

50-3

Agenda Item #:

PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS  
AGENDA ITEM SUMMARY

Meeting Date: July 22, 2014 [ ] Consent [X] Regular  
[ ] Ordinance [ ] Public Hearing

Department: Facilities Development & Operations

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to:

A) approve a Parking Easement Agreement with Transit Village, LLC a Florida limited liability company (TV); and

B) receive and file a status report on the Transit Village Project.

**Summary:** The County entered into an Agreement for Purchase and Sale with TV for the sale of 5.8 acres at the corner of Banyan Boulevard and Clearwater Drive, commonly referred to as the Wedge for \$3,600,000. Appraisals valued the property at between \$350,000 and negative \$5,000,000. The Purchase and Sale Agreement requires TV to provide the County 25 parking spaces within TV's proposed parking garage for use by Palm Tran employees. This Parking Easement Agreement establishes the County's rights to review the design of the garage and approve the location of the County's parking spaces and circulation and access within the garage as required by the Purchase and Sale Agreement. At closing, TV will grant the County a perpetual easement for use of the 25 County parking spaces without charge. For the record, TV's parking agreement with the South Florida Regional Transit Authority (SFRTA) has the SFRTA agreeing to pay \$3,000,000 for the structured parking spaces as well as annual operating charges. The appraisal assumed the SFRTA spaces would be provided without charge to SFRTA, but charging for these spaces is not prohibited by the Purchase and Sale Agreement. The appraisal has been updated to reflect these payments by the SFRTA and is still a negative value. An update on the status of various governmental approvals, particularly the FTA/NEPA milestone, is also provided. The FTA approval letter contained a condition requiring updated appraisals within 6 months of closing. This is a very complicated transaction with multiple layers of required governmental approvals. TV has been actively pursuing the required approvals. The next milestone, submission of a site plan into the City's approval process, and the City's reaction thereto, will provide the clearest picture as to the viability of the project. (PREM) District 7 (HJF)

**Background and Policy Issues:**

**County Spaces/Parking Easement Agreement** - The Purchase and Sale Agreement with TV required that the parties agree upon a legal document providing the County the right to use 40 parking spaces within the parking garage for County and/or SFRTA employee parking which would be effective upon closing of the sale of the

Continued on Page 3

**Attachments:**

- 1. Location Map
- 2. Parking Easement Agreement
- 3. County Staff Review of SFRTA Parking Agreement
- 4. SFRTA Response

Recommended By: Keith Arroyo Wurf Department Director 7/14/14 Date

Approved By: [Signature] County Administrator 7-17-14 Date



**Background and Policy Issues continued:** property. The number of spaces has been reduced to 25 as SFRTA has agreed that they do not require separate employee spaces.

**SFRTA Spaces** - The Purchase and Sale Agreement also required that TV and SFRTA enter into a similar agreement with respect to the 250 parking spaces TV is required to make available to SFRTA. The appraisals and County Staff had contemplated that the 250 spaces would be provided to SFRTA without charge. However, the Purchase and Sale Agreement did not specifically require the SFRTA spaces to be provided without charge, as TV insisted that the timing, location, operational characteristics and other terms of providing the SFRTA spaces be left to further negotiations between TV and SFRTA.

On June 7, 2013, TV and SFRTA entered into a Parking Agreement in which SFRTA agreed to pay \$3,000,000 for purchase of 250 parking spaces within the garage and agreed that it did not need additional spaces for its employees. Upon learning of the TV/SFRTA Agreement, Staff questioned why SFRTA should pay for its parking spaces. In negotiating the purchase price for the property, there was extensive discussion of the substantial unusual development costs which were imposed by the County, including the cost of providing parking spaces to the County and SFRTA. Staff's review of the RFP process and relevant contractual provisions regarding the SFRTA spaces is included as Attachment 3. County Staff concluded that there is no clear legal right to require the SFRTA's spaces be provided without charge and did not pursue the issue further after it sent the attached correspondence and held several conference calls with SFRTA Staff on the issue. Attachment 4 is SFRTA's response. It should be noted that even with SFRTA payment for the spaces, the purchase price remains substantially higher than the appraised value (as adjusted to account for the SFRTA \$3,000,000 payment). Since the parking garage will be structured as a condominium whereby SFRTA will own 250 units, SFRTA will also be obligated to pay its proportionate share of operating and maintenance expenses for the garage.

**Status of TV Development Approvals:**

The Purchase and Sale Agreement provided several milestones in which to obtain various Governmental Approvals as follows:

Effective Date: August 14, 2012

- Obtain FTA Approval, NEPA Approval, FDOT Approval, City Approval and SFRTA Approval within two (2) years of the Effective Date;
- Submit application for Site Plan Approval to the City within one (1) year of obtaining both FTA and NEPA Approval;
- Obtain the Governmental Approvals, excluding Building Permits, within three (3) years of obtaining both FTA and NEPA Approval;
- Obtain the Building Permits and complete the Closing within five (5) years after the Effective Date;
- Commence construction of the Improvements for the Envelope Construction and the Required ITC Modifications within one (1) year after the Closing.

A discussion of each of the relevant milestones is set forth below.

**FTA Approval** – Whether FTA approval has been obtained is debatable. On March 19, 2013, FTA issued a letter concurring with the proposed sale of the property to TV and acknowledging that the sales proceeds may be utilized by Palm Tran to fund another FTA eligible capital project. TV argues that this letter constitutes FTA approval. However, FTA is requiring an updated appraisal be provided within 6 months of the closing. If the updated appraisal were to exceed the purchase price, it is unclear what action if any, that FTA would pursue. Although unlikely, it is conceivable that FTA could require the purchase price to be increased to the updated appraised value.

The Purchase and Sale Agreement requires the County to use the sales proceeds to fund any required grant repayments and for TV to be responsible for any repayment in excess of the sales price. While not entirely clear, a required increase in the purchase price is arguably equivalent to a grant repayment. FTA has approval rights both as to the sales price/appraised value determination and on the use of sales proceeds, and could potentially not allow funding of the valuation/purchase price shortfall out of the sales proceeds. As noted above, as of this date the purchase price still exceeds the appraised value.

## **Page 4**

**Background and Policy Issues continued:** In light of the foregoing, Staff has left open the issue of whether FTA approval has been obtained to clarify who is assuming the risk of a future FTA decision and/or preserve the County's right to terminate the Agreement. Staff will work with TV to obtain clarification of this issue from FTA in the next 90 days. However, the impact of this open issue is that timeframes for satisfying the subsequent milestones start with FTA and NEPA approvals.

### **NEPA Approval**

In their March 19, 2013 letter, FTA concluded that NEPA review is not required.

