

GROUND LEASE AND OPTION AGREEMENT

Between

THE CITY OF BOCA RATON, FLORIDA, a Florida municipal corporation

and

VIRGIN TRAINS USA LLC, a Delaware limited liability company

Date: _____

LEASE AND OPTION AGREEMENT

THIS LEASE AND OPTION AGREEMENT (the "Agreement") is entered into by **THE CITY OF BOCA RATON, FLORIDA**, a Florida municipal corporation ("City") and **VIRGIN TRAINS USA LLC**, a Delaware limited liability company ("VTUSA").

RECITALS:

WHEREAS, Pursuant to Section 337.251, Florida Statutes ("F.S."), the City may lease to public agencies or private entities use of the City's property to further economic development.

On September 17, 2019 VTUSA delivered an unsolicited proposal to the City (the requesting a ground lease of City owned land upon which VTUSA desires to construct a passenger train station (the "Station Parcel") and a garage facility (the "Garage Parcel,") which, together with the Station Parcel are together referred to as the "Property," for the purpose of offering Virgin passenger intercity rail service to the City (the "Proposal").

The Proposal included a request for the grant by City to VTUSA for an option to purchase (the "Option") other City lands proximate and adjacent to the Property in contemplation of developing community of commercial and residential uses maximizing access to the Property (the "TOD Land").

The City's Comprehensive Plan establishes numerous Transportation Objectives and Policies for the establishment of a rapid rail passenger train station in Boca Raton along the Florida East Coast Railway LLC's ("FEC") corridor (the "Corridor"), including by way of example:

OBJECTIVE TRAN. 5. 6. 0 Encourage the Florida Transportation Commission ("FTC"), the Florida Department of Transportation ("FDOT"), and FEC to develop passenger transit services along the rail corridor adjacent to Old Dixie Highway.

POLICY TRAN. 5. 6. 1 Promote the development of local or regional passenger transit service along the rail corridor adjacent to Old Dixie Highway.

POLICY TRAN. 5. 6. 2 Reserve land for transit stations at appropriate locations along the transit corridor, and develop the area surrounding each station at an appropriate density and intensity and transit -oriented design to support rail service in the future.

POLICY TRAN. 5. 6. 6 Examine the feasibility of a transit station in the vicinity of Palmetto Park Road to serve future transit service along the FEC rail corridor.

WHEREAS, VTUSA has constructed and is operating a privately owned, environmentally friendly passenger railway system with passenger train stations in Miami, Fort Lauderdale and West Palm Beach and a planned extension to Orlando (the "System").

WHEREAS, Boca Raton is experiencing continued growth and is seeking alternative transportation options to reduce impact on the Boca Raton roadways, eliminate toxic pollutants from private motor vehicles, ride share vehicles, buses and taxis.

WHEREAS, as part of the System, VTUSA has invested hundreds of millions of dollars to upgrade and build the necessary infrastructure, and acquired five new train sets that operate on the Corridor, which currently connects downtown Miami to downtown West Palm Beach, and is prepared to (a) add an additional station and (b) provide passenger train service from its existing and future station locations to Boca Raton.

WHEREAS, the City desires, and VTUSA has agreed, to provide the necessary infrastructure and construct (a) a passenger rail station and structured parking garage (the “Project”) on the Corridor and on the land described on Exhibit A to this Agreement (the “Property”) in each case, pursuant to the terms and conditions set forth herein.

At a public hearing on September 24, 2019, the Council reviewed the proposal outlined by VTUSA and directed the City Manager to negotiate a lease and option agreement with VTUSA

The City wishes to lease the Property and have the Option to the TOD Land to VTUSA on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and VTUSA agree as follows:

AGREEMENT:

1. **Agreement of Property.** The City hereby leases to VTUSA, and VTUSA leases from the City, the Property, subject to the terms and conditions of this Agreement. **Exhibits.** The following Exhibits are attached to this Agreement and are a part of this Agreement.

