Deputy Clerk

By: _____
, Chair

APPROVED AS TO FORM AND

LEGAL SUFFICIENCY

By: _____
Assistant County Attorney

(OFFICIAL SEAL)

EXHIBIT A

LEGAL DESCRIPTION

***THE LEGAL DESCRIPTION TO BE INCLUDED IN EXHIBIT A TO THE DEED WILL
BE ATTACHED TO THE DEED PRIOR TO CLOSING.***

EXHIBIT "E-3"

SPECIAL WARRANTY DEED

PREPARED BY AND RETURN TO:

PALM BEACH COUNTY
PROPERTY & REAL ESTATE MANAGEMENT DIVISION
2633 Vista Parkway
West Palm Beach, FL 33411-5605

PCN: _____
Closing Date: _____
Purchase Price: _____

SPECIAL WARRANTY DEED

THIS SPECIAL WARRANTY DEED is made and given as of the ____ day of _____, 201__ by Transit Village, LLC, a Florida limited liability company, having offices located at _____ (the "Grantor"), to and in favor of PALM BEACH COUNTY, a political subdivision of the State of Florida, having offices located at 301 North Olive Avenue, West Palm Beach, Florida 33401 (the "Grantee").

[Whenever used herein the terms "Grantor" and "Grantee" include the parties to this instrument, together with their respective heirs, legal representatives, successors and assigns.]

WITNESSETH, that Grantor, for and in consideration of Ten and No/100 (\$10.00) Dollars and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, has granted, bargained and sold, and by these presents does hereby grant, bargain and sell, to Grantee forever, the following described land lying, being, and situate in Palm Beach County, Florida (the "Property"), to wit:

See Exhibit "A" attached hereto and made a part hereof.

TOGETHER WITH all the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

TO HAVE and to hold the same in fee simple forever.

GRANTOR hereby covenants with Grantee that it is lawfully seized of the Property in fee simple, that it has good right and lawful authority to sell and convey the Property, that it specially warrants the title to the Property and, subject to the foregoing matters, will defend the same against the lawful claims of all persons claiming by, through or under Grantor, but no others.

E-9

EXHIBIT A

LEGAL DESCRIPTION

***THE LEGAL DESCRIPTION TO BE INCLUDED IN EXHIBIT A TO THE DEED WILL
BE ATTACHED TO THE DEED PRIOR TO CLOSING.***

EXHIBIT "E-4"

ESCROW AGREEMENT

THIS ESCROW AGREEMENT ("Escrow Agreement") made and entered into _____, 201_ by and between TRANSIT VILLAGE, LLC, a Florida limited liability company ("Purchaser") and PALM BEACH COUNTY, a political subdivision of the State of Florida ("County"), (hereinafter collectively referred to as the "Principals") and _____, County Clerk, ("Escrow Agent").

WHEREAS, on _____, 2012, Principals entered into an Agreement for Purchase and Sale under Resolution No. _____, a copy of which is attached hereto as Exhibit "A"; and

WHEREAS, Principals desire that Escrow Agent act as escrow agent relating to the Agreement and hold certain property as described in Exhibit "B", attached hereto and incorporated herein by reference, (the "Escrow Property") pursuant to the Escrow Instructions described on Exhibit "C", attached hereto and made a part hereof, (the "Instructions"); and

WHEREAS, Escrow Agent has agreed to act as Escrow Agent for the Escrow Property on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the covenants and agreements herein set forth and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto, intending to be legally bound, agree as follows:

I. Escrow.

A. Escrow Agent agrees to hold the Escrow Property in escrow subject to the terms and conditions contained in this Escrow Agreement and the Instructions.

B. Unless otherwise provided in this Escrow Agreement, Escrow Agent shall disburse the Escrow Property without interest or other accumulation in value.

C. Escrow Agent shall not be deemed to have knowledge of any matter or thing unless and until Escrow Agent has actually received written notice of such matter or thing. Escrow Agent shall not be charged with any constructive notice whatsoever.

D. In the event Instructions from Principals would require Escrow Agent to spend any monies or incur any costs, Escrow Agent shall be entitled to refrain from taking any action until Escrow Agent has notified Principals that payment for such costs is required and Escrow Agent receives payment for such costs.

E. Principals acknowledge and agree that nothing in this Escrow Agreement shall prohibit Escrow Agent from serving in a similar capacity on behalf of others.

II. Release of Escrow Property.

A. Escrow Agent agrees to release the Escrow Property in accordance with the terms and conditions set forth in the Instructions in this Escrow Agreement.

B. If all or any portion of the Escrow Property delivered to Escrow Agent is in the form of a check or in any form other than cash, Escrow Agent shall deposit same in an Escrow or Trust Account but shall not be liable for the non-payment thereof nor responsible to enforce collection thereof. In the event such check or other instrument is returned to Escrow Agent unpaid, Escrow Agent shall notify the Principals for further instructions.

III. Liability of Escrow Agent.

A. It is agreed that the duties of the Escrow Agent are purely ministerial in nature and shall be expressly limited to the safe keeping of the Escrow Property and for the disposition of the same in accordance with the Instructions in this Escrow Agreement. Contractor hereby agrees to indemnify Escrow Agent and holds it harmless from and against any and all claims, liabilities, damages, costs, penalties, losses, actions, suits or proceedings at law or in equity, or any other expenses, fees, or charges of any character or nature which it may incur or with which it may be threatened directly or indirectly, arising from, or in any way connected with this Escrow Agreement or which may result from Escrow Agent's following of Instructions from Principals, and in connection therewith agrees to indemnify Escrow Agent against any and all expenses, including attorney's fees and the costs of defending any action, suit, or proceeding or resisting any claim, whether or not litigation is instituted. This Article III shall not apply in the event Escrow Agent breaches the terms of this Agreement or fails to follow the instructions contained herein.

IV. Disputes.

A. In the event Escrow Agent is joined as a party to a lawsuit by virtue of the fact that it is holding the Escrow Property, Escrow Agent shall, at its option, either (1) tender the Escrow Property into the registry of the appropriate court or (2) disburse the Escrow Property in accordance with the court's ultimate disposition of the case, and Contractor hereby agrees to indemnify and hold Escrow Agent harmless from and against any damages or losses in connection therewith including, but not limited to, reasonable attorney's fees and court costs at all trial and appellate levels.

B. In the event Escrow Agent tenders the Escrow Property into the registry of the appropriate court and files an action of interpleader naming the Principals and any affected third parties of whom Escrow Agent has received actual notice, Escrow Agent shall be released and relieved from any and all further obligation and liability hereunder or in connection herewith and Contractor hereby agrees to indemnify and hold Escrow Agent harmless from and against any damages or losses arising in connection therewith including, but not limited to, all costs and expenses incurred by Escrow Agent in connection with the filing of such action including, but not limited to, reasonable attorney's fees and court costs at all trial and appellate levels.

V. Term of Agreement.

A. This Escrow Agreement shall remain in effect unless and until it is canceled in any of the following manners:

1. Upon written notice given by all Principals of cancellation of designation of Escrow Agent to act and serve in said capacity, in which event, cancellation shall take effect no earlier than twenty (20) days after notice to Escrow Agent of such cancellation; or

2. Upon Escrow Agent's resignation as Escrow Agent, which Escrow Agent may do at anytime upon giving notice to Principals of its desire to so resign; provided, however, that resignation of Escrow Agent shall take effect no earlier than ten (10) days after the giving of notice of resignation; or

3. Upon compliance with all escrow provisions as set forth in this Escrow Agreement and in the Instructions.

B. In the event Principals fail to agree to a successor escrow agent within the time period described herein above, Escrow Agent shall have the right to deposit all of the Escrowed Property held hereunder into the registry of an appropriate court and request judicial determination of the rights of Principals, by interpleader or other appropriate action, and Contractor hereby, jointly and severally, indemnify and hold Escrow Agent harmless from and against any damages or losses in connection therewith, including, but not limited to, reasonable attorney's fees and court costs at all trial and appellate levels.

C. Upon termination of the duties of Escrow Agent in either manner set forth in subparagraphs 1. and 2. of Paragraph A. of this Article V., Escrow Agent shall deliver all of the Escrowed Property to the newly appointed Escrow Agent designated by the Principals.

D. Escrow Agent shall not be bound by any modification, cancellation or rescission of this Escrow Agreement unless in writing and signed by Escrow Agent and Principals. In no event shall any modification of this Escrow Agreement, which shall affect the rights or duties of Escrow Agent, be binding on Escrow Agent unless it shall have given it prior written consent.

VI. Notices.

All notices, certificates, requests, demands, materials and other communications hereunder shall be in writing and deemed to have been duly given (1) upon delivery by hand to the appropriate address of each Principal or Escrow Agent as set forth in this Escrow Agreement, or (2) on the third business day after mailing by United States registered or certified mail, return receipt requested, postage prepaid to such address or (3) upon delivery by an overnight courier service at the following addresses:

Purchaser:

Transit Village, LLC

COUNTY:

PALM BEACH COUNTY

ESCROW AGENT:

_____, COUNTY CLERK & COMPTROLLER
CLERK OF THE CIRCUIT COURT

Governmental Center
301 North Olive Avenue
9th Floor Administration
West Palm Beach, Florida 33401

VII. Choice of Law and Venue.

This Escrow Agreement shall be governed by and construed in accordance with the laws of the State of Florida. In the event any action, suit or proceeding is instituted as a result of any matter or thing affecting this Escrow Agreement, the parties hereto hereby designate Palm Beach County, Florida as the proper jurisdiction and venue in which the same is to be instituted.

VIII. Cumulative Rights.

No right, power or remedy conferred upon Escrow Agent by this Escrow Agreement is exclusive of any other right, power or remedy, but each and every such right, power or remedy, shall be cumulative and concurrent and shall be in addition to any other right, power or remedy Escrow Agent may have under the Escrow Agreement or now or hereafter existing at law, in equity or by statute. The exercise of one right, power or remedy by Escrow Agent shall not be construed or considered as a waiver of any other right, power or remedy.

IX. Binding Agreement.

This Escrow Agreement shall be binding upon the Principals and Escrow Agent and their respective successors and assigns.

(REMAINDER OF PAGE IS LEFT BLANK INTENTIONALLY)

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed as of _____.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

ESCROW AGENT:

SHARON R. BOCK
CLERK & COMPTROLLER

By: _____
Deputy Clerk

Signature

Print name of witness

Signature

Print name of witness

Signed in the presence of:

CONTRACTOR:

By: _____

Signature

Print name of witness

Print Name

Signature

Its: _____

Print name of witness

ATTEST:

SHARON R. BOCK
CLERK & COMPTROLLER

PALM BEACH COUNTY, a political
subdivision of the State of Florida

By: _____
Deputy Clerk

By: _____
Shelley Vana, Chair

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

Assistant County Attorney

EXHIBIT A

AGREEMENT FOR PURCHASE AND SALE

*THE AGREEMENT FOR PURCHASE AND SALE TO BE INCLUDED IN EXHIBIT A TO
THE ESCROW AGREEMENT WILL BE ATTACHED TO THE ESCROW AGREEMENT
PRIOR TO CLOSING.*

EXHIBIT B

ESCROW PROPERTY

EXHIBIT B-1: Release of Reverter

EXHIBIT B-2: Purchaser's Special Warranty Deed

EXHIBIT B TO THE ESCROW AGREEMENT WILL BE ATTACHED TO THE ESCROW AGREEMENT PRIOR TO CLOSING.

EXHIBIT C
INSTRUCTIONS

Capitalized terms used herein and not defined in this Escrow Agreement shall have the meanings set forth in the Purchase Agreement.

Pursuant to Section 5.12 of the Purchase Agreement, upon the Purchaser commencing construction of the Improvements, the Purchaser shall provide the County Project Manager with evidence of such commencement of construction and upon receipt, the County Project Manager shall instruct the Escrow Agent to release Exhibit "B-1" (Release of Reverter) from escrow and record same in the public records and to return Exhibit "B-2" (Purchaser's Special Warranty Deed) to the Purchaser. Upon such recording and return, the duties of Escrow Agent shall terminate.