### **FDOT Approval**

By letter dated September 13, 2012, FDOT indicated its support for the County entering into the Purchase and Sale Agreement with TV, and confirming that repayment of grant funding would not be required. However, FDOT also has a reversionary interest in a .24 acre triangular shaped portion of the property. FDOT Staff have agreed to the form of the release and are recommending the release of this reverter, but the timing of said release remains subject to discussion. In the event FDOT Approval of the release of reverter is not obtained by August 14, 2014, then either party has the right to terminate the Purchase and Sale Agreement.

### **City Approval**

On July 30, 2013, the City/CRA agreed that it would not require any repayment of grant funds provided by the City/CRA for acquisition and development of the Intermodal Facility. The City also has a reversionary interest in a .4 acre portion of the property. The City approved an Agreement to release the reverter at its July 7, 2014 meeting, conditioned upon City Commission approval of TV's site plan and completion of construction in accordance with the approved site plan.

### **SFRTA Approval**

On June 7, 2013, SFRTA entered into an agreement with TV that acknowledged and agreed to the terms of the Purchase and Sale Agreement between TV and the County and its impact upon SFRTA's interest in the property

### **Site Plan Application to City**

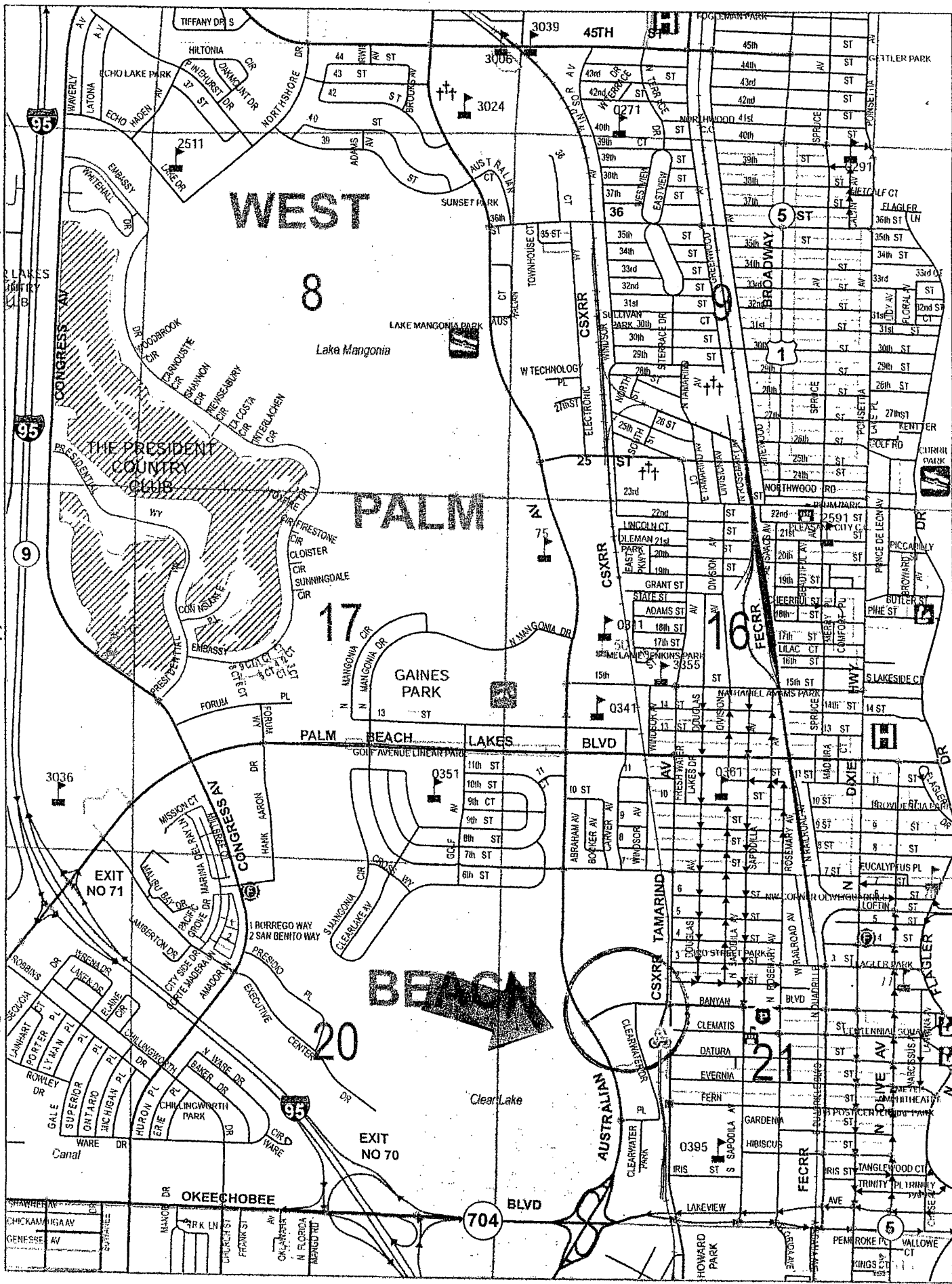
TV represents that it will be submitting an application for site plan approval to the City within the next few months. Under the most restrictive interpretation that FTA and NEPA approval was obtained on March 19, 2013, TV was required to submit by March 18, 2014 which it has not done. TV has been delayed in finalizing its site plan application by the City's delay in agreeing to release the City's reverter, however, it is questionable whether TV has the right to an extension for this delay.

### **Conclusion**

This is a very complicated transaction with multiple layers of required governmental approvals. Each agency has its own approval processes and objectives. Navigating those processes has been challenging. TV has been actively pursuing the required approvals, but is approaching, if not exceeding the early project milestones. Staff is confident that TV will ultimately obtain all required approvals. The next important milestone, submission of a site plan into the City's approval process, and the City's reaction thereto, will provide the clearest picture as to the viability of the project. TV has represented that it will be submitting its application in the next few months.

The Purchase and Sale Agreement with TV is an extremely complex document with provisions designed to address unknown situations as best as could be anticipated at the time of approval. As with all such contracts, there are grey areas capable of multiple interpretations. Such is the case with respect to the milestones for FTA approval and the subsequent milestones tied thereto, and the County's rights to terminate the Agreement for failure to meet those milestones.

Staff does not recommend pursuing a termination at this time as it would undoubtedly be contested, result in litigation and delay completion of a project for redevelopment of this property indefinitely.



T43

13

T43

# LOCATION MAP

II

## **PARKING EASEMENT AGREEMENT**

This PARKING EASEMENT AGREEMENT ("Parking Agreement") dated as of \_\_\_\_\_, 2014 between TRANSIT VILLAGE, LLC, a Florida limited liability company ("TV") and PALM BEACH COUNTY, a political subdivision of the State of Florida ("County").