Exhibit A – Legal Description of the Property

Exhibit B – Legal Description of the TOD Land

Exhibit C – Leasehold Mortgagee Provisions

Exhibit D – Memorandum of Agreement

Exhibit E – Draw Request Form

Exhibit F – Option to Purchase Provisions

2. **Defined Terms.** Terms used in this Agreement are defined in the sections where they are first used. The following terms appear throughout this Agreement and have the meanings set forth below.

- 2.1. **Agreement Commencement Date.** The date this Agreement goes into effect pursuant to Section 5 of the Agreement

- 2.2. **Agreement Term.** A period of 50 years, commencing on the Rent Commencement Date, as extended in accordance with the Agreement.
- 2.3. **Agreement Year.** The 12-month period commencing on the Rent Commencement Date and ending on the day immediately preceding the first anniversary of the Rent Commencement Date, and each successive 12-month period thereafter during the Term.
- 2.4. **Attorneys' Fees.** All reasonable attorneys' fees and expenses and court costs, including, without limitation, all in-house attorneys' fees, and all fees, taxes, costs and expenses incident to trial, appellate, bankruptcy and post-judgment proceedings.
- 2.5. **Business Day.** Any day other than a Saturday, Sunday, or the list of legal holidays set forth in the City Code.
- 2.6. **Calendar Year.** A 12-month period beginning on January 1 and ending on December 31 of the same year.
- 2.7. **City Code.** The Boca Raton Code of Ordinances.
- 2.8. **Default Rate.** The rate of interest that is three (3%) percent over the "Prime Rate" published in the Wall Street Journal "Money Rates" section on a daily basis, not to exceed the statutory rate of usury.
- 2.9. **Force Majeure.** Any strike, lockout, act of God, inability to obtain labor or materials due to governmental restrictions, riot, war, hurricane, tropical storm, hazardous weather condition, or other similar cause beyond the reasonable control of a party
- 2.10. **Garage Parcel.** The portion of the Property necessary land for the Parking Garage.
- 2.11. **Governmental Authority.** Any federal, state, county, municipal or other governmental department, entity, authority, commission board, bureau, court, agency, or any instrumentality of any of them.
- 2.12. **Governmental Approval.** Any license, permit, certificate, consent, authorization, or other document issued by a Governmental Authority.
- 2.13. **Governmental Requirement.** Any law, enactment, statute, code, ordinance, rule, regulation, judgment, decree, writ, injunction, order, permit, certificate, license, authorization, agreement, or other direction or requirement of any Governmental Authority now existing or hereafter enacted, adopted, promulgated, entered, or issued, including the City Code.
- 2.14. **Initial Term.** The initial Term of the Agreement, which will begin on the Agreement Commencement Date and end 50 years after the Rent Commencement Date.
- 2.15. **Library.** The City owned library located at 2nd Avenue and 4th St.