Pursuant to Section 7.4.1 of the Purchase Agreement, upon a default by the Purchaser after Closing for failure to commence construction of any of the Improvements within the time period provided in Section 7.3.1.5 of the Agreement, the County shall provide the Purchaser with written notice of such alleged default. The Purchaser shall then have a reasonable time to commence to cure such alleged default. If such default is not then cured, then upon sixty (60) days prior notice to Purchaser, the County shall have the right to terminate the Purchaser Agreement and request the Escrow Agent to record Exhibit "B-2" (Purchaser's Special Warranty Deed) to re-convey the Property to the County. Upon such recording, the Escrow Agent shall return Exhibit "B-1" to the County. Upon such recording and return, the duties of Escrow Agent shall terminate.

Schedule 1

Permitted Exceptions

	<u>Instrument</u>	<u>Filed</u>	<u>Book/Page</u>
1.	Amendment to Transmission Line Easement	September 24, 2007	22134/110
2.	Easement Agreement	November 20, 2007	22268/851
3.	Easement Agreement	May 12, 2009	23224/1664
4.	First Amendment to Easement Agreement	September 21, 2009	23453/1097
5.	Plat (Map of Town of West Palm Beach)	December 28, 1893	PB 1/2
6.	Plat (West Palm Beach Intermodal Transfer Facility	November 20, 2007	PB 110/191

Schedule 2

Contractor Insurance

COMMERCIAL GENERAL LIABILITY: Standard ISO version Commercial General Liability policy form, or its equivalent providing coverage for, but not be limited to, Bodily Injury and Property Damage, Premises/Operations, Products/Completed Operations, Independent Contractors Contractual Liability, Broad Form Property Damage, X-C-U Coverages (if applicable), Severability of Interest including Cross Liability, and be in accordance with all of the limits, terms and conditions set forth herein.

BUSINESS AUTOMOBILE LIABILITY: Standard ISO version Business Automobile Liability coverage form, or its equivalent, providing coverage for all owned, non-owned and hired automobiles, and in accordance with all of the limits, terms and conditions set forth herein. Notwithstanding the foregoing, should the contractor not own any automobiles, the business auto liability requirement shall be amended to allow the contractor to agree to maintain only Hired & Non-Owned Auto Liability. This amended coverage requirement may be satisfied by way of endorsement to the Commercial General Liability, or separate Business Auto Coverage form.

WORKER'S COMPENSATION & EMPLOYER'S LIABILITY: Worker's Compensation Insurance & Employers Liability, covering all of contractor's employees on the work site. This coverage shall be in accordance with all of the limits, terms and conditions set forth herein. Exemptions for a contractor in or doing work in the Construction Industry, or proof of worker's compensation coverage provided by an employee leasing arrangement shall not satisfy this requirement. If any work is sublet contractor shall require all subcontractors to similarly comply with this requirement unless such subcontractors' employees are covered by contractor's Worker's Compensation insurance policy.

ADDITIONAL REQUIRED INSURANCE WHEN WORK INVOLVES PROPERTY: Contractor shall agree to maintain the following additional required insurance coverages with respect to any work involving property, operations, or type of equipment for which each insurance coverage described below has been designed specifically to provide coverage for:

BUILDER'S RISK: With respect to any of the work involving the construction of real property (buildings and improvements other than buildings) during the construction project, contractor will maintain Builders Risk insurance providing coverage for its work at the project site, and will also cover portions of work located away from the site but intended for use at the site, and will also cover portions of the work in transit.[THIS COVERAGE MAY BE PROVIDED BY PURCHASER, INSTEAD OF CONTRACTOR.]

SATISFYING LIMITS UNDER AN UMBRELLA POLICY: If necessary, contractor may satisfy the minimum limits required above for Commercial General Liability, Business Auto Liability, and Employer's Liability coverage under an Umbrella or Excess Liability. The underlying limits may be set at the minimum amounts required by the Umbrella or Excess Liability provided the combined limits meet at least the minimum limit for each required policy. The Umbrella or Excess Liability shall have an Annual Aggregate at a limit not less than two (2) times the highest per occurrence minimum limit required above for any of the required coverages. The County shall be specifically endorsed as an "Additional Insured" on the Umbrella or Excess Liability, unless the

Umbrella or Excess Liability provides continuous coverage to the underlying policies on a complete "Follow-Form" basis without exceptions and stated as such on the Certificate of Insurance. [THIS COVERAGE MAY BE PROVIDED BY PURCHASER, INSTEAD OF CONTRACTOR.]

ADDITIONAL INSURED: To the extent permitted by the insurer, at contractor's option, contractor agrees to either (i) provide the County evidence of its blanket Additional Insured coverage on General Liability, Excess, and Builders Risk, or (ii) endorse the County as an Additional Insured on each insurance policies required to be maintained by contractor, except for Worker's Compensation and Business Auto Liability. The CG 2026 Additional Insured - Designated Person or Organization endorsement, or its equivalent, shall be endorsed to the Commercial General Liability. Other policies, when required, such as for builder's risk or transit insurance, shall provide a standard Additional Insured endorsement offered by the insurer providing coverage with respect to liability arising out of the operations of contractor. Endorsement shall be in accordance with all of the limits, terms and conditions set forth herein.

LOSS PAYEE: Contractor shall agree to endorse the County as an Additional Insured on the Builder's Risk. The Loss Payee endorsement shall read "Palm Beach County Board of County Commissioners." Endorsement shall be in accordance with all of the limits, terms and conditions set forth herein.

ADDITIONAL REQUIREMENTS FOR CERTIFICATES OF INSURANCE

1. Shall clearly identify Palm Beach County, a political subdivision of the State of Florida, its officers, agents and employees as Additional Insured for all required insurance coverages, except Workers Compensation and Business Auto Liability.
2. Shall clearly indicate project name and project number to which it applies.
3. Shall provide notification in the event of cancellation or non-renewal of coverage in accordance with the then-current Acord form.
4. Evidence of renewal coverage must be provided at least five (5) days in advance of any policy that may expire during the term of the construction contract. .
5. Contractor shall deliver original Certificate(s) of Insurance to the following Certificate Holder address:

Palm Beach County
c/o Capital Improvements Division
2633 Vista Parkway
West Palm Beach, FL 33411-5604

DEDUCTIBLES, COINSURANCE PENALTIES, & SELF-INSURED RETENTION: Contractor shall agree to be fully and solely responsible for any costs or expenses as a result of a coverage deductible, coinsurance penalty, or self-insured retention; including any loss not covered because of the operation of such deductible, coinsurance penalty, or self-insured retention.

SUBCONTRACTOR'S INSURANCE: Contractor shall agree to cause each subcontractor employed by contractor to purchase and maintain insurance of the type specified herein, unless contractor's or Purchaser's insurance provides coverage on behalf of the subcontractor. When requested by the County, contractor shall agree to obtain and furnish copies of certificates of insurance evidencing coverage for each subcontractor.

INSURANCE COVERAGE & TABLE. Contractor shall agree to maintain the coverages, endorsements, and limits of liability in accordance with and set forth by the Insurance Coverage & Table below:

INSURANCE COVERAGE & LIMIT TABLE	
TYPE OF COVERAGE	COVERAGE
<u>COMMERCIAL GENERAL LIABILITY:</u> Limit of Liability not less than: Additional Insured endorsement required:	 \$1,000,000 per occurrence Yes
<u>COMPREHENSIVE AUTO LIABILITY:</u> Limit of Liability not less than:	 \$1,000,000 per occurrence
<u>WORKERS COMPENSATION & EMPLOYER'S LIABILITY:</u> Coverage not less than: Employers Liability Limits:	 Statutory \$100/500/100

Schedule 3

Developer (Purchaser) Insurance

1. **Commercial General Liability** Commercial General Liability at a limit of liability not less than \$500,000 Each Occurrence. Coverage shall not contain any endorsement excluding Contractual Liability or Cross Liability unless granted in writing by County's Risk Management Department. Purchaser shall provide this coverage on a primary basis.

2. **Business Automobile Liability** Business Automobile Liability at a limit of liability not less than \$500,000 Each Accident for all owned, non-owned and hired automobiles. In the event Purchaser doesn't own any automobiles, the Business Auto Liability requirement shall be amended allowing Purchaser to agree to maintain only Hired & Non-Owned Auto Liability. This amended requirement may be satisfied by way of endorsement to the Commercial General Liability, or separate Business Auto coverage form. Purchaser shall provide this coverage on a primary basis.

3. **Worker's Compensation Insurance & Employers Liability** Worker's Compensation & Employers Liability in accordance with Florida Statute Chapter 440. Purchaser shall provide this coverage on a primary basis.

4. **Professional Liability** Professional Liability or equivalent Errors & Omissions Liability at a limit of liability not less than \$1,000,000 Each Claim. When a self-insured retention (SIR) or deductible exceeds \$10,000, County reserves the right, but not the obligation, to review and request a copy of Developer's most recent annual report or audited financial statement. For policies written on a "Claims-Made" basis, Purchaser shall maintain a Retroactive Date prior to or equal to the closing date under this Agreement. The Certificate of Insurance providing evidence of the purchase of this coverage shall clearly indicate whether coverage is provided on an "occurrence" or "claims - made" form. If coverage is provided on a "claims - made" form the Certificate of Insurance must also clearly indicate the "retroactive date" of coverage. In the event the policy is canceled, non-renewed, switched to an Occurrence Form, retroactive date advanced, or any other event triggering the right to purchase a Supplement Extended Reporting Period (SERP) during the life of this Agreement, Purchaser shall purchase a SERP with a minimum reporting period not less than 3 years. Purchaser shall provide this coverage on a primary basis.

5. **Additional Insured** Endorse the County as an Additional Insured with a CG 2026 Additional Insured - Designated Person or Organization endorsement, or its equivalent, to the Commercial General Liability. The Additional Insured endorsement shall read:

"Palm Beach County Board of County Commissioners, a Political Subdivision of the State of Florida, its Officers, Employees and Agents."

6. **Waiver of Subrogation** Purchaser hereby waives any and all rights of Subrogation against the County, its officers, employees and agents for each required policy. When required by the insurer, or should a policy condition not permit an insured to enter into a pre-loss agreement to waive subrogation without an endorsement, then Purchaser shall agree to notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any

policy, which a condition to the policy specifically prohibits such an endorsement, or voids coverage should Purchaser enter into such an agreement on a pre-loss basis.

7. **Umbrella or Excess Liability** If necessary, the minimum limits required above may be satisfied for either Commercial General Liability, Business Auto Liability, and Employer's Liability coverage under Umbrella or Excess Liability. The Umbrella or Excess Liability shall have an Aggregate limit not less than the highest "Each Occurrence" limit for either Commercial General Liability, Business Auto Liability, or Employer's Liability. The County shall be specifically endorsed as an "Additional Insured" on the Umbrella or Excess Liability, unless the Certificate of Insurance notes the Umbrella or Excess Liability provides coverage on a "Follow-Form" basis.

Schedule 4

Insurance for Purchaser's Design Professionals

Commercial General Liability Maintain Commercial General Liability Insurance at a limit of liability not less than \$1,000,000 Each Occurrence. Coverage shall not contain any endorsement excluding Contractual Liability or Cross Liability unless granted in writing by County's Risk Management Department.

Business Automobile Liability Maintain Business Automobile Liability Insurance at a limit of liability not less than \$1,000,000 Each Occurrence for all owned, non-owned and hired automobiles. In the event ARCHITECT doesn't own any automobiles, the Business Auto Liability requirement shall be amended allowing ARCHITECT to agree to maintain only Hired & Non-Owned Auto Liability. This amended requirement may be satisfied by way of endorsement to the Commercial General Liability, or separate Business Auto coverage form.

Worker's Compensation Insurance & Employers Liability Maintain Worker's Compensation & Employers Liability Insurance in accordance with Florida Statute Chapter 440 or as otherwise required at the ARCHITECT'S principal place of business. ARCHITECT shall provide this coverage on a primary basis if permissible within the applicable jurisdiction and subject to there being no coverage from other sources.