### **RECITALS**

A. TV and the County entered into the Agreement for Purchase and Sale between Transit Village, LLC and Palm Beach County, dated August 14, 2012 ("TV-PBC Agreement"). Except as specifically set forth herein, capitalized terms used herein and not defined shall have the meanings set forth in the TV-PBC Agreement.

B. SFRTA and TV have entered into an agreement dated June 7, 2013, pursuant to which SFRTA is purchasing parking spaces ("SFRTA Parking Spaces") for the public using the Tri-Rail Station and Tri-Rail employees ("SFRTA Parking Agreement") in the Parking Garage as set forth in the SFRTA Parking Agreement.

C. County has approved the SFRTA Parking Agreement under the Review and Resubmit Process, conditioned upon County's right to review the location and operational characteristics of the SFRTA Parking Spaces as further provided herein.

D. TV is responsible for addressing, in an agreement with the County, the County Parking Spaces, pursuant to Section 2.6 of the TV-PBC Agreement. County Parking Spaces are defined in Section 1.16 of the TV-PBC Agreement and were initially determined to consist of 15 spaces to be used for County/PalmTran employees and 25 spaces to be for SFRTA employees; however, SFRTA has agreed to include the 25 spaces initially allocated to it within the SFRTA Parking Spaces discussed in the SFRTA Parking Agreement.

E. The County has advised TV that it will require 25 parking spaces ("County Parking Spaces") for County use as shall be provided pursuant to this Parking Agreement.

F. The County is to be granted a perpetual easement to use the County Parking Spaces and the grant of such easement will satisfy Section 3.6.3.7 of the TV-PBC Agreement.

### **AGREEMENT**

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

**1. Glossary of Terms.** The list of defined terms below is not intended to be exhaustive and there are other terms defined within this Agreement.

"Applicable Laws" means all federal, state, county, municipal and other governmental statutes, laws, rules, orders, regulations, ordinances, judgments, decrees and injunctions of Governmental Authorities including the Americans with Disabilities Act of 1990, as amended, and all permits, licenses, authorizations, rules and regulations relating thereto.

“CO” means all certificates, permits, licenses and approvals, including certificates of use, certificates of completion and occupancy (whether temporary or permanent) required for the legal use and occupancy and operation of the Parking Garage and County Parking Spaces.

“Easement” means an easement granted to the County in the form of Exhibit “A” attached hereto granting the County a perpetual easement to the County Parking Spaces in the Parking Garage.

“Easement Recording Date” means the date on which the Easement is recorded.

“Environmental Law” means all Applicable Laws relating to the environment, health, safety, or to the managing of Hazardous Substances or to releases in the indoor or outdoor environment, and any permits, approval, licenses, registrations, filings and authorizations required under Applicable Laws.

“Grant Conditions” means the conditions precedent to Easement as set forth in Section 3.

“Hazardous Materials” means all (a) chemicals or substances, materials, or wastes, that are now or hereafter included in the definition of “hazardous substances,” “hazardous wastes,” “hazardous materials,” “extremely hazardous wastes,” “restricted hazardous wastes,” “toxic substances,” “toxic pollutants,” “contaminants,” “pollutants” or words of similar meaning under any “Environmental Law”; (b) other chemicals, materials or wastes, exposure to which is now or hereafter prohibited, limited or regulated under any Environmental Law; and (c) petroleum or petroleum products or waste, explosives, flammables, radioactive materials, laboratory or biohazardous wastes, asbestos-containing materials, laboratory or biohazardous wastes, urea formaldehyde, PCBs, lead in drinking water, radon, lead-based paint, or other chemical element or substance the managing or release of or exposure to which (i) is prohibited or regulated by or could lead to liability under any Environmental Law or (ii) is subject to notice or reporting requirements under any Environmental Law.

“Parking Garage” means the parking structure: (i) to be built on the Property as part of the TOD; and (ii) in which the County Parking Spaces are to be located.

“Project” means the improvements to be constructed by TV on the Property, including the Parking Garage, and any improvements required for vehicular and/or pedestrian access to the County Parking Spaces.

“Project Documents” means: (i) a declaration of condominium with respect to the Parking Garage; (ii) any recorded written instrument in the nature of covenants running with the land which subjects the land comprising portions of the TOD to the jurisdiction and control of an association(s) in which the owners of parcels, or their association, representatives must be members of; and (iii) any other documents pertaining to the Project, which affect the rights and obligations of the County relating to the County Parking Spaces.

**2. Grant of Easement for County Parking Spaces.** Subject to the conditions hereinafter set forth, TV shall grant the Easement to the County for the County Parking Spaces.

- (a) **Consideration.** The Easement shall be granted at no charge to the County as part of the consideration for County entering into the TV-PBC Agreement.
- (b) **Easement Recording Date.** The Easement Recording Date shall occur within ten (10) business days after satisfaction or waiver of all Grant Conditions set forth in Section 3 below, or at such other date as mutually agreed upon by the parties.
- (c) **Costs.** TV shall pay all costs in connection with the preparation and recording of the Easement.
- (d) **Possession.** As of the Easement Recording Date, the County shall have the right to exclusive possession and occupancy of the County Parking Spaces, with access and other rights as provided in the Easement.

**3. Grant Conditions.** The County's and TV's obligation to record the Easement shall be subject to the satisfaction or written waiver by both Parties of the condition that TV shall have obtained a CO for either the entire Parking Garage or such portion thereof which includes the County Parking Spaces, the SFRTA Parking Spaces and the access and circulation areas providing access to said spaces.

**4. Representations and Warranties.**

(a) **TV's Representations and Warranties.** TV hereby makes the following representations and warranties to the County, which are, and shall be, true and correct as of the Effective Date and Easement Recording Date:

(i) **Validity of Agreement.** This Parking Agreement constitutes the valid and binding obligation of TV enforceable in accordance with its terms.

(ii) **Organization, Standing, Power and Authority.** TV is validly existing and in good standing under the laws of the State of Florida. TV has all requisite power and authority to execute, deliver and perform all obligations pursuant to this Parking Agreement.

(iii) **No Conflicts or Violations.** The execution and delivery of this Parking Agreement and the sale of the County Parking Spaces do not, and will not: (i) violate any statute, law, rule or regulation, or any order, writ, injunction or decree of any court or governmental authority; or (iii) violate or conflict with or constitute a default under any agreement, instrument or writing of any nature to which TV may be bound.