- 2.16. **Leasehold Estate.** The rights granted to VTUSA under this Lease.
- 2.17. **Leasehold Mortgage.** A mortgage or mortgages or other similar security agreements given to any Leasehold Mortgagee of the leasehold interest of VTUSA hereunder, and shall be deemed to include any mortgage or trust indenture under which this Agreement shall have been encumbered, and including any and all renewals, modifications, advances, additions, and extensions of or to a Leasehold Mortgage.
- 2.18. **Leasehold Mortgagee.** Any unaffiliated third party public or private lending source or institution, federal, state, county or municipal governmental agency or bureau, bank, savings and loan, pension fund, insurance company, real estate investment trust, tax credit syndication entity, or other real estate investment or lending entity, savings bank, whether local, national or international, and/or the holder of any purchase money mortgage given back to a transferor, that is or becomes the holder, mortgagee or beneficiary under any Leasehold Mortgage and the successors or assigns of such holder, mortgagee or beneficiary, and shall be deemed to include, without limitation, the trustee under any such trust indenture and the successors or assigns of such trust; provided that if a Leasehold Mortgagee is other than a federal, state, county or municipal governmental agency or bureau, or a United Statesbased bank, savings and loan, pension fund, insurance company, or real estate investment trust.
- 2.19. **Losses.** Any and all claims, demands, losses, liabilities (including strict liability), damages, injuries, expenses, fees (including Attorneys' Fees), and costs (including costs of settlement or judgment) of any and every kind whatsoever paid, incurred, suffered by, or asserted against, the City by any person, entity or Governmental Authority.
- 2.20. **Parking Garage.** A structured parking garage on the Garage Parcel adjacent to the train station that includes parking for both the train station customers and library visitors.
- 2.21. **Permitted Use.** The operation of the Train Station, including ancillary use such as newsstands, cafes or coffee shops, and the Parking Garage.
- 2.22. **Project.** The development, construction, operation and maintenance of the Train Station and Parking Garage.
- 2.23. **Renewal Term.** Each of four successive periods of ten years each.
- 2.24. **Rent.** All Minimum Rent and Additional Rent due under this Agreement.
- 2.25. **Station Parcel.** The portion of the portion of the Property necessary land for the train station and access road.
- 2.26. **Term.** The Initial Term of the Agreement and any Renewal Terms in effect.
- 2.27. **TOD Land.** The City owned land south of the Garage Parcel and south of 4th St.

- 2.28. **Train Station.** A train station to be developed on the Station Parcel to serve the System.
3. **Rules of Construction.**
- 3.1. **City.** The term “City,” unless otherwise specified or required by the context, means the City of Boca Raton acting in its proprietary capacity as owner of the Premises and landlord under this Agreement, and not in its governmental capacity as a municipality administering laws and ordinances which are applicable to the Premises.
- 3.2. **No Waiver of Regulatory Powers.** The City cannot, and hereby specifically does not, waive or relinquish any of its regulatory approval or enforcement rights and obligations as it may relate to regulations of general applicability which may govern the Premises or any operations at the Premises. Nothing in this Agreement shall be deemed or interpreted to create an affirmative duty of the City to abrogate or relinquish its sovereign right to exercise its police powers and governmental powers by approving, disapproving, or taking any other action in accordance with its City Code and all other Governmental Requirements. Nothing in this Agreement is intended to be or shall be considered contract zoning.
- 3.3. **Approvals and Consents.** Any approval or consent required from the City as landlord in this Agreement shall be given or denied at the City’s sole discretion, unless expressly stated to the contrary. In those instances where an approval is required from the City in its governmental capacity, the approval will be granted or denied in accordance with applicable Governmental Requirements.
4. **Agreement Commencement Date.** The Agreement Commencement Date will be the date the Agreement has been signed by the City and VTUSA and all appeal and petition periods applicable to the effectiveness of this Agreement have expired.
- 4.1. **Agreement Termination Rights.** If the Agreement Commencement Date has not occurred within one year after this Agreement is signed by the last party to sign it, either party will have a continuing right to terminate the Agreement by sending written notice to the other party of its election to terminate. The right to terminate will expire upon the occurrence of the Agreement Commencement Date.
- 4.2. **Litigation.** If any litigation is instituted by a third party as a result of the City’s approval of this Agreement or of the development contemplated by this Agreement, City will not be obligated to defend such litigation, and will have the right to terminate this Agreement. The City will have no liability to VTUSA for the City’s failure to defend such litigation or its election to terminate this Agreement.
- 4.3. **Petition.** If a petition is filed in accordance with the City Code which requires reconsideration of the City Council’s approval of this Agreement, the City Council will have the option to either repeal the ordinance or resolution approving this Agreement or to allow the qualified voters of the City to approve or reject it at a City election, as set forth in the City Code. City will have no liability to VTUSA

as a result of either (i) the City Council's election to repeal the ordinance or resolution approving this Agreement after the filing of a petition for reconsideration, or (ii) the failure of the voters to approve the ordinance or resolution approving the Agreement.