Professional Liability Maintain Professional Liability Insurance, or equivalent Errors & Omissions Liability Insurance at a limit of liability not less than \$1,000,000 on a claims-made basis with an annual aggregate of not less than \$1,000,000. When a self-insured retention (SIR) or deductible exceeds \$10,000, COUNTY reserves the right, but not the obligation, to review and request a copy of ARCHITECT'S most recent annual report or audited financial statement. For policies written on a "Claims-Made" basis, ARCHITECT shall maintain a Retroactive Date prior to or equal to the closing date under this Agreement. In the event the policy is canceled, non-renewed, switched to an Occurrence Form, retroactive date advanced, or any other event triggering the right to purchase a Supplement Extended Reporting Period (SERP) during the life of this Agreement, ARCHITECT shall purchase a SERP with a minimum reporting period not less than 3 years. The requirement to purchase a SERP shall not relieve the ARCHITECT of the obligation to provide replacement coverage. ARCHITECT shall provide this coverage on a primary basis subject to there being no professional liability coverage available elsewhere. The Architect shall require its consultants, if any, to obtain and maintain professional liability insurance as applicable to their disciplines and services substantially on the terms set forth herein applicable to the Architect.

Additional Insured Endorse the COUNTY as an Additional Insured with a CG 2026 Additional Insured - Designated Person or Organization endorsement, or its equivalent, to the Commercial General Liability. The Additional Insured endorsement shall read:

"Palm Beach County Board of County Commissioners, a Political Subdivision of the State of Florida, its Officers, Employees and Agents."

Umbrella or Excess Liability If necessary, ARCHITECT may satisfy the minimum limits required above for either Commercial General Liability, Business Auto Liability, and Employer's Liability coverage under Umbrella or Excess Liability. The Umbrella or Excess Liability shall have an Aggregate limit not less than the highest "Each Occurrence" limit for either Commercial General Liability, Business Auto Liability, or Employer's Liability. The COUNTY shall be specifically endorsed as an "Additional Insured" on the Umbrella or Excess Liability, unless the Certificate of Insurance notes the Umbrella or Excess Liability provides coverage on a "Follow-Form" basis.

Schedule 5

FORM OF GUARANTEE

(To be provided only until completion of Envelope Construction Improvements)

GUARANTEE FOR TRANSIT VILLAGE, LLC AND (Contractor and Surety Name)
_____.

We the undersigned hereby guarantee that the (PROJECT NAME), which we have contracted for and constructed, has been done in accordance with the contract between Contractor and Transit Village, LLC, and the plans and specifications; that the work constructed will fulfill the requirements of the guaranties included in the construction contract between Contractor and Transit Village, LLC related to the Envelope Construction and the Required ITC Modifications and until delivery of a Certificate of Completion of the Envelope Construction Improvements. We agree to repair or replace or cause to be repaired or replaced, any or all of our work, together with any work of others which may be damaged in so doing, that may prove to be defective in the workmanship or materials within a period of one year from the date of the Certificate of Completion, without any expense whatsoever to said Palm Beach County, ordinary wear and tear and unusual abuse or neglect excepted. When correction work is started, it shall be carried through to completion.

In the event of our failure to acknowledge notice, and commence corrections of defective work within five (5) working days after being notified in writing by Palm Beach County, we, collectively or separately, do hereby authorize Palm Beach County to proceed to have said defects repaired and made good at our expense and we will honor and pay the costs and charges therefore upon demand.

DATED _____ (Date to be filled in as date of Certificate of Completion)

SEAL AND NOTARIAL ACKNOWLEDGMENT OF SURETY

Transit Village, LLC

(Contractor)
(Seal)

By: _____

By: _____
(Signature)

Title:

(Surety) (Seal)

By: _____
(Signature)

Collateral Assignment:

Transit Village, LLC hereby collaterally and non-exclusively assigns this guarantee to Palm Beach County until one year from the date of the Certificate of Completion of the above named work. This collateral assignment shall not be deemed to prohibit Transit Village, LLC from enforcing the guarantee during the period while the collateral assignment is effective.

TRANSIT VILLAGE, LLC

By: _____

Schedule 6

CONSTRUCTION GENERAL CONDITIONS

GC 1 AUTHORIZED REPRESENTATIVES

Before starting work, Purchaser shall designate an authorized representative(s) to represent and act for Purchaser and shall inform County in writing, of the name and address of such representative together with a clear definition of the scope of his authority to represent and act for Purchaser and shall specify any and all limitations of such authority. Purchaser shall keep Owner informed of any subsequent changes in the foregoing. Such representative(s) shall be present or duly represented at the site of work at all times when work is actually in progress. Nothing contained herein shall be construed as modifying the Purchaser's duty of supervision and fiscal management as provided for by Florida law. The County Project Manager shall be the designated authorized representative(s) who will have the limited authority to act for the County as delineated between the County and the Purchaser in the Agreement. The County Project Manager will be a member of the Facilities Development and Operations Department. Representatives of Palm Tran or any other County department are not authorized County representatives for the purposes of this Agreement.

GC 2 NOTICES

Any notices required to be provided to the County shall be in writing at the addresses shown or provided pursuant to the terms of the Agreement.

GC 3 LAWS AND REGULATIONS

The Purchaser and its employees and representatives shall at all times comply with all applicable laws, codes, ordinances, statutes, rules or regulations in effect at the time work is performed

GC 4 STANDARDS AND CODES

Wherever references are made in the Construction Plan to standards or codes in accordance with which work is to be performed or tested, the edition or revision of the standards or codes current on the date that the work is authorized to be performed shall apply, unless otherwise expressly set forth. Unless otherwise specified, reference to such standards or codes is solely for implementation of the technical portions of such standards and codes. Purchaser acknowledges that compliance with code requirements represents minimum standards for construction and is not evidence that the work has been completed in accordance with the Construction Plan or the Purchaser's obligations pursuant to this Agreement.

GC 5 COMMERCIAL ACTIVITIES

Purchaser shall not establish any commercial activity or issue concessions or permits of any kind to third parties for establishing commercial activities on the ITC Property. Purchaser shall not allow its employees to engage in any commercial activities on the ITC Property.

GC 6 COOPERATION WITH OTHERS

County and other contractors and subcontractors may be working at the ITC during the performance of this Agreement. Purchaser shall fully cooperate with the County Project Manager and its contractors to avoid any delay or hindrance of their work. In the event that the County's work

requires that certain facilities be used concurrently by Purchaser and other parties the County shall be required to use good faith efforts to coordinate such activities with the Purchaser. To the extent that the County and Contractor cannot reach agreement on a plan for the County's contractors and the Purchaser to work concurrently, the plan for the County's work shall take precedence over the Construction Plan, provided that the County shall have exercised good faith so as avoid scheduling any such concurrent work. Any change required in order to schedule, permit or prioritize such concurrent work shall be deemed an amendment to the Construction Plan.

GC 7 Intentionally Omitted

GC 8 EXAMINATION OF PURCHASER'S RECORDS

The County shall, until the expiration of four years after completion of the Envelope Construction, have access to, and the right to examine any directly pertinent books and records of the Purchaser involving construction records and payments to Purchaser's Contractors and subcontractors for the Envelope Construction, and to make copies, excerpts and transcriptions thereof, provided that any such financial records shall be kept confidential and not be public records to the extent permitted by law. Purchase acknowledges that the documents and records required for the release of Financial Assurances will be public records.

GC 9 COORDINATION AND CORRELATION OF DRAWINGS AND SPECIFICATIONS

The Purchaser shall cause Contractor, to compare any applicable phasing, demolition, architectural, structural, civil and site drawings and specifications relating to the Required ITC Modifications and the Envelope Construction and to compare and review all general and specific details on the drawings and that all conflicts, discrepancies, errors and omissions, which are within the commonly accepted knowledge base of the Contractor to carry out the work involved in the Required ITC Modifications and the Envelope Construction and/or to cause such conflict, discrepancies, errors and omissions, if any, to be either corrected or clarified prior to commencement of construction.

GC 10 PERMIT DRAWINGS AND SPECIFICATIONS

Prior to commencement of construction, the Purchaser shall provide the County with two (2) complete sets of the permitted drawings. The Purchaser shall perform work only in accordance with the permitted drawings and any subsequent revisions thereto. Purchaser shall maintain at the site of the work a copy of the permitted drawings and specifications kept current with all changes and modifications and shall at all times give County, as well as all trades performing at the project, access thereto.

GC 11 WARRANTY

All materials and equipment incorporated into any structural components for the Envelope Construction shall be new and, where not specified, of the standard quality for their intended use, and all workmanship shall be in accordance with the Construction Plan. Unless otherwise provided in the drawings and specifications included in the Construction Plan, Purchaser warrants all such equipment, materials, and labor furnished or performed under this Agreement for the Required ITC Modifications and Envelope Construction, against defects in design, materials and workmanship for a period of twelve months (unless longer guarantees or warranties are provided for elsewhere in the Construction Plan in which case the longer periods of time shall prevail) from and after substantial completion work under the Agreement. This warranty shall be regardless of whether the same were

furnished or performed by Purchaser or by any of its Contractors. In the event that the County assumes partial utilization of portions of the work prior to completion of all construction, the warranty period shall extend for twelve months from substantial completion of the last portion of the construction.

Upon receipt of written notice from County of any defect in any such equipment, materials, or labor during the applicable warranty period, due to defective design, materials or workmanship, the affected item or parts thereof shall be redesigned, repaired or replaced by Purchaser at a time and in a manner acceptable to County.

Purchaser warrants such redesigned, repaired or replaced work against defective design, materials and workmanship for a period of twelve months from and after the date of acceptance thereof. Should Purchaser fail to promptly make the necessary redesign, repair, replacement and tests, County may perform or cause to be performed the same at Purchaser's expense.

Purchaser shall perform such tests as County may require to verify that such redesign, repairs and replacements comply with the requirements of this Agreement. All costs incidental to such redesign, repair, replacement and testing, including the removal, replacement and reinstallation of equipment and materials necessary to gain access, shall be borne exclusively by Purchaser.

Purchaser and its surety or sureties shall be liable for the satisfaction and full performance of the warranties as set forth herein and any damage to other parts of the work caused by the Purchaser's failure to perform pursuant to this general condition.

The Purchaser shall commence work to remedy or replace the defective, deficient work for the Required ITC Modifications or the Envelope Construction within five (5) calendar days after receiving written (including transmittals by FAX) notice from the County. If the Purchaser fails to remedy or remove or replace that work or material which has been found to be defective, then the County may remedy or replace the defective or deficient work at the Purchaser's expense; provided, however, all repairs to natural gas, telephone, radio, computer security, water, electric, air conditioning services and all emergency services shall be commenced within twelve (12) hours of notification, or by 7:00 a.m. whichever is earlier, and Purchaser shall complete the repairs in an expeditious manner befitting the nature of the deficiency. Should the County remedy or replace the defective or deficient work as provided above, the Purchaser shall immediately pay the expenses incurred by the County for remedying the defects. If the County is not paid within ten (10) calendar days, the County may pursue any and all legal remedies it may have against the Purchaser as provided in the Agreement.

The Purchaser is required to provide a designated telephone number for warranty related emergencies which occur outside the normal workday. The Purchaser is solely responsible for ensuring that all warranty work is completed in the manner described above. Upon notice to the County, the Purchaser may designate a person(s) to be the point of contact for notices regarding warranty items, but such designation shall not absolve the Purchaser of his responsibility.

GC 12 DIFFERING SITE CONDITIONS

Purchaser shall notify County of any condition, within 24 hours of discovery, in writing and before proceeding with any work which Purchaser believes constitutes a differing site condition with respect to: (1) subsurface or latent physical conditions at the jobsite differing materially from those indicated in this contract; or (2) unknown physical conditions at the jobsite, of an unusual nature,

differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Agreement.

Purchaser will, as promptly as practicable, investigate such conditions and if it determines that such conditions do materially so differ will issue a written modification to the Purchaser's work which is acceptable to the County.