(iv) **Use of County Parking Spaces.** As of the Easement Recording Date, the County will have access to the County Parking Spaces, free and clear of all liens or encumbrances, except for the Project Documents and those exceptions to title which are accepted in writing by County. TV shall provide County with a title commitment and policy insuring County's interest in the Easement at TV's sole cost and expense, provided that the coverage amount shall not be greater than the good-faith estimate by TV of the construction cost of the County Parking Spaces.



(b) County's Representations and Warranties. The County hereby makes the following representations and warranties to TV, which are, and shall be, true and correct as of the Effective Date and Easement Recording Date and shall survive the Closing:

(i) Validity of Agreement. This Parking Agreement constitutes the valid and binding obligation of the County enforceable in accordance with its terms.

(ii) No Conflicts or Violations. The execution and delivery of this Parking Agreement and the purchase of the County Parking Spaces do not, and will not: (i) violate any statute, law, rule or regulation, or any order, writ, injunction or decree of any court or governmental authority; or (iii) violate or conflict with or constitute a default under any agreement, instrument or writing of any nature to which the County may be bound.

**5. Ongoing Covenants and Agreements.** The County and TV agree to the following covenants and agreements, which if appropriate, shall be incorporated in the Project Documents.

(a) Location and Pre-Design of County Parking Spaces. TV shall use reasonable efforts so that the County Parking Spaces will be located within a separate area adjacent to or within the boundaries of the area containing the SFRTA Parking Spaces. TV shall have the right to relocate the County Parking Spaces from time to time by providing 30 days' prior written notice to the County of the new location however the County shall have the right of prior review of the location under the Review and Resubmit Process. If after the Closing, and upon receiving such approval the spaces are relocated, TV and the County shall exchange an easement and a release of easement or other required documentation to reflect the new location. TV shall have the right to relocate the SFRTA Parking Spaces from time to time by providing 30 days' prior written notice to the SFRTA and the County of the new location however the County shall have the right of prior review of the location of the County Parking Spaces and the SFRTA Parking Spaces under the Review and Resubmit Process and the SFRTA shall have the right of review as provided in the SFRTA Parking Agreement. If the County and the SFRTA cannot agree as to the location of their respective Parking Spaces, then the County shall have the right to approve the location of the County Parking Spaces and the SFRTA shall have the right to approve the location of the SFRTA Parking Spaces.

(b) Design/Permitting/Construction.

(i) TV shall cause the design, permitting and construction of the Parking Garage to include the County Parking Spaces and the SFRTA Parking Spaces as provided pursuant to 5 (a) above.

(ii) TV shall provide to the County during the design phase a design and operational plan ("Design Plan") providing (a) the proposed location of the County Parking Spaces and the SFRTA Parking Spaces, (b) the proposed method of controlling access to the spaces, (c) the proposed separation/identifiable method (by signage, access card, gate or other method, (d) internal circulation plan for all floors of the garage up to where the County Parking Spaces and SFRTA Parking Spaces may be initially located or potentially relocated in the future, (e) garage access points for vehicles, (f) pedestrian access and circulation for connections to the ITC, and

(g) such other items as are reasonably necessary for the operation of the garage. The County shall have a right to comment on the Design Plan pursuant to the Review and Resubmit Process.

(iii) (a) construction of the County Parking Spaces shall comply with all Applicable Laws; (b) the County Parking Spaces shall be constructed utilizing the same materials and to the same quality of construction as the other parking spaces available to the general public in the Parking Garage and as required by the TV-PBC Agreement; and (c) there shall not be any special requirements or specifications pertaining to the County Parking Spaces, unless specifically agreed to by TV and the County.

(iv) The County Parking Spaces and the SFRTA Parking Spaces shall: (i) be available 24/7; (ii) have elevator access to, and from, each floor to an elevated pedestrian walkway and to the ground floor so as to provide reasonable access; (iii) have access to, and from, either Clearwater Drive or Banyan Boulevard; (iv) include the number of code-required ADA accessible spaces; (v) have a minimum length and width per parking space as provided by Applicable Laws; and (vi) include no tandem spaces.

All costs with respect to the County Parking Spaces for capital improvements or repairs and improvements necessary due to the failure of the general contractor to construct the improvements as required by the TV-PBC Agreement shall be the responsibility of TV or the developer of the Parking Garage, if not TV, for a period of two (2) years from the Easement Recording Date.

(c) Project Documents. Prior to commencement of the construction of the Parking Garage, TV shall prepare a declaration of condominium and associated documents, including the formation of the necessary associations. The Project Documents shall reference the Easement, which shall provide access for County employees to, and from, the County Parking Spaces and the Parking Garage without additional expense to the County. The Project Documents and the Design Plan shall incorporate the provisions of the Easement, including providing for, without additional cost to the County, non-exclusive, perpetual vehicular and pedestrian egress and ingress and access easements and maintenance easements over and across the Common Elements (as will be defined in the Project Documents) of the Parking Garage together with driveway, elevated pedestrian walkway(s) and sidewalks in the TOD to permit access to, and from, the County Parking Spaces and the ITC from the Parking Garage. TV shall provide County with drafts of the Project Documents pursuant to the Review and Resubmit Process for purposes of ensuring that such Documents comply with the terms of both this Agreement and the TV-PBC Agreement.

(d) Maintenance and Other Future Costs. The County shall not be responsible for any expenses incurred by the condominium association or property owners association governing the Parking Garage in the performance of its/their duties pursuant to the Project Documents, the perpetual use, operation and maintenance of the County Parking Spaces to be entirely without charge to County.

(e) Hazardous Materials. No owner or tenant shall be permitted to store or use, or permit the storage or use of Hazardous Materials in the Parking Garage or TOD, except in compliance with Applicable Laws.

(f) Access to Parking Garage. TV will make available to the County access cards or other method being utilized from time to time to provide access to the Parking Garage for County employees. The access system used will be designed to provide access to no more than 25 parking spaces at any one time. The access system will be further described in the Design Plan.

(g) No Sale to Third Party. Prior to delivery of the Easement, TV covenants not to sell the County Parking Spaces to a third party, provided, however, this provision shall not limit the ability of TV to assign all or part of its contract rights and obligations to a third party, provided that: (i) such assignment is approved by the County under the TV-PBC Agreement; (ii) such assignment is subject to the terms of the Easement, (iii) such third party assumes TV's obligations hereunder; (iv) the County's rights under this Agreement are not impaired by such an assignment and (v) TV shall not be released of its obligations under the TV-PBC Agreement or this Parking Agreement.

**6. Termination.**

(a) Notwithstanding any provision of this Parking Agreement to the contrary, prior to Closing, this Parking Agreement shall terminate if the TV-PBC Agreement terminates for any reason.

(b) Prior to the Closing, the County shall have the right to terminate this Parking Agreement in the event TV defaults under the either the TV-PBC Agreement or this Parking Agreement for whatever reason and such default is not cured under the TV-PBC Agreement or this Parking Agreement, as applicable. If TV or the County defaults under this Parking Agreement, the default procedure outlined in Paragraphs 7.4 and 7.5 of the TV-PBC Agreement, as applicable, shall be available to each Party.

**7. Miscellaneous.**

(a) 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:

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

**And to:**

Belson Karsch, LLC  
2000 Glades Road, Suite 300  
Boca Raton, Florida 33431  
Attention: Michael D. Karsch, Esq.  
Email: mkarsch@belsonkarsch.com

**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

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.

(b) Radon. Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risk to persons who are exposed to it over time. Levels of radon that exceed Federal and State Guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from the County's Public Health Unit.

(c) Modification. This Agreement may be modified, amended or supplemented only by a written instrument duly executed by all the Parties hereto.

(d) Severability. Should any term, provision or paragraph of this Agreement be determined to be illegal or void or of no force and effect, the balance of the Agreement shall survive.

(e) Captions. All captions and headings contained in this Agreement are for convenience of reference only and shall not be construed to limit or extend the terms or conditions of this Agreement.

(f) Waiver. No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of the same or other provisions, whether or not similar, nor shall any waiver constitute a continuing waiver. The failure of either Party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that Party's right to subsequently enforce and compel strict compliance with every provision of this Agreement. No waiver shall be binding unless executed in writing by the Party making the waiver.

Neither any failure nor any delay on the part of either Party in insisting upon strict performance of any term, condition, covenant or agreement, or exercising any right, power, remedy or privilege hereunder or under any other instrument or document executed as required hereunder, shall operate as or constitute a waiver thereof, nor shall a single or partial exercise thereof preclude any other future exercise, or the exercise of any other right, power, remedy or privilege.

Any provision of this Agreement may be freely waived in whole or in part by either Party if, in its sole discretion, it deems it advisable or desirable to do so.

(g) Survival. All of the respective covenants and agreements of TV and the County herein, or in any certificates or other documents delivered prior to or at the Closing, shall survive the Closing.

(h) Binding Effect. This Agreement shall bind and inure to the benefit of the respective permitted successors, and assigns of the Parties hereto. TV may not assign this Parking Agreement unless it has first complied with Paragraph 8.10 of the TV-PBC Agreement or to a lender in connection with financing of the Parking Garage provided that such assignment also complies with Paragraph 8.10 the TV-PBC Agreement.

(i) Construction of Agreement; Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. In the event of litigation between the Parties arising from the subject matter of this Agreement, the exclusive venue for any such action shall be, if a state action, in Palm Beach County, Florida, or, if a federal action, in the Southern District of Florida.

(j) Waiver of Jury Trial. The Parties hereby knowingly, voluntarily, intentionally and irrevocably waive any right either Party may have to a jury trial in each and every jurisdiction and any action, proceeding or counterclaim brought by either of the Parties hereto against the other or their respective successors or assigns in respect to any matter arising out of, or in connection with, this Agreement

(k) Interpretation. In the interpretation and construction of this Agreement, the Parties acknowledge that the terms hereof reflect extensive negotiations between the Parties and that this Agreement shall not be deemed, for the purpose of construction and interpretation, drafted by either Party hereto.

(n) Multiple Counterparts. This Agreement may be executed in multiple original counterparts, each of which shall be deemed to be an original, but which together shall constitute the one and the same instrument. Further, the signature pages from executed originals may be detached and assembled together to form complete executed originals of this Agreement. Additionally, the Parties agree that signatures appearing on copies of this Agreement transmitted

by facsimile transmissions or electronic transmissions shall be deemed to be original signatures and shall be binding on the Parties as if originally signed by any such Party.

(o) Time is of the Essence. Time is of the essence in this Agreement, and all of the terms, covenants and conditions hereof.

(p) Entire Agreement. This instrument and the documents to be executed pursuant hereto contain the entire agreement between the Parties relating to the matters that are subject to this Agreement. Any oral representations or modifications concerning the subject matter of this Agreement or any such other document shall be of no force and effect excepting a subsequent modification in writing approved by both Parties in the same manner as this Agreement.

(q) Recitals. The truth and accuracy of each of the Recitals set forth above are acknowledged by the Parties and, along with the exhibits attached to this Agreement, are incorporated herein by reference.

(r) 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, gender identity or expression, or genetic information, be excluded from the benefits of, or be subjected to any form of discrimination under any activity conducted pursuant to this Agreement.

(s) No Third Party Beneficiary. No provision of this Agreement is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this Agreement, including but not limited to any citizens of County or employees of County or TV.

(t) Office of the Inspector General. Palm Beach County has established the Office of the Inspector General. The Inspector General's authority includes but is not limited to the power to review past, present and proposed County contracts, transactions, accounts and records, to require the production of records, and audit, investigate, monitor, and inspect the activities of the parties or entities with which the County enters into agreements, their officers, agents, employees, and lobbyists in order to ensure compliance with contract specifications and detect corruption and fraud. All parties or entities doing business with the County or receiving County funds shall fully cooperate with the Inspector General including granting the Inspector General access to records relating to the agreement and transaction.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

Signed, sealed, and delivered  
in the presence of:

TRANSIT VILLAGE, LLC, a Florida limited  
liability company

\_\_\_\_\_  
Witness Signature

By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Witness Name

\_\_\_\_\_  
Print Signatory's Name

\_\_\_\_\_  
Witness Signature

Its: \_\_\_\_\_

\_\_\_\_\_  
Print Witness Name

SEAL

ATTEST:

SHARON R. BOCK  
CLERK & COMPTROLLER

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

By: \_\_\_\_\_  
Deputy Clerk

By: \_\_\_\_\_  
Priscilla A. Taylor, Mayor

\_\_\_\_\_  
Witness Signature

SEAL

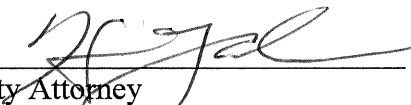
\_\_\_\_\_  
Print Witness Name

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Print Witness Name

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY

APPROVED AS TO TERMS  
AND CONDITIONS

By:   
County Attorney

By:   
Department Director

G:\PREM\Dianna\County Parking Agreement TV Execution.7-15-2014 Final

**EASEMENT**

THIS EASEMENT (hereinafter referred to as the “Easement”), granted \_\_\_\_\_, 20\_\_ by TRANSIT VILLAGE, LLC, a Florida limited liability company, whose mailing address is 2000 Glades Road, Suite 300, Boca Raton, Florida 33431, hereinafter referred to as “Transit Village”, to PALM BEACH COUNTY, a political subdivision of the State of Florida, whose mailing address is 301 North Olive Avenue, West Palm Beach, Florida 33401-4791, hereinafter referred to as “County”. County and Transit Village are sometimes referred to herein individually as a “party” and collectively as the “parties”.