GC 13 ACCESS TO WORK AREAS

County Project Manager shall, at all reasonable times, for the purpose of determining compliance with Agreement, have access to all places where equipment or materials are being manufactured, produced, or fabricated for use in the Envelope Construction. Purchaser's access to the site and storage areas shall be as provided in the Construction Plan and include use by the County, public and visitors as noted. During the Commercial Construction, the County Project Manager shall have access to the Property as provided in the Commercial Construction Plan. All traffic authorized to enter the site by Purchaser shall be experienced in the route or guided by personnel experienced in the route. The Purchaser is responsible for immediate cleanup of any debris deposited along the access route as a result of its construction traffic.

GC 14 PURCHASER INGRESS AND EGRESS

Purchaser's access to the work area will be permitted only through approaches designated on the Construction Plan, and then only in such manner that Purchaser's traffic will not interfere with the continuous operation of the ITC. Purchaser personnel are not to enter into any areas of the jobsite other than work areas and areas of designated access.

GC 15 PRECONSTRUCTION CONFERENCE

Prior to commencement of construction but after the issuance of the first Building Permit, a pre-construction conference will be arranged by the Purchaser and the County Agreement Manager at a mutually convenient time. The County will secure the attendance at said conference of the County Agreement Manager and/or Project Manager. The purpose of said conference is to establish procedures related to the implementation of the Construction Plan, smooth progress of the Required ITC Modifications and Envelope Construction and for processing and distribution of all documents and correspondence related to the Agreement.

GC 16 DELIVERY, UNLOADING AND STORAGE

Purchaser shall, at its expense, receive all materials, plant and equipment required for the Required ITC Modifications and Envelope Construction. The only on-site storage of materials on the ITC Property will be in areas designated on the Construction Plan.

GC 17 PURCHASER'S WORK AREA

Purchaser shall identify on the Construction Plan its office, shops, storage, assembly and equipment and vehicle parking areas, if any, that will be located on the ITC Property. .

GC 18 PURCHASER'S PLANT, EQUIPMENT AND FACILITIES

Purchaser shall provide and use only such construction plant and equipment as are capable of producing the quality and quantity of work and materials required by the Agreement for the

Required ITC Modifications and Envelope Construction. Before proceeding with the erection on the ITC Property of any of the Required ITC Modifications or the Envelope Construction, including but not limited to temporary structures, machinery, equipment, offices and warehouses, Purchaser shall furnish County such information and drawings relative to such equipment, plant, facilities, etc as identified in the Construction Plan.

Upon the County's determination that Purchaser is operating unsatisfactory plant, equipment or facilities, with respect to the Envelope Construction, the County may provide a written notice to Purchaser specifying the details of same and Purchaser shall direct Contractor to discontinue operation of any such unsatisfactory plant, equipment or facilities and shall either modify or remove the unsatisfactory items from the site.

GC 19 PURCHASER-FURNISHED MATERIALS, EQUIPMENT AND WORKMANSHIP WITH RESPECT TO THE REQUIRED ITC MODIFICATIONS AND ENVELOPE CONSTRUCTION

Only new, unused items of recent manufacture, of designated quality, but in no event less than the standard quality for the improvements, free from defects, will be accepted for the Required ITC Modifications and structural elements of the Envelope Construction. Rejected items shall be removed immediately from the work and replaced with items of specified quality. Failure by County to order removal of rejected materials and equipment shall not relieve Purchaser from responsibility for quality of the materials supplied nor from any other obligation under this Agreement.

Purchaser shall cause its Contractor to check architectural and structural clearances for accessibility of equipment and mechanical and electrical systems. No allowance of any kind will be made for Purchaser's negligence to foresee means of installing equipment into position inside structures.

No work defective in construction or quality, or deficient in meeting any requirement of the contract drawings and specifications will be acceptable with regard to the Required ITC Modifications and Envelope Construction regardless of County's failure to discover or to point out defects or deficiencies during construction of the Required ITC Modifications and Envelope Construction; nor will the presence of field representatives at the work or the satisfaction of the Purchaser's work meeting applicable code requirements relieve Purchaser from responsibility for the quality and progress of work for the Required ITC Modifications and Envelope Construction as required by the Agreement. The County shall notify the Purchaser of defective or unacceptable work for the Required ITC Modifications or the Envelope Construction if the County discovers such. Defective work revealed within the time required by warranties (whether expressed or implied) shall be remedied in accordance with the GENERAL CONDITIONS Section entitled, WARRANTY.

Purchaser shall waive "common practice" and "common usage" as construction criteria wherever details and specifications or governing codes and ordinances require greater quantity or better quality than common practices and common usage would require for the Required ITC Modifications and Envelope Construction. If an item is found to be unavailable, Purchaser shall notify County immediately of recommended substitute(s) to permit County's approval of a proposed substitute for the Required ITC Modifications and Envelope Construction.

County will exercise sole authority for determining conformance of workmanship, materials, equipment and systems with the specific requirements of the Construction Plan for the Required

ITC Modifications and Envelope Construction which require approval of the County. This function by County will apply both to approvals for the Contract as initially signed, and to approvals for changes to Construction Plan for the Required ITC Modifications and Envelope Construction by modifications during progress of the work. Reference to manufacturers' names, brands and models is to establish the type and quality desired. Substitutions may be permitted unless specifically noted otherwise on the Construction Plan.

When materials, equipment, or systems for the Required ITC Modifications and Envelope Construction are specified by performance only, without reference to specific manufacturer's brands or models, Purchaser shall submit its own choice for County's review and approval, supported by sufficient evidence of conformity with the Agreement.

This General Condition will apply to the Commercial Construction unless a waiver is included in the Commercial Construction Plan as approved by the County.

**GC 20 SUBSTITUTIONS WITH RESPECT TO THE REQUIRED ITC
MODIFICATIONS AND ENVELOPE CONSTRUCTION**

Prior to proposing any substitute item for the Required ITC Modifications or Envelope Construction, Purchaser shall satisfy itself that the item proposed is, in fact, equal or better to that specified, that such item will fit into the space allocated, that such item affords comparable ease of operation, maintenance and service, that the appearance, longevity and suitability for the climate are comparable, and that by reason of cost savings, reduced construction time, or similar demonstrable benefit, the substitution of such item will be in County's and Purchaser's interest.

The burden of proof of equality of a proposed substitution for a specified item shall be upon Purchaser. Purchaser shall support its request with sufficient test data and other means to permit County to make a fair and equitable decision on the merits of the proposal. Purchaser shall submit drawings, samples, data and certificates and additional information as may be required by the County for proposed substitute items as required by GC 25, PURCHASER FURNISHED DRAWINGS, DATA & SAMPLES.

Any item by a manufacturer for the Required ITC Modifications or Envelope Construction other than those specified or of brand name or model number or of generic species other than those specified will be considered a substitution. County will be the sole judge of whether or not the substitution is equal in quality, utility and economy to that specified. Purchaser shall allow an additional 15 days for County's review of substitution. All requests for substitutions with submittal data must be made at least fifty (50) days prior to the time Purchaser must order, purchase or release for manufacture or fabrication. Materials and methods proposed as substitutions for specified items shall be supported by certification of their approval for use by all governmental agencies having jurisdiction over use of specific material or method. Substitutions may not be permitted in those instances where the products are designed to match artistic design, specific function or economy of maintenance. Approval of a substitution shall not relieve Purchaser from responsibility for compliance with all requirements of the Agreement. Purchaser shall coordinate the change with its Contractor(s) caused by any substitutions.

If County rejects Purchaser's substitute item on the first submittal, Purchaser may make additional requests for substitution in the same category with the Purchaser bearing all County costs associated with reviewing subsequent requests.

This General Condition will apply to the Commercial Construction unless a waiver is included in the Commercial Construction Plan as approved by the County.

GC 21 Intentionally Omitted

GC 22 Intentionally Omitted

GC 23 Intentionally Omitted

GC 24 FIELD LAYOUT OF WORK

All work under this Contract for the Required ITC Modifications shall be constructed in accordance with the lines and grades shown on the Construction Plan.

All survey work for construction control purposes shall be made by a land surveyor registered in the State of Florida with demonstrated experience in the project area. The Purchaser shall establish all base lines for the location of the principal component parts of the work together with permanent bench marks and temporary bench marks adjacent to the work. Based upon the information provided by the drawings, the Purchaser shall develop and make all detail surveys necessary for construction for the Required ITC Modifications and Envelope Construction including establishment or construction of grid coordinates as shown on the drawings, location of property boundaries, stakes for all working points, lines and elevations.

The Purchaser shall have the responsibility to carefully preserve all bench marks, reference points and stakes. In case of destruction thereof by the Purchaser resulting from its negligence, or for any other reason, Purchaser shall be held liable for any expense and damage resulting therefrom and shall be responsible for any mistakes that may be caused by the unnecessary loss or disturbance of such bench marks, reference points and stakes. Existing or new control points, property markers, and monuments that will be established or are destroyed during the normal course of construction shall be re-established by the Purchaser, and all reference ties recorded therefore shall be furnished to the County. All computations necessary to establish the exact position of the work shall be made and preserved by the Purchaser.

This General Condition will apply to the Commercial Construction unless a waiver is included in the Commercial Construction Plan as approved by the County.

GC 25 PURCHASER FURNISHED DRAWINGS, DATA AND SAMPLES

Review and permission to proceed by County does not constitute acceptance or approval of design details, calculations, analyses, test methods, certificates or materials developed or selected by the Purchaser and does not relieve Purchaser from full compliance with Agreement obligations. Drawings, samples, catalogues, data and certificates required to be submitted to the County for review, shall be submitted attached to forms agreed to by the Purchaser and County at the Pre-Construction Conference.

Transmittals from the Purchaser to the County shall be numbered sequentially and the submittal number shall be referenced. Submittal drawings (shop, erection or setting diagrams) and schedules, required for work of various trades, shall be checked before submission by technically qualified employees of Purchaser or its Contractor for accuracy, completeness and compliance with contract requirements. These drawings and schedules shall be stamped and signed by Purchaser or its Contractor certifying to such check. The certification stamp shall read as follows:

"I certify that I have checked this submittal for accuracy, completeness and compliance with the Construction Plan, and it has been coordinated with all other submittals and Contract Documents."

SIGN DATE

"XYZ Construction Company"

A. Drawings

Where drawings are required for (a) fabrication of Purchaser's or its Contractor's furnished equipment; (b) installing Purchaser or its Contractor's furnished material or equipment; or (c) planning and performance of the work under Agreement; such drawings shall be originally generated and submitted to County by and at the expense of the Purchaser before fabrication, installation or performance is commenced. Each submittal shall be made not less than twenty (20) calendar days prior to the time that the drawings are required in accordance with the schedule. Allow at least 20 calendar days for review by County. Such drawings shall include, but not be limited to, matchmarks, erection diagrams and other details, such as field connections for proper installation, erection of the equipment, and performance of the work.

For drawings greater in size than 11" x 17", one reproducible and four copies shall be submitted to the County by and at the expense of the Purchaser. The County will be the sole judge of the adequacy of the quality of the reproducible and prints and may reject reproducibles and/or prints on the basis of quality alone. Such drawings will not be folded, but will be transmitted in mailer rolls manufactured expressly for that purpose. The reproducible with the County's review comments will be returned to the Purchaser. A reproducible copy of drawings equal to or less than 11" x 17" is not necessary, but five copies of such unfolded drawings must be transmitted to the County.

If drawings show variations from the contract requirements, the Purchaser shall describe such variations in writing, separate from the drawings, at the time of submission. If the County approves any such variation(s), the Purchaser will issue an appropriate contract modification, except that, if the variation is minor and does not involve a change in price or in time of performance, a modification need not be issued.

Drawings of a specific piece of equipment, if applicable, shall identify components with the manufacturer's part number or reference drawing clearly indicated. If reference drawing numbers are used, the review date of such drawings shall be included. Drawings shall indicate design dimensions, maximum and minimum allowable operating tolerances on all major wear fits, i.e. - rotating, reciprocating or intermittent sliding fits between shafts or stems and seals, guides and pivot pins. The sequence of submission of all drawings shall be such that all information is available for reviewing each drawing when it is received.