RECITALS

A. Transit Village and the County entered into a Parking Easement Agreement dated \_\_\_\_\_, 2014 (“Parking Agreement”) pursuant to which Transit Village has agreed to provide the County with 25 parking spaces for Palm Tran and County employees (“County Parking Spaces”) within the parking garage (“Parking Garage”) included in the Project (as defined in the Parking Agreement).

B. Transit Village has agreed to grant the County a perpetual easement to use the County Parking Spaces in the Parking Garage pursuant to the terms of the Parking Agreement, the terms of which are hereby incorporated herein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein and various other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Recitals. The foregoing recitals are true and correct and incorporated herein by reference:
2. Grant of Exclusive Easement. Transit Village hereby grants the County a perpetual, exclusive easement to the County Parking Spaces. The location of the County Parking Spaces is fully described in Exhibit “A” to be attached hereto.
3. Grant of Non-Exclusive Easement. Transit Village hereby grants the County a perpetual non-exclusive easement in accordance with the terms of the Parking Agreement to have access, ingress and egress, both vehicular and pedestrian to and from the County Parking Spaces to and from Clearwater Drive. The location of this non-exclusive easement is described in Exhibit “B” attached hereto. County shall also have the perpetual right to non-exclusive access, ingress and egress over and across the common elements of the Parking Garage together with driveway,



elevated pedestrian walkways and sidewalks to permit access to and from the County Parking Spaces and the ITC from the Parking Garage.

4. Beneficiaries of Easements. Each of the easements granted herein are for the benefit of the County and its employees.

5. Rights Retained by Transit Village. Transit Village hereby retains all rights relating to the Property not specifically conveyed to the County by this Easement Agreement.

6. Use of the County Parking Spaces. The County shall use the County Parking Spaces solely for the County's and Palm Tran's employees and shall exercise the rights granted hereunder in a manner which does not interfere with Transit Village's use and enjoyment of the Parking Garage.

7. Maintenance and Future Costs. The County, in its use of the easements granted herein, shall not be responsible for any expenses incurred by the condominium association, property owners association, or other entity governing or operating the Parking Garage. It is the intent of the granting of this easement for a public purpose and to a public entity that this easement is for the County's perpetual use of the County Parking Spaces for their intended use that, such use is to be entirely without charge to the County.

8. Easement to Run with Land. This Easement and all other covenants, agreements, rights and obligations created hereby, shall run with the Property, and shall be binding on and inure to the benefit of all persons having or acquiring fee title to the Property, all upon the terms, provisions and conditions set forth herein. This Easement and all the rights and obligations of the County and Transit Village with respect to the Easement set forth herein will commence as of the date hereof and shall continue in perpetuity.

9. Rules and Regulations. In connection with its use of the County Parking Spaces, the County and its occupants, tenants, invitees, customers, guests, employees, successors and assigns shall comply with all reasonable rules and regulations promulgated by Transit Village relating to the use by all occupants of the Parking Garage.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

Signed, sealed, and delivered  
in the presence of:

TRANSIT VILLAGE, LLC, a Florida limited  
liability company

\_\_\_\_\_  
Witness Signature

By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Witness Name

\_\_\_\_\_  
Print Signatory's Name

\_\_\_\_\_  
Witness Signature

Its: \_\_\_\_\_

\_\_\_\_\_  
Print Witness Name

SEAL

STATE OF FLORIDA  
COUNTY OF \_\_\_\_\_

The foregoing instrument was sworn to, subscribed and acknowledged before me this \_\_\_\_\_  
day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_  
\_\_\_\_\_ [ ] 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: \_\_\_\_\_

ATTEST:

SHARON R. BOCK  
CLERK & COMPTROLLER

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

By: \_\_\_\_\_  
Deputy Clerk

By: \_\_\_\_\_  
Priscilla A. Taylor, Mayor

Witness Signature  
\_\_\_\_\_  
Print Witness Name

SEAL

Witness Signature  
\_\_\_\_\_  
Print Witness Name

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY

APPROVED AS TO TERMS  
AND CONDITIONS

By: \_\_\_\_\_  
County Attorney

By: \_\_\_\_\_  
Department Director

G:\PREM\Dianne\Parking Garage Easement Final 7-14-2014 DC Compare.docx

**EXHIBIT A**

**LEGAL DESCRIPTION OF COUNTY PARKING SPACES**

[To be prepared by Transit Village and agreed to pursuant to the Review and Resubmit Process and to be inserted by County staff prior to filing]

**EXHIBIT B**

**DESCRIPTION OF ACCESS TO COUNTY PARKING SPACES**

[To be prepared by Transit Village and agreed to pursuant to the Review and Resubmit Process and to be inserted by County staff prior to filing]

**Dianne Cahill**

---

**From:** Ross Hering  
**Sent:** Thursday, July 03, 2014 11:59 AM  
**To:** Dianne Cahill  
**Subject:** FW: Wedge TOD Property/SFRTA Parking and Funding

---

**From:** Audrey Wolf  
**Sent:** Sunday, August 04, 2013 9:52 AM  
**To:** Stephens Jack  
**Cc:** giuliettj@sfrta.fl.gov; Moore Teresa; Cargill Loraine; Ross Hering; Robert Weisman  
**Subject:** Wedge TOD Property/SFRTA Parking and Funding

Jack -

You requested that we provide you with any documentation in our possession which lead us to inquire as to the rationale for SFRTA agreeing to partially fund TV's obligation to provide SFRTA with 250+ parking spaces within TV's proposed development. We completed a review of the RFP, TV's proposal, and discussion at BCC meetings pertaining to the financial terms of providing 290 parking spaces for Tri-Rail and Palm Tran. We didn't find anything definitive from a contractual standpoint, and there is support for both sides of this argument and as such, we do not intend to comment upon or question this further to SFRTA. Below is a summary of each document and meeting.