All drawings submitted by the Purchaser shall be certified and dated by the Purchaser or its Contractor on the face of each drawing to be correct, accurate and shall be furnished in accordance with requirements of the specifications. County will conduct a review of Purchaser's drawings and a drawing marked with one of the following review comments will be returned to the Purchaser.

- Code 1: No exceptions taken.
- Code 2: Make corrections noted. No re-submittal.
- Code 3: Make corrections noted. Resubmit.
- Code 4: Rejected.
- Code 5: Not required for review.

The Purchaser must review and if appropriate, incorporate the changes indicated, resubmit and obtain a Code 1,2 or 5 notation before release for shipment can be granted.

B. Samples

Samples are physical examples which illustrate materials, equipment or workmanship and establish standards by which the work will be judged. Samples of all items of related systems (i.e. adjacent surfaces requiring similar colors but manufactured of different materials) must be submitted in the same time frame before the approval process can begin.

Where samples are required, they shall be submitted by and at the expense of the Purchaser. Such submittal shall be made not less than twenty (20) calendar days prior to the time that the materials represented by such samples need to be ordered for incorporation into any work in accordance with the schedule. Materials represented by such samples shall not be manufactured, delivered to the site or incorporated into any work without such review. Each sample shall bear a label showing the Purchaser's name, date submitted, project name, name of the item, manufacturer's name, brand name, model number, supplier's name, and reference to the appropriate drawing, technical specification section and paragraph number, all as applicable.

Samples which have been reviewed may, at County's option, be returned to the Purchaser for incorporation into the work.

C. Catalogues, Data and Certificates

Where catalogues, data or certificates are required, five (5) copies of each shall be submitted by and at the expense of the Purchaser. Such submittal shall be made not less than twenty (20) calendar days prior to the time that the materials represented by such catalogues, data or certificates must be ordered for incorporation into any work in accordance with the Construction Plan. Material represented by such shall not be fabricated, delivered to the site or incorporated into any work without such review.

Certificates shall clearly identify the material being certified and shall include but not be limited to providing the following information: Purchaser's name, project name, name of the item, manufacturer's name, and reference to the appropriate drawing, technical specification section and paragraph number all as applicable. All catalogues, data and certificates submitted by the Purchaser shall be certified and dated by the Purchaser on the face of each catalogue, data and certificate to be correct and shall be furnished in accordance with these requirements and the requirements of the Technical Specification, on forms provided by the County. County will conduct a review of Purchaser's catalogues, data, and certificates and one copy marked with the review comments listed in paragraph A, above, will be returned to the Purchaser.

This General Condition will apply to the Commercial Construction unless a waiver is included in the Commercial Construction Plan as approved by the County.

The Envelope Construction and Required ITC Modifications shall be monitored by a detailed Critical Path Method scheduling system. The Purchaser shall, at least fourteen (14) calendar days prior to the pre-construction conference, submit to County its Construction Plan and COOP, which shall contain a bar chart indicating the activities for the Required ITC Modifications and the Envelope Construction. This Construction Plan and COOP must be accepted by the County prior to commencement of construction.

The CPM schedule and all reports shall be prepared with computer software by Microsoft Project, Primavera Project Planner, or Primavera SureTrak.

The construction schedule shall be complete in all respects, covering, in addition to activities and interfaces with other Contractors at the site of work, offsite activities such as design, fabrication, an allowance for weather delays, submittals, procurement and jobsite delivery of Purchaser's or its Contractor's furnished material and equipment. The schedule shall be a Critical Path Method (CPM) type network drawn to a time scale using arrow or precedence type diagramming.

The construction schedule shall include the following:

1. Brief description of each activity.
2. All submittals, samples, approvals, fabrication, and deliveries for equipment and materials, including float.
3. Activities showing scheduled start and finish, late start and finish, and float.
4. Relations between activities.
5. Duration of activities.
6. Contractual and other major milestones including phasing.
7. Schedule activities to include labor and material.
8. All construction activities assumed to be undertaken outside of daylight hours on the weekdays.
9. All activities identified on the Construction Plan
10. All activities identified on the Personalty Plan
11. All activities required by County or SFRTA (if any) in the COOP.

The detailed CPM schedule submittal shall include five (5) color copies of the following:

- Time Scaled Network Diagram.
- Bar Chart in the following formats:
 - Sorted by activity
 - Sorted by total float
 - Sorted by early start
- Precedence and Successor report
- Narrative report.
- Computer diskette. (One copy)

Submittals shall be organized under Standard CSI format.

The detailed CPM Schedule for the Envelope Construction and the Required ITC Modifications shall be updated no less frequently than monthly and submitted along with an updated computer diskette after having met with Purchaser and Architect/Engineer of Record to review and verify:

Actual start and finish dates for completed activities.

Remaining duration required to complete each activity started, scheduled to start, but not completed.

Logic and time, for change orders that are to be incorporated into the diagram and computer produced schedules.

Percentage for completed and partially completed activities.

Revisions to the schedule for the Envelope Construction and the Required ITC Modifications must be submitted to the County. To the extent that the County is responsible for a delay to the Purchaser for the start or completion of any activity that occur at a time different from the last schedule provided to the County, the Purchaser shall be relieved of any of the provisions of this Agreement relating to Purchaser caused delay.

The monthly report shall include a written narrative and update.

This General Condition will apply to the Commercial Construction unless a waiver is included in the Commercial Construction Plan as approved by the County.

GC 27 RESPONSIBILITY FOR WORK SECURITY

Purchaser shall, at its expense, at all times cause itself or its Contractor to be responsible for the conduct of all operations under the Agreement for the Envelope Construction and the Required ITC Modifications in a manner to avoid or minimize the risk of loss, theft or damage by vandalism, sabotage or other means to any property. Purchaser shall promptly take all reasonable precautions which are necessary and adequate against any conditions for the Envelope Construction and the Required ITC Modifications which involve a risk of loss, theft or damage to its property, to assure that it is minimized. Purchaser shall, or cause its Contractor to inspect all its work, materials, equipment and facilities to discover and determine any such conditions and shall be solely responsible for discovery, determination and correction of any such condition.

This General Condition will apply to the Commercial Construction unless a waiver is included in the Commercial Construction Plan as approved by the County.

GC 28 PROTECTION OF WORK IN PROGRESS, MATERIALS AND EQUIPMENT

Purchaser shall be responsible for and shall bear any and all risk of loss or damage to work in progress, all materials delivered to the site, and all materials and equipment involved in the work for the Envelope Construction and the Required ITC Modifications. Permanent openings or thoroughfares for the introduction of work and materials to the structure and construction site shall be protected so that upon completion, the Required ITC Modifications will be delivered to the County in proper, whole and unblemished condition.

This General Condition will apply to the Commercial Construction unless a waiver is included in the Commercial Construction Plan as approved by the County.

GC 29 PROTECTION OF EXISTING PROPERTY

Purchaser shall so conduct its operations as not to damage, close, or obstruct any utility installation, highway, road or other property until permits therefore have been obtained. If facilities are closed, obstructed, damaged or rendered unsafe by Purchaser's operations, Purchaser shall, at its expense, make such repairs and provide temporary guards, lights and other signals as necessary or required for safety and as will be acceptable to County.

Unless otherwise specifically provided in the Construction Plan, Purchaser shall conduct its operation so as not to damage any existing buildings or structures. The Purchaser shall verify that means and methods of construction used inside, adjacent to, under or over existing buildings will not cause damage. The Purchaser shall provide protection methods which are acceptable to the County.

Unless otherwise specifically provided in the Construction Plan, Purchaser shall not do any work that would disrupt or otherwise interfere with the operation of any pipeline, telephone, electric, radio, gas, transmission line, ditch or other structure, nor enter upon lands in their natural state until approved by County. Thereafter, and before it begins such work, Purchaser shall give due notice to County of its intention to start such work.

Except as shown on the Construction Plan, Purchaser shall preserve and protect all cultivated and planted areas and vegetation such as trees, plants, shrubs and grass on or adjacent to the premises as identified on the Personalty Plan. Purchaser shall be responsible for damage to any such areas and vegetation and for unauthorized cutting of trees and vegetation, including, without limitation, damage arising from the performance of its work through operation of equipment or stockpiling of materials. All cost in connection with any repairs or restoration necessary or required by reason of any such damage or unauthorized cutting shall be borne by Purchaser.

This General Condition will apply to the Commercial Construction unless a waiver is included in the Commercial Construction Plan as approved by the County.

GC 30 LABOR

Purchaser shall employ only competent and skilled personnel to perform the work.

GC 31 SAFETY & PROTECTION OF PERSONS & PROPERTY

RESPONSIBILITY FOR SAFETY AND HEALTH

The Purchaser shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the work to be performed under the terms of the Agreement. The Purchaser shall take all precautions and follow all procedures for the safety of, and shall provide all protection to prevent injury to, all persons involved in any way in the work and all other persons, including, without limitation, County employees, agents, guests, invitees and licensees relating to their jobs and the construction work. The Purchaser shall set forth in writing its safety precautions and programs in connection with the work for the Envelope Construction and the Required ITC Modifications and submit the same to the County in the Construction Plan. The County may, but

shall not be obligated to, make suggestions and recommendations to the Purchaser with respect thereto.

All work, whether performed by the Purchaser, its Contractor(s), and all equipment, appliance, machinery, materials, tools and like items incorporated or used in the work, shall be in compliance with, and conform to:

A. all applicable laws, ordinances, rules, regulations and orders of any public, quasi-public or other authority relating to the safety of persons and their protection against injury, specifically including, but in no event limited to, the Federal Occupational Safety and Health Act of 1970, as amended and all State, Local, City and County rules and regulations now or hereafter in effect; and

B. the Required ITC Modifications, all codes, rules, regulations and requirements of the County and its insurance carriers relating thereto. In the event of conflicting requirements, the more stringent shall govern.

Should the Purchaser fail to provide a safe area for the performance of the work for the Envelope Construction and the Required ITC Modifications or any portion thereof which in the County's sole discretion impacts the ITC, the County shall have the right, but not the obligation, to direct the Purchaser to suspend work in the unsafe area until the Purchaser remedies such condition.

The Purchaser shall provide, or cause to be provided, to each worker on the Job Site the proper safety equipment for the duties being performed by that worker and will not permit any worker on the Job Site who fails or refuses to use the same.

In accordance with the terms of the Agreement, the Purchaser shall defend, indemnify and hold the County, harmless from and against any and all liability, public or private, penalties, contractual or otherwise, losses, damages, costs, attorneys' fees, expenses, causes of action, claims or judgments resulting either in whole or in part from any failure of the Purchaser, its Contractor(s) for its failure to comply with the provisions of this General Condition.

SURFACE AND SUBSURFACE WATER

Surface or subsurface water or other fluid shall not be permitted to accumulate in excavations or under or in the structures. Should such conditions develop or be encountered, the water or other fluid shall be controlled and suitably disposed of by means of temporary pumps, piping, drainage lines and ditches, dams or other methods approved by the County in writing. The proposed location and coordination of temporary channels and conduits conducting accumulated water from the Job Site shall be permitted by the proper regulatory agency and submitted to the County for its prior written approval.

PROTECTION OF WORK AND PROPERTY; RESPONSIBILITY FOR LOSS

The Purchaser shall, throughout the Envelope Construction, maintain adequate and continuous protection of all completed work and temporary facilities against loss or damage from whatever cause, shall protect the property of the County and third parties from loss or damage from whatever cause arising out of the construction of the Envelope Construction and shall comply with the requirements of the County and with all applicable laws, codes, rules and regulations with respect to the prevention of loss or damage to the property. Prior to Envelope Construction Completion, the County may, but shall not be required to, make periodic patrols of the ITC Property and, upon

reasonable notice to the Purchaser, the Property as a part of its normal safety, loss control and security programs. In such event, however, the Purchaser shall not be relieved of its aforesaid responsibilities and the County shall not assume, nor shall it be deemed to have assumed, any responsibility otherwise imposed upon the Purchaser.

The Purchaser shall rebuild, repair, restore and make good all losses of, and injuries or damages to the ITC Property or any portion thereof resulting from its breach of its obligation to protect the property of the County and third parties as provided herein from loss or damage from whatever cause arising out of the construction of the Envelope Construction or its breach of its obligation to comply with all applicable laws, codes, rules and regulations.

EMERGENCIES

In any emergency affecting the safety of persons or property, or in the event of a claimed violation of any federal or state safety or health law or regulation, arising out of or in any way connected with the work or its performance, the Purchaser shall act immediately to prevent threatened damage, injury or loss to remedy said violation, whichever is applicable. Failure by Purchaser to take necessary emergency action shall entitle the County to take whatever action it deems necessary.

The Purchaser will be responsible for any and all costs or expenses of whatever nature, including attorneys' fees, paid or incurred by the County in taking such emergency action arising out of or in any way connected with Purchaser's work or Purchaser's performance.

This General Condition will apply to the Commercial Construction unless a waiver is included in the Commercial Construction Plan as approved by the County.

GC 32 PROJECT SITE PROTECTION

Purchaser, at its expense, shall maintain such protection as provided in General Conditions Section (GC 31) titled SAFETY & PROTECTION OF PERSONS & PROPERTY in a satisfactory condition until removal is appropriate. Purchaser, at its expense, shall make all necessary repairs to property damaged by construction operations. Repairs shall be made in a manner satisfactory to County.

This General Condition will apply to the Commercial Construction unless a waiver is included in the Commercial Construction Plan as approved by the County.

GC 33 FIRE PREVENTION

Purchaser shall, at its expense, conform to all Federal, State, and local laws and regulations pertaining to burning, fire prevention and control within or adjacent to the Envelope Construction and the Required ITC Modifications. Necessary precautions to avoid and eliminate fire hazards shall be the responsibility of the Purchaser. This includes keeping the Contract work area clear of all trash at all times.

All tarpaulins used for any purpose during construction of any work shall be made of material resistant to fire, water and weather and shall bear UL labels. Lighting of any fires on premises is strictly forbidden. Purchaser shall provide portable fire extinguishers properly labeled, located and compatible with the hazard of each work area and shall instruct its personnel in their use. Wherever welding and burning are conducted, inflammable materials shall be protected and a fire watch shall be provided by Purchaser to be present during the burning and welding operation to ensure that

protective measures are taken and that no fires result from such operation. The fire watch shall have fire extinguisher equipment readily available and know-how for proper use.

This General Condition will apply to the Commercial Construction unless a waiver is included in the Commercial Construction Plan as approved by the County.

GC 34 ILLUMINATION

When any work is performed at night or where daylight is shut off or obscured, Purchaser shall, at its expense, provide artificial light sufficient to permit work to be carried on efficiently, satisfactorily and safely, and to protect the continued operation of the ITC. All wiring for electric light and power shall be installed and maintained in a first-class manner, securely fastened in place at all points, and shall be kept as far as possible from telephone wires, signal wires, and wires used for firing blasts.

This General Condition will apply to the Commercial Construction unless a waiver is included in the Commercial Construction Plan as approved by the County.

GC 35 BEST MANAGEMENT PRACTICES

Purchaser's Contractor shall be responsible for evaluating the site before construction is initiated to determine if any site conditions may pose particular problems for the handling of any Regulated Substances. For example, handling Regulated Substances in the proximity of water bodies or wetlands may be improper.

Regulated Substances are substances that may cause significant harm to human health and the environment (including surface and groundwater). The Unified Land Development Code (ULDA) Section 9.3, Wellfield Protection, regulates the storage, handling, use and production of Regulated Substances within wellfield zones which may impair present and future drinking water suppliers.

If any regulated substances are stored on the construction site, they shall be stored in a location and manner which will minimize any possible risk of release to the environment. Any storage container of 55 gallons, or 440 pounds, or more containing Regulated Substances shall have constructed below it an impervious containment system constructed of materials of sufficient thickness, density and composition that will prevent the discharge to the land, groundwaters, or surface waters, of any pollutant which may emanate from said storage container or containers. Each containment system shall be able to contain 150% of the contents of all storage containers above the containment system.

Purchaser shall familiarize itself with the manufacturer's safety data sheet supplied with each material containing a Regulated Substance and shall be familiar with procedures required to contain and clean up any releases of the Regulated Substance. Any tools or equipment necessary to accomplish same shall be available in case of a release.

Upon completion of construction, all unused and waste Regulated Substances and containment systems shall be removed from the construction site and shall be disposed of in a proper manner as prescribed by law.

GC 36 DUST CONTROL

The Purchaser, until completion of the Envelope Construction and the Required ITC Modifications and thereafter during the Commercial Construction, shall, at its expense, maintain all excavations embankments, haul roads, access roads, plant sites, waste disposal areas, borrow areas, and all other work areas free from dust. Industry-accepted methods of dust control suitable for the area involved will be permitted.

GC 37 WATER POLLUTION

Purchaser's Contractor, until completion of the Envelope Construction and the Required ITC Modifications and thereafter during the Commercial Construction, shall, at its expense, provide suitable facilities to prevent the introduction of any substance or materials into any stream, river, lake or other body of water which may pollute the water or constitute substances or materials deleterious to fish and wildlife.

GC 38 AIR POLLUTION

The Purchaser, until completion of the Envelope Construction and the Required ITC Modifications and thereafter during the Commercial Construction, shall, at its expense, so perform its work as not to discharge into the atmosphere from any source whatever smoke, dust, or other air contaminants in violation of the laws, rules and regulations of all Federal, State and local air and water pollution requirements including, but not limited to: Registering with the Palm Beach County Health Department, Air Pollution Board, any equipment requiring operating permits by said Board; Adhering to all Palm Beach County Air Pollution Board Regulations.

GC 39 EXPLOSIVES & HAZARDOUS MATERIALS

Purchaser shall obtain all required Federal, State and local permits and licenses and shall be responsible for the safe and proper handling, transporting, storage and use of any explosive or hazardous materials brought onto or encountered by the Purchaser within the ITC Property and the Property, and at its expense, make good any damage caused by its handling, transporting, storage and use. The Purchaser will notify the County immediately if explosive or hazardous materials are encountered on the site. Transporting explosive or hazardous materials onto the site will require prior written approval from the County. The Purchaser shall maintain and post as necessary Material Hazard Data Sheets for all applicable Hazardous Materials used in the course of its work.

In the event that hazardous material is improperly handled or stored by the Purchaser, its Contractors or subcontractors which results in contamination of the site, Purchaser shall immediately notify the County and the appropriate governmental authority and shall take whatever action is necessary or desirable to remediate the contamination. Further, Purchaser shall indemnify and hold the County harmless from any and all cost, expense, action, or liability whatsoever resulting from such contamination and/or remedial activities.

GC 39(a) ASBESTOS NOTIFICATION

Prior to the removal or modification of any asbestos containing structure on the ITC Property, the Purchaser will facilitate the removal of all ACBM that may be distributed during the renovations, (except bituminous roofing materials) and must be conducted by a Florida Licensed Asbestos Purchaser.

If materials are discovered that are suspect asbestos materials that were not previously sampled, stop all work that will disturb these materials and immediately notify the County.

**GC 40 INSPECTION: REJECTION OF MATERIALS AND WORKMANSHIP
WITH RESPECT TO THE REQUIRED ITC MODIFICATIONS**

All materials and equipment furnished and work performed for the Required ITC Modifications and the Envelope Construction shall be properly inspected by Purchaser, at its expense, and shall at all times be subject to quality surveillance, observations or quality audit by County. Purchaser shall provide safe and adequate facilities and all samples, drawings, lists and documents necessary for such quality surveillance, observation or quality audit. For this purpose, and upon reasonable notice to the Purchaser, County shall be afforded full and free access to the shops, factories or places of business of Purchaser and its subcontractors and suppliers for such quality surveillance, observation or quality audit and to determine the status of the work for the Required ITC Modifications and the Envelope Construction. If Purchaser covers all or any portion of the work prior to any quality surveillance or test by County, the cost of any necessary uncovering and replacing shall be borne by Purchaser. Neither the failure to make such quality surveillance, observance or quality audit, nor to discover defective workmanship, materials, or equipment, nor acceptance of or payment to Purchaser for such work, materials or equipment shall prejudice the rights of County thereafter to correct or reject the same as hereinafter provided.

If any material, equipment or workmanship for the Required ITC Modifications is determined by County, either during performance of the work or on final quality surveillance, or during any applicable warranty period (expressed or implied), to be defective or not complying with the requirements of this Agreement, County shall notify Purchaser in writing that such material, equipment or work is rejected. Thereupon, Purchaser shall immediately remove and replace or correct such defective material, equipment or work by making the same comply strictly with all requirements of the Agreement.

GC 41 TESTING

Unless otherwise provided in the Construction Plan, Drawings and Specifications shop and field testing of materials or work for the Required ITC Modifications and the Envelope Construction shall be performed by the Purchaser at its expense and in accordance with the Technical Specifications. Should tests for the Required ITC Modifications and the Envelope Construction in addition to those required by the Specifications be desired by County, Purchaser will be advised in reasonable time to permit such testing. Such additional tests will be at County's expense unless such additional tests are required due to Purchaser's work or materials having failed any initial test. In this event, such additional (re-test) tests shall be at Purchaser's expense. Purchaser shall furnish samples as requested and shall provide reasonable assistance and cooperation as necessary to permit tests to be performed on materials or work in place for the Required ITC Modifications and the Envelope Construction including reasonable stoppage of work during testing. Purchaser shall provide reasonable and accurate notice of when construction activities which require County's testing services are required. Purchaser shall be responsible for stand-by and other costs associated with the testing agency if that construction activity for the Required ITC Modifications or the Envelope Construction is delayed or canceled.

GC 42 RECORD DRAWINGS AND SPECIFICATIONS

Drawings:

Conformed Documents – Within 30 days of commencement of construction, Purchaser shall show proof of conformed documents on its field set of drawings for the Required ITC Modifications and the Envelope Construction.

Progress Records - During construction for the Required ITC Modifications and the Envelope Construction, Purchaser shall keep a marked-up and up-to-date set of drawings showing as-built conditions on the site as an accurate record of all deviations between work as shown and work as installed. These drawings shall be available to County for inspection at any time.

Final Records - The Purchaser shall furnish to County a complete set of marked-up as-builts for the Required ITC Modifications and the Envelope Construction with RECORD clearly printed on each sheet within 30 days of the completion of construction of the Required ITC Modifications and of the Envelope Construction. Purchaser shall, by use of professional draftsman, accurately and neatly transfer all deviations from progress as-builts to final as-builts for the Required ITC Modifications and the Envelope Construction. Record information necessary to establish utility services shall be provided by Purchaser a minimum of 30 days prior to needed utility service.

B. Endorsement:

Purchaser shall sign each final record drawing and the cover of the record specifications for the Required ITC Modifications and the Envelope Construction and shall note that deviations and annotations are complete and accurate.

The Purchaser shall provide a signed and notarized affidavit indicating that no asbestos containing materials were used or installed during the course of construction for the Required ITC Modifications and the Envelope Construction.

This General Condition will apply to the Commercial Construction unless a waiver is included in the Commercial Construction Plan as approved by the County.

GC 43 DISPOSAL OF MATERIAL OUTSIDE PROJECT LIMITS

The Purchaser shall make its own arrangements for disposal of materials outside the project limits and shall pay all costs involved. The County reserves the right to retain any salvage material or equipment scheduled for removal pursuant to the Personalty Plan. Should the County elect to retain salvaged materials or equipment, the Purchaser will provide appropriate temporary on-site storage and protection at the County's cost. The County will be responsible for transporting from the site any materials or equipment it has elected to retain and use off-site. Off-site disposal of any items not retained by the County shall be the responsibility of the Purchaser.

When any material is to be disposed of outside the project limits, the Purchaser shall first obtain a written permit from the property owner on whose property the disposal is to be made and it shall file in writing with the County said permit or the certified copy thereof together with a written release from the property owner absolving the County of any and all responsibility in connection with the disposal of material on said property.

When material is disposed of as above provided and the disposal location is visible from the project, the Purchaser shall dispose of the material in a neat and uniform manner to the satisfaction of the County.