Audrey

**Easement Agreement between PBC and SFRTA**

2.9 In the event the County decides to convey or lease the Easement Premises to a third party for the purpose of development (the "Third Party Developer"), County agrees to: 1) include SFRTA in the development of the RFP, evaluation of the proposals, and the negotiations with the Third Party Developer; and 2) include in any agreement to convey or lease the Easement Premises, a requirement that the Third Party Developer include as part of any new development of the Easement Premises, 250 parking spaces for the public using the Tri-Rail Station. Any agreement between the Third Party Developer and SFRTA for the construction, operation, maintenance, all associated costs, and any other provisions affecting the replacement of SFRTA's Parking Facility, shall be executed by said parties prior to the conveyance or lease of any portion of the Easement Premises. SFRTA shall exercise reasonable good faith efforts to reach an agreement with such third party developer. SFRTA acknowledges that it will not be reimbursed by County or Third Party Developer for any costs or expenses associated with the SFRTA Parking Facility, including without limitation, the design, construction, maintenance, consultants, permit fees or any other cost associated therewith.

Note: SFRTA Parking Facility is defined as the existing +/-160 spaces.

**November 17, 2009BCC Agenda Item**

Minimum RFP Requirement: Dedicate a minimum of 250 parking spaces for SFRTA/Tri-Rail  
Selection Criteria: Tri-Rail parking accommodations (15 points)

**RFP excerpts – 2/3/2010**

Provide a minimum of 250 parking spaces on behalf of the SFRTA for use by, and at no charge to, SFRTA patrons. Additional parking spaces for use by, and at no charge to, SFRTA and Palm Tran employees is required to replace any of those 40 employee parking spaces that currently exist on the northern +/-2.0 acres of the property and are lost as a result of the proposed development; for a combined minimum requirement of not greater than 290 parking spaces.

Identify, on the required parking plan, the location and number of spaces to be assigned to SFRTA for no-cost parking available for mass transit patrons.

whether and how many additional SFRTA *patron* parking spaces (beyond the minimum 250) can be accommodated within the Project if fully funded by the SFRTA.

how the SFRTA patrons will be allowed to use the spaces at no cost to those patrons.

responsibility for the ongoing maintenance of the required SFRTA and Palm Tran employee and patron parking spaces (a combined minimum requirement of not greater than 290 parking spaces), including all expectations for public financial contributions.

**Indicate how the required 250 parking spaces for SFRTA will be provided, including any proposed funding from public entities. Include any capital contribution required by SFRTA in support of the minimum parking allocation required by the RFP. Proposals that have no or the lowest capital contribution required of SFRTA will receive higher scores on this criterion.**

#### **TV Response to RFP – 2/18/2010**

**Parking.** TV plans to provide 1,800 to 2,500 parking spots in the base of the project. These spaces include 250 Tri-Rail patron spaces and 40 employee spaces and will meet or exceed the requirements of the City of West Palm Beach Downtown Master Plan depending on the final programs included in the project.” (Proposal Requirements, page 3-8)

“Market conditions, user demand, construction costs and other conditions, all materially affect many of the variables for the development of the Wedge. Therefore, preparation of prospective sources and uses of funds will be prepared as part of Phase 2.” (Financial Terms, page 4-2)

#### ***“B. Financial proposal to address provision of no fewer than 250 spaces for Tri-Rail patrons, including any anticipated subsidies from public entities***

TV will request that SFRTA provide a TBD amount per parking space provided for reimbursement of the capital costs of construction for such spaces. Such amount will be determined as the estimated costs of the parking spaces are determined. SFRTA and other appropriate agencies will be required to cooperate with TV to obtain grants for the project for parking and certain transit and other costs of the project.” (Financial Terms, Page 4-2)

#### ***“D. Proposed purchase price(s) and/or annual land rent payment(s) for the “Wedge” property, including air rights over the ITC.***

...

TV believes that there are significant offsets to the value of the property offered as a result of the encumbrances and restrictions placed upon the property that must be offset against the purchase price.

- First, a purchaser is required to provide 290 parking spaces at an estimated cost of \$20,000 per space or a total cost of \$5,800,000.” (Financial Terms, Page 4-3)

“To the extent that the County provides funding for these offsets, the resulting payment will be increased and should same result in a positive number, TV will pay such additional amounts to the County. Notwithstanding the offsets, the payment shall never be less than \$100,000...” (Financial Terms, Page 4-3)

#### **3/16/2010 Selection Committee Meeting**

ALW: The RFP meant to physically provide parking spaces, with an understanding that the cost of doing so would be assumed, deducted or offset.

Loraine Cargill: TV’s response does not say that the spaces will be provided at no charge to RTA.

Loraine Cargill: Cost of transit parking, as well as operation and maintenance for same, should be covered by the developer. The developer may pursue grant funding opportunities for this purpose.

#### **July 10, 2012 BCC Meeting, PM Session**

Video -> <mms://pbcvideo.co.palm-beach.fl.us/BCC/2012/bcc07-10-12pm.wmv>

**Mike Masanoff (2:31 PM, 29:00): Purchase price is not \$100K because the contract requires over \$18M of obligations**

**TV slide (2:31 PM, 29:30): Construction and maintenance cost of 290 structured parking spaces = \$6.36M**

**August 14, 2012 BCC Meeting**

Video (10:58 AM, 01:28:00)-> <mms://pbcvideo.co.palm-beach.fl.us/BCC/2012/bcc08-14-12.wmv>

Agenda item -> <http://www.pbcgov.com/pubInf/Agenda/20120814/5i2.REVISED.pdf>

**Synopsis:**

Verbal and visual representations made by Mike Masanoff at the 7/10/2012 Board meeting indicated that TV was required to fully absorb the cost of providing 290 parking spaces. This representation was not retracted or otherwise clarified at the August 14, 2012 meeting at which the contract was approved with an increase in the purchase price from \$100,000 to \$3.6M, with the County being responsible for grant repayment up to the amount of the purchase price. While the SFRTA's offering to partially fund the parking requirement of the RFP would appear to be inconsistent with representations made by TV to the Board of County Commissioners, the contract between TV and the County does not specifically require the parking spaces be provided at no cost. As there is no definitive contractual provision requiring TV to fund the construction of the parking spaces at its sole cost and/or prohibiting TV from seeking funding assistance from SFRTA, we are leaving any decision regarding funding assistance to SFRTA.



Attachment 4  
SFRTA Response



**SOUTH FLORIDA  
REGIONAL  
TRANSPORTATION  
AUTHORITY**

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

July 11, 2013

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

**VIA Email and U.S. Mail**

Re: WPB Joint Development/TV/SFRTA Purchase and Sale Agreement of 250 Parking  
Spaces

Dear *Audrey* Ms. Wolf:

Pursuant to our phone conversation on Monday, June 24, 2013, regarding the above referenced agreement (the "Agreement"), you explained to me that it was the County's position that the 250 SFRTA/Tri-Rail parking spaces ("SFRTA Parking Spaces") were supposed to be provided by Transit Village, LLC ("TV") to SFRTA for free (not just at no charge to our patrons) and that this was clearly stated in the Request for Proposals issued by the County for the West Palm Beach Transit-Oriented Development. In addition, you said that the County felt it had not been informed of the progress in the negotiations between SFRTA and TV and so were caught off-guard when the Purchase and Sale Agreement between SFRTA and TV for the SFRTA Parking Spaces ("Purchase and Sale Agreement") was approved by the SFRTA Governing Board at its June 7, 2013 meeting.