GC 44 CLEANING UP

Purchaser shall, at all times, at its expense, keep its work areas in a neat, clean and safe condition. Upon completion of the work for the Envelope Construction, Purchaser shall, within 48 hours, remove all of its equipment, construction plant, temporary structures and surplus materials not used.

GC 45 PESTICIDES AND HERBICIDES APPLICATION

Provide evidence to County of proper certification of applicators of pesticides or herbicides to be applied on the ITC Property prior to the application of those products on County property.

GC 46 NPDES PERMIT FOR STORM WATER DISCHARGE

The Purchaser will be required to comply with the County's NPDES General Permit which includes implementation of a storm water pollution prevention plan (SWPPP) during construction, provided that the Purchaser may amend the County's NPDES General Permit and apply for its own NPDES General Permit to take into account the Purchaser's improvements so long as such applications or amendments do not adversely affect the County's NPDES General Permit.

Schedule 7

[TO BE REVISED TO BE THE COUNTY'S FORM AT THE TIME OF ISSUANCE]

PUBLIC CONSTRUCTION BOND

BOND NUMBER: _____

BOND AMOUNT: _____

CONTRACT AMOUNT: _____

CONTRACTOR'S NAME: _____

CONTRACTOR'S ADDRESS: _____

CONTRACTOR'S PHONE: _____

SURETY COMPANY: _____

SURETY'S ADDRESS: _____

OWNER'S NAME: PALM BEACH COUNTY

OWNER'S ADDRESS: 2633 Vista Parkway
West Palm Beach, FL 33411-5604

OWNER'S PHONE: (561) 233-0261

DESCRIPTION OF WORK: _____

PROJECT LOCATION: _____

LEGAL DESCRIPTION: _____

This Bond is issued in favor of the County conditioned on the full and faithful performance of the Contract

KNOW ALL MEN BY THESE PRESENTS: that Contractor and Surety, are held and firmly bound unto

Palm Beach County Board of County Commissioners
301 N. Olive Avenue
West Palm Beach, Florida 33401

as Obligee, herein called County, for the use and benefit of claimant as hereinbelow defined, in the amount of

Dollars (\$))

(Here insert a sum equal to the Contract Price)

for the payment whereof Principal and Surety bind themselves, their heirs, personal representatives, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS,

Principal has by written agreement entered into a contract with the County for

Project Name:

Project No.:

Project Description:

Project Location:

in accordance with Design Criteria Drawings and Specifications prepared by

NAME OF ARCHITECTURAL FIRM:

LOCATION OF FIRM:

PHONE:

FAX:

which contract is by reference made a part hereof in its entirety, and is hereinafter referred to as the Contract.

THE CONDITION OF THIS BOND is that if Principal:

1. Performs the contract between Principal and County for the construction of the Required ITC Modifications, the contract being made a part of this bond by reference, at the times and in the manner prescribed in the contract; and
2. Promptly makes payments to all claimants, as defined in Section 255.05, Florida Statutes, supplying Principal with labor, materials, or supplies, used directly or indirectly by Principal in the prosecution of the work provided for in the contract; and

3. Pays County all losses, damages (including liquidated damages), expenses, costs, and attorneys' fees, including appellate proceedings, that County sustains because of a default by Principal under the contract; and
4. Performs the guarantee of all work and materials furnished under the contract for the time specified in the contract, then this bond is void; otherwise it remains in full force.
5. Any changes in or under the contract documents and compliance or noncompliance with any formalities connected with the contract or the changes does not affect Surety's obligation under this bond and Surety waives notice of such changes.
6. The amount of this bond shall be reduced by and to the extent of any payment or payments made in good faith hereunder, inclusive of the payment by Surety of construction liens which may be filed of record against said improvement, whether or not claim for the amount of such lien be presented under and against the bond.
7. Principal and Surety expressly acknowledge that any and all provisions relating to consequential, delay and liquidated damages contained in the contract are expressly covered by and made a part of this Performance, Labor and Material Payment Bond. Principal and Surety acknowledge that any such provisions lie within their obligations and within the policy coverages and limitations of this instrument.
8. Section 255.05, Florida Statutes, as amended, together with all notice and time provisions contained therein, is incorporated herein, by reference, in its entirety. Any action instituted by a claimant under this bond for payment must be in accordance with the notice and time limitation provisions in Section 255.05(2), Florida Statutes. This instrument regardless of its form, shall be construed and deemed a statutory bond issued in accordance with Section 255.05, Florida Statutes.
9. Any action brought under this instrument shall be brought in the court of competent jurisdiction in Palm Beach County and not elsewhere.

Witness

Principal (Seal)

Title

Witness

Surety (Seal)

Title

Schedule 8
DISCLOSURE OF BENEFICIAL INTERESTS

TO: PALM BEACH COUNTY CHIEF OFFICER, OR HIS OR HER OFFICIALLY
DESIGNATED REPRESENTATIVE

STATE OF FLORIDA
COUNTY OF PALM BEACH

BEFORE ME, the undersigned authority, this day personally appeared, Michael D. Masanoff,
hereinafter referred to as "Affiant", who being by me first duly sworn, under oath, deposes and
states as follows:

1. Affiant is the Manager (position - i.e. president, partner, trustee) of Transit Village, LLC (name and type of entity - i.e. ABC Corporation, XYZ Limited Partnership).
2. Affiant's address is: 2000 Glades Road, Suite 300, Boca Raton, Florida 33431.
3. Attached hereto, and made a part hereof, as Exhibit "A" is a complete listing of the names and addresses of every person or entity having a five percent (5%) or greater beneficial interest in (entity) and the percentage interest of each such person or entity.
4. Affiant further states that Affiant is familiar with the nature of an oath and with the penalties provided by the laws of the State of Florida for falsely swearing to statements under oath.
5. Under penalty of perjury, Affiant declares that Affiant has examined this Affidavit and to the best of Affiant's knowledge and belief it is true, correct, and complete, and will be relied upon by Palm Beach County relating to its sale of the property.

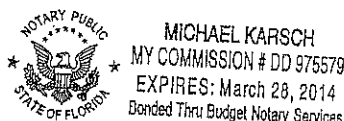
FURTHER AFFIANT SAYETH NAUGHT.

 Affiant
(Print Affiant Name) MICHAEL D. MASANOFF

The foregoing instrument was sworn to, subscribed and acknowledged before me this 21 day of June, 2012, by Michael D. Masanoff [☒ who is personally known to me or [☐ who has produced as identification and who did take an oath.



Notary Public



(Print Notary Name)

NOTARY PUBLIC
State of Florida at Large

My Commission Expires: _____

EXHIBIT "A"

SCHEDULE TO BENEFICIAL INTERESTS IN (entity)

You are only required to identify five percent (5%) or greater beneficial interest holders. If none, so state. You must identify individual owners. If, by way of example, an entity is wholly or partially owned by another entity, such as a corporation, you must identify such other entity, its address and percentage interest, as well as such information for the individual owners of such other entity.

Please note the following: (i) If the disclosing entity is registered with the Federal Securities Exchange Commission whose interest is for sale to the general public then the disclosure need only state: "_____ is an entity registered with the Federal Securities Exchange Commission whose interest is for sale to the general public, and therefore, it is exempt from disclosing its beneficial interest pursuant to Section 286.23(3(a)) Florida Statutes." and (ii) If the disclosing entity is a not-for-profit corporation then the disclosure need only state: "_____ is a 501C3 not-for profit corporation."

<u>Name</u>	<u>Address</u>	<u>Percentage of Interest</u>
TOD Advisors, LLC	102 W. Whiting Street, Suite 600, Tampa, FL 33602	100% of Transit Village, LLC
CRP II-TOD Advisors, LLC	102 W. Whiting Street, Suite 600, Tampa, FL 33602	51% of TOD Advisors, LLC (51% of Transit Village, LLC)
RDJ V, LLC	7900 West Upper Ridge Drive, Parkland, FL 33067	49% of TOD Advisors, LLC (49% of Transit Village, LLC)
Community Reinvestment Partners II, LP ("CRP II")	102 W. Whiting Street, Suite 600, Tampa, FL 33602	100% of CRP II-TOD Advisors, LLC (51% of Transit Village, LLC)
TIAA-CREF		33.162% of CRP II (16.91% of Transit Village, LLC). TIAA is an entity registered with the Federal Securities Exchange Commission whose interest is for sale to the general public, and therefore, it is exempt from disclosing its beneficial interest pursuant to Section 286.23(3(a)) Florida Statutes.

Regions Bank		16.581% of CRP II (8.46% of Transit Village, LLC). Regions Bank is an entity registered with the Federal Securities Exchange Commission whose interest is for sale to the general public, and therefore, it is exempt from disclosing its beneficial interest pursuant to Section 286.23(3(a)) Florida Statutes.
Wachovia Bank (Wells Fargo Bank)		11.054% of CRP II (5.64% of Transit Village, LLC). Wells Fargo is an entity registered with the Federal Securities Exchange Commission whose interest is for sale to the general public, and therefore, it is exempt from disclosing its beneficial interest pursuant to Section 286.23(3(a)) Florida Statutes.
SunTrust Bank		11.054% of CRP II (5.64% of Transit Village, LLC). SunTrust Bank is an entity registered with the Federal Securities Exchange Commission whose interest is for sale to the general public, and therefore, it is exempt from disclosing its beneficial interest pursuant to Section 286.23(3(a)) Florida Statutes.
Fifth Third Bank		11.054% of CRP II (5.64% of Transit Village, LLC). Fifth Third Bank is an entity registered with the Federal Securities Exchange Commission whose interest is for sale to the general public,

		and therefore, it is exempt from disclosing its beneficial interest pursuant to Section 286.23(3(a)) Florida Statutes.
Synovus Bank		8.567% of CRP II (4.37% of Transit Village, LLC). Synovus Bank is an entity registered with the Federal Securities Exchange Commission whose interest is for sale to the general public, and therefore, it is exempt from disclosing its beneficial interest pursuant to Section 286.23(3(a)) Florida Statutes.
Northern Trust Bank		5.527% of CRP II (2.82% of Transit Village, LLC). Northern Trust is an entity registered with the Federal Securities Exchange Commission whose interest is for sale to the general public, and therefore, it is exempt from disclosing its beneficial interest pursuant to Section 286.23(3(a)) Florida Statutes.
Held by Others		3% of CRP II (1.53% of Transit Village, LLC) ¹
Faye. S. Masanoff Irrevocable Trust ²	7900 West Upper Ridge Drive, Parkland, FL 33067	90% of RDJ V, LLC (44.1% of Transit Village, LLC)
Held by Others		10% of RDJ V, LLC (4.90% of Transit Village, LLC) ¹

¹ Not required to be disclosed.

² The Beneficiaries of the Trust are the family members of Faye Masanoff, including her husband Michael D. Masanoff

TREASURE COAST REGIONAL PLANNING COUNCIL

INDIAN RIVER - ST. LUCIE - MARTIN - PALM BEACH

June 19, 2012

The Honorable Shelley Vana, Chair
Palm Beach County Board of County Commissioners
301 N. Olive Avenue
West Palm Beach, FL 33401

Subject: West Palm Beach Transit Village Project

Dear Chair Vana:

For more than two decades, the concept of a transit village in the City of West Palm Beach surrounding the historic Seaboard train station and intermodal facility has presented one of the strongest opportunities for a transit-oriented development (TOD) project in the Region. The location represents a fully multi-modal interface that includes Tri-Rail, Amtrak, Greyhound, Palm-Tran's intermodal facility, and the City's trolley system, as well as bicycle, pedestrian, and vehicular connections. In 2005, Council led a public charrette process that resulted in a mixed-use master-plan spanning several blocks adjacent to the train station that has been adopted by the City. The "Transit Village" site was identified in the master plan as the location for some of the highest development intensities. Through years of inter-agency work and ultimately a County RFP process, this project has been advanced to a point of transaction with the private sector -- Transit Village LLC.

It is Council's understanding the developer's plans propose a mix of civic, commercial/office, hotel, residential (both workforce and market-rate), and retail uses, which is the type of mix envisioned in the charrette master plan. Further, the project offers an opportunity for the City, County, and Region to improve the efficiency of the transportation network, expand mobility options, reduce carbon emissions, and create long-term economic opportunities with an infill TOD project at this existing transportation hub.