I have also received your email of June 28, 2013, in which you explained the urgency of addressing these issues because the County is currently reviewing its parking agreement with TV, which does not include provisions requiring the County to pay for construction or operation of its parking spaces and the County's need to assure it has a right to review operational issues regarding these spaces with TV at a later date. You also explain that you will be on vacation for the next 2 weeks, but would like to set up a meeting between our staffs.

As such, I have prepared this letter to provide all of us with a timeline and related documentation on this issue to facilitate our discussion and to request confirmation of the County's position that SFRTA should not have to pay for the construction and maintenance of the Tri-Rail parking, as it impacts the validity and enforceability of the Agreement.

We have reviewed the RFP and the resulting Agreement for Purchase and Sale between TV and Palm Beach County, dated August 14, 2012 ("County/TV Agreement"), along with numerous

emails and other documentation in our files regarding the provision of SFRTA and County parking at the West Palm Beach transit-oriented development.

1. Informing the County

It has always been SFRTA's goal to keep the County and specifically, your office, informed of what was occurring in the discussions between SFRTA and TV regarding the SFRTA Parking Spaces. As such, and pursuant to your request, we transmitted the Letter of Intent to Provide for SFRTA Purchase of Parking Spaces to Facilitate Implementation of the West Palm Beach Transit Oriented Development approved by the Board on January 25, 2013 (the "LOI"), along with the corresponding Board item and backup for the County's information on March 25, 2013. The LOI was nonbinding and provided that the parties would try and negotiate a Purchase and Sale Agreement within 90 to 120 days following its approval. The LOI clearly addressed that SFRTA was paying \$3,000,000 for the construction of the parking spaces and would be responsible for its share of the parking garage common area maintenance. We did not receive any objection from your office regarding the transaction outlined in the LOI.

The Agreement was approved by the SFRTA Board at its June 7, 2013 meeting, subject to the County Approval, as required by Section 1.57 of the County/TV Agreement. We requested such approval in writing and TV provided SFRTA with Ross Hering's email dated June 7, 2013, stating:

*Yes, you can proceed with the SFRTA agreement. Our concerns regarding ability to provide input on location and operational considerations during design of the garage apply to both SFRTA and County Parking Spaces, and this design review and approval can be addressed in the County Parking Agreement. [emphasis added]*

We were therefore, very surprised when you called and indicated that the County had serious concerns that SFRTA was paying for these parking spaces.

2. Construction and Operational Costs of SFRTA Parking Spaces

One of the issues you raised on our June 24, 2013 call was that the County never intended for the TOD developer to charge SFRTA for the construction and operation of the 250 parking spaces. Going back to the language of the easement agreement dated March 17, 2009 between SFRTA and the County ("Easement Agreement"), the language assumes there would be an agreement between SFRTA and the TOD developer regarding construction and operation of the parking spaces. This approach was carried through in Exhibit "E" of the final County Request for Proposals to Lease or Purchase Property Known as the Wedge Property within the City of West

Palm Beach and the Proposed Transit Oriented Development District (RFP No. 2009-104-RCH) dated December, 2009 (the "RFP"), which stated that proposers were to:

*Include any capital contribution required by SFRTA in support of the minimum parking allocation required by the RFP [250]. Proposals that have no or the lowest capital contribution required of SFRTA will receive higher scores on this criterion.*

As we know, only one proposal was received by the County from TV. Section 4-2(B) of TV's proposal stated:

*TV will request that SFRTA provide a TBD amount per parking space provided for reimbursement of the capital costs of construction for such spaces. Such amount will be determined as the estimated costs of the parking spaces are determined.*

We appreciate that the goal of the County in drafting the RFP language was to obtain SFRTA parking spaces in the TOD at the lowest possible cost, but the RFP clearly did not require the proposer to provide the parking spaces to SFRTA at no cost for their construction and did not address operational costs at all. It did however, clearly require that the parking be provided for free to the Tri-Rail patrons, as well as to County and SFRTA employees. (See Exhibit "C", #7 of the RFP)

The language of the County/TV Agreement did not change the language in the RFP or TV's Proposal regarding the provision of SFRTA parking spaces. Section 2.7 of the County/TV Agreement merely states:

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

Based upon our recent conversation and the email that you sent me on June 28, 2013, we are now concerned that the County has not formally approved the Purchase and Sale Agreement, which would affect its enforceability and validity. We request that you please advise, in writing, as to the status of the County's Approval pursuant to Sections 1.53 and 1.57 of the County/TV Agreement.

### 3. County Parking Spaces

Regarding your concerns about the County spaces, we assume you are referring to the spaces referenced in Exhibit "C", #7 of the RFP which states:

*Additional parking spaces for use by, and at no charge to, SFRTA and Palm Tran employees is required to replace any of those 40 employee parking spaces that currently exist...*

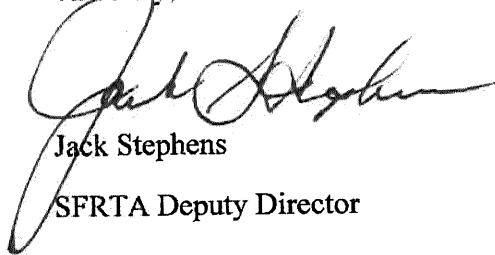
SFRTA is going to use some of its 250 spaces to accommodate its employees and therefore, will not require any of the referenced 40 spaces.

#### 4. Review of Design and Operation of Parking Spaces

In reviewing the County/TV Agreement, we are unable to locate a provision that requires the County to comply with any of the terms of the Agreement. The Agreement does not address the issue of the County's review of TV's plans. Instead, it gives SFRTA the same review rights as the County has in the County/TV Agreement. We do not see how this detrimentally impacts the County's arrangement.

As I confirmed when we talked, SFRTA staff is more than willing to meet on these issues to better understand the County's position.

Sincerely,



Jack Stephens  
SFRTA Deputy Director

Encls.

cc: Mayor Steven Abrams, SFRTA Chair  
Joseph Giulietti, SFRTA Executive Director  
Teresa Moore, SFRTA General Counsel  
William Cross, SFRTA Director of Planning and Capital Development  
Loraine Cargill, SFRTA Transportation Planning Manager  
Ross Hering, PB County Director, Property and Real Estate Division