Council strongly encourages the Palm Beach County Board of County Commissioners to enable the private sector to advance the West Palm Beach Transit Village project through the land transfer, design, and construction phases for the betterment of the Region. Thank you for the opportunity to comment.

Sincerely,



Michael J. Busha, AICP
Executive Director

cc: Palm Beach County Board of County Commissioners
Jeri Muoio, Mayor, City of West Palm Beach
Randy Whitfield, Executive Director, Palm Beach MPO
Joe Guilietti, Executive Director, South Florida Regional Transportation Authority
Jim Wolfe, Secretary, FDOT District IV
Audrey Wolf, Director Facilities & Operations, Palm Beach County

"Regionalism One Neighborhood At A Time"- Est.1976

421 SW Camden Avenue - Stuart, Florida 34994
Phone (772) 221-4060 - Fax (772) 221-4067 - www.tcrpc.org

Southeast Florida Regional Partnership

Indian River - St. Lucie - Martin
Palm Beach - Broward - Miami-Dade - Monroe

June 19, 2012

Shelly Vana, Chair
Palm Beach County Board of County Commissioners
301 N. Olive Avenue
West Palm Beach, FL 33401

Subject: West Palm Beach Transit Village Project

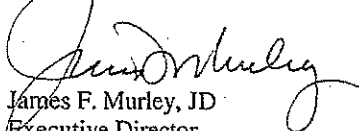
Dear Chair Vana:

As you are aware, Palm Beach County is engaged with its neighboring counties to the north and south in the development of the "Seven50 Southeast Florida Prosperity Plan" pursuant to a U.S. HUD Sustainable Communities Regional Planning Grant that was awarded to Southeast Florida in 2010. This effort will enable the Region's organizations, residents, visitors, and businesses to work together to address the Region's most pressing challenges and achieve shared goals for the optimal Southeast Florida of tomorrow. The long-term future of the Region ideally is one that is growing jobs, creating a more resilient and diverse economy, strengthening its communities, and protecting its fragile natural environment.

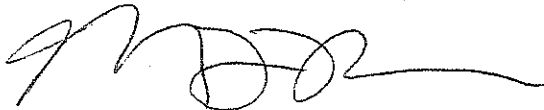
Towards that end, the Southeast Florida Partnership has identified improved mobility and better integrated transportation/land use relationships as critical issues to be addressed. Transit-oriented development, or TOD, is the land use pattern that best corresponds to transit investments, yielding efficiency, improved mobility, and economic development for the immediate community as well as the greater Region. The Tri-Rail system, which operates through three of the seven counties, is a centerpiece of a 72-mile corridor of TOD opportunities for infill and redevelopment. Projects such as the West Palm Beach Transit Village represent immediate implementation opportunities for TOD that will help bring jobs, housing, and activity to better leverage this significant federal transportation investment in the Region. As a result, the transportation network should operate with greater efficiencies and economic improvement generated for the city, county, and region.

The Southeast Florida Partnership supports TOD as a key strategy for a more prosperous Region. We look forward to an opportunity to celebrate the success this kind of innovative, inter-agency project as the Seven50 Southeast Florida Prosperity Plan effort continues.

Sincerely,



James F. Murley, JD
Executive Director
South Florida Regional Planning Council



Michael J. Busha, AICP
Executive Director
Treasure Coast Regional Planning Council

cc: Palm Beach County Board of County Commissioners
Jeri Muoio, Mayor, City of West Palm Beach
Randy Whitfield, Executive Director, Palm Beach MPO
Joe Guilietti, Executive Director, South Florida Regional Transportation Authority
Jim Wolfe, Secretary, FDOT District IV
Audrey Wolf, Director Facilities & Operations, Palm Beach County

c/o South Florida Regional Planning Council
3440 Hollywood Boulevard, Suite 140, Hollywood, Florida 33021
Broward (954) 985-4416, State (800) 985-4416
Fax (954) 985-4417, e-mail sfadmin@sfrpc.com, website: www.sfrpc.com



**SOUTH FLORIDA
REGIONAL
TRANSPORTATION
AUTHORITY**

ATTACHMENT 6

800 NW 33rd Street | Pompano Beach, Florida 33064 | ☎ 954/942-7245 | ☎ 954/788-7878 | www.sfcta.fl.gov

June 20, 2012

Audrey Wolf, Director
Palm Beach County Facilities Development and Operations Dept.
2633 Vista Parkway
West Palm Beach, FL 33411

Via Fax (561-233-0206) and U.S. Mail

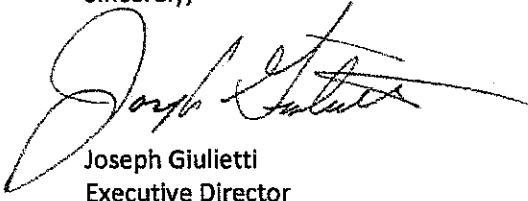
Re: RFP No. 2009104-RCH
Agreement for Purchase and Sale between Transit Village, LLC and Palm Beach County

Dear Ms. Wolf,

The purpose of this letter is to reiterate the SFRTA Governing Board's support for transit-oriented development at Tri-Rail Stations in Palm Beach County, which would include the development addressed by the above referenced agreement. Enclosed is Resolution No. 07-04 evidencing the Board's support.

Should you have any questions regarding this letter, please feel free to contact me.

Sincerely,



Joseph Giulietti
Executive Director

Encls.

cc: SFRTA Governing Board
Michael Masanoff

**SOUTH FLORIDA REGIONAL TRANSPORTATION AUTHORITY
RESOLUTION NO. 07-04**

**RESOLUTION SUPPORTING PALM BEACH COUNTY'S TRANSIT
ORIENTED DEVELOPMENT ("TOD") CONCURRENCY AMENDMENT
TO ITS COMPREHENSIVE PLAN FOR TOD PROJECTS AND
PLANNING AT TRI-RAIL STATIONS IN PALM BEACH COUNTY;
PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE
DATE**

WHEREAS, the South Florida Regional Transportation Authority ("SFRTA") is a body politic and corporate, a public instrumentality and an agency of the State of Florida pursuant to Florida Statutes, Chapter 343; and

WHEREAS, the integration of land use and transportation planning has been shown to increase transit ridership; improve transit efficiency, effectiveness, and safety; enhance transportation mobility; promote sustainable development patterns; and improve the success of transit service; and

WHEREAS, "transit-oriented development," or TOD, is one means by which land use and transportation planning have been successfully integrated in conjunction with passenger transit service in the United States and internationally; and

WHEREAS, supporting and encouraging TOD projects and planning at Tri-Rail stations is a goal of the SFRTA; and

WHEREAS, TOD can be encouraged by supportive policies and regulations in local government plans, including comprehensive land use plans and land development codes; and

WHEREAS, Palm Beach County has recently developed and transmitted an amendment to its Comprehensive Plan to define TOD, identify specific TOD design standards, and establish a lower traffic concurrency level-of-service for TOD projects as defined and specified; and

WHEREAS, the Palm Beach County TOD amendment can become a regulatory incentive to encourage TOD projects and planning at Tri-Rail stations in Palm Beach County;

NOW, THEREFORE, BE IT RESOLVED BY GOVERNING BOARD OF THE SOUTH FLORIDA REGIONAL TRANSPORTATION AUTHORITY:

Section 1. The recitals contained in the preamble to this Resolution are incorporated by reference herein.

Section 2. SFRTA hereby expresses its support for Palm Beach County's Transit Oriented Development ("TOD") Concurrency Amendment to its Comprehensive Plan for TOD Projects and Planning at Tri-Rail Stations in Palm Beach County.

Section 3. If any section, paragraph, clause or provision of this Resolution shall be held to be invalid or ineffective for any reason, the remainder of this Resolution shall continue in full force and effect, it being expressly hereby found and declared that the remainder of this Resolution would have been adopted despite the invalidity or ineffectiveness of such section, paragraph, clause or provision.

Section 4. This Resolution shall take effect immediately upon its adoption, and any provisions of any previous resolutions in conflict with the provisions herein are hereby superseded.

[Remainder of page left intentionally blank.]

The foregoing resolution was offered by Board Member James A. Cummings, who moved its adoption. The motion was seconded by Board Member Marie Horenburger, and upon being put to vote, the votes were as follows:

Member Mayor Josephus Eggelletion, Jr. - yes

Member Neisen Kasdin - yes

Member Commissioner Jeff Koons - yes

Member John Martinez - absent

Member George Morgan, Jr. - yes

Member Bill T. Smith, Jr. - yes

Chairman Commissioner Bruno A. Barreiro - yes

The Chairperson thereupon declared the resolution duly passed and adopted this 25 day of May, 2007.

SOUTH FLORIDA REGIONAL TRANSPORTATION AUTHORITY (SFRTA)

By: 

SFRTA Secretary


ATTEST

South Florida Regional Transportation Authority

BY


Joseph Giulietti
Executive Director


BY


Commissioner Bruno A. Barreira
Chair

25 day of May, 2007.

(SFRTA seal)

Approved as to form and legal sufficiency by:


Teresa J. Moore
General Counsel, SFRTA
Greenburg Traurig, PA
777 S. Flagler Drive, Ste 300E
West Palm Beach, Florida 33401
(561) 650-7963



Florida Department of Transportation

RICK SCOTT
GOVERNOR

3400 West Commercial Boulevard
Fort Lauderdale, FL 33309

ANANTH PRASAD, P.E.
SECRETARY

June 21, 2012

The Honorable Shelley Vana, Chair
Palm Beach County
Board of County Commissioners
301 N. Olive Avenue
West Palm Beach, FL 33401

Subject: West Palm Beach Transit Village: County/Developer Final Agreement

Dear Commissioner Vana:

The Florida Department of Transportation supports the proposed agreement for the sale and development of the Wedge Property located within the Transit Oriented Development District in downtown West Palm Beach. The Department has participated in the planning and development of this site from a vacant parcel to the construction of the central transfer hub for PalmTran, through the Charette and planning process to allow for transit supportive development and on the Selection Committee to identify the best development partner for the envisioned project.

Approval of the proposed agreement will allow the private development sector to move forward with plans to construct a dense mixed use development that will be supported by the PalmTran bus system and the Tri-Rail Commuter Rail system. Again, we support taking this next step.

I appreciate the efforts the County and the Developer have expended to come to an agreement that benefits each other and the community as whole. The Department looks forward to continuing to coordinate and provide technical support in the implementation of the agreement where applicable.

Sincerely,

for: James A. Wolfe, P.E.
District Secretary
District Four

JAW/jw

cc: The Honorable Jeri Muoio, Mayor, City of West Palm Beach
Randy Whitfield, Executive Director, Palm Beach County MPO

www.dot.state.fl.us



"The Capital City of the Palm Beaches"

June 25, 2012

Mr. Robert Weisman
Palm Beach County Administrator
301 N. Olive Avenue, Suite 1101
West Palm Beach, FL 33401

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RE: Proposed Development Agreement for the Transit Oriented Development

Dear Mr. Weisman,

The CRA and City of West Palm Beach staff has been working with county staff and other stakeholders for an extended period of time to realize the vision of a transit oriented development in the city's downtown core. The 2005 Treasure Coast Regional Planning Council charrette envisioned a high density project intended to capitalize on the transit assets already in place and provide a basis for increased transit usage in the future.

Staff has reviewed the Purchase and Sale Agreement the County will consider on July 10, 2012 with Transit Village LLC and concurs that it furthers the goals as outlined in the charrette, and reflects the efforts of the City to attract transit development on the wedge property.

The City and CRA are currently discussing lease/purchase terms with Transit Village LLC for the City owned parcel on Tamarind which is an integral parcel to the TOD development. Provided the County approves the agreement, and terms are reached on the City's disposition of the city owned parcel, the TOD can finally become a reality.

Sincerely,


Jeri Muoio
Mayor

cc: Shelly Vana, Palm Beach County Commission Chair
Audrey Wolf, Director FD&O
Kim Briesemeister, CRA Redevelopment Manager

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