5. **Agreement Term.**

5.1. **Initial Term.** The Initial Term of this Agreement will be for a period beginning on the Agreement Commencement Date and ending 50 years after the Rent Commencement Date, subject to extension in accordance with this Agreement.

5.2. **Renewal Terms.** VTUSA shall have the option to extend the Term for up to four successive Renewal Terms of ten years each by giving written notice to the City of VTUSA's election to extend the Term at least one year prior to the expiration of the initial Term but no earlier than two years prior to the expiration of the initial Term or the Renewal Term then in effect. VTUSA shall have the right to exercise the option to extend as long as no Event of Default exists under the Agreement at the time the option is exercised. Any extension of the Term shall be on the same terms and conditions set forth in this Agreement, including the Minimum Rent requirements set forth below.

5.3. **Possession Date.** The City shall deliver possession of the Property to VTUSA on the Agreement Commencement Date.

6. **Payment of Rent.** During the Term, VTUSA shall pay City Minimum Rent and Additional Rent, as defined below. Minimum Rent and Additional Rent are collectively referred to as "**Rent**." All payments of Rent due under this Agreement shall be delivered to the City at the following address:

City Manager
City of Boca Raton Financial Services
201 West Palmetto Park Road
Boca Raton, Florida 33432-3795

Alternatively, payments of Rent may be made to the City by electronic fund transfer in accordance with wire instructions provided to VTUSA by the City.

7. **Minimum Rent.** VTUSA agrees to pay City minimum rent ("**Minimum Rent**") of \$1.00 per Agreement Year for the first five Agreement Years of the Term. VTUSA shall pay the Minimum Rent in advance.

8. **Additional Rent.** All sums and charges that come due under the terms and conditions of this Agreement, other than Minimum Rent, shall be considered "**Additional Rent**."

9. **Taxes.**

9.1. **Real Property Taxes.** The parties acknowledge and agree that VTUSA shall not be responsible for any ad valorem property taxes imposed or assessed against the Property, ("**Real Property Taxes**") and that such Real Property Taxes shall be the sole responsibility of the City.

- 9.2. **Taxes Other than Real Property Taxes.** VTUSA shall timely pay and discharge, before any fine, penalty, interest or cost may be added for nonpayment, any and all taxes and assessments imposed or assessed on personal property maintained in the Project; public assessments; special assessments; utility taxes; and any other taxes or assessments that may be imposed at any time in the future. If VTUSA fails to pay any such taxes prior to delinquency, the City, without declaring a default and without relieving VTUSA of any liability, may, but is not obligated to, pay any such taxes, after notice to VTUSA. Any such taxes so paid by the City, together with all costs and expenses incurred by the City in connection with such payment, will constitute Additional Rent and shall be paid immediately by VTUSA to the City on demand with interest at the Default Rate from the date of payment by the City through the date of repayment to the City.
10. **Utility Charges.** VTUSA shall pay when due all charges, fees, and deposits (collectively, “**Charges**”) for all public and private utility services (including utility services provided by the City), including, but not limited to, water, sewer, stormwater, electricity, gas, light, heat, air conditioning, telephone, trash removal, cable television, and other utility and communication services that are provided to any portion of the Premises during the Term. If VTUSA fails to pay any Charges on a timely basis, and the City receives notice that such Charges are past due, City will have the right (but not the obligation) to pay the past due Charges after notice to VTUSA. Any funds advanced by City for such Charges, together with all costs and expenses incurred by the City in connection with such payment, will constitute Additional Rent and shall be paid immediately by VTUSA to the City on demand with interest at the Default Rate from the date of payment by the City through the date of repayment to the City.
11. **Use and Operation of the Premises.**
- 11.1. **Permitted Use.** During the Agreement Term, VTUSA shall be permitted to use the Premises for the Permitted Use. Any use of the Premises other than the Permitted Use is prohibited. The Train Station to be constructed and operated on the Station Parcel shall be comparable to VTUSA’s Fort Lauderdale train station. It is understood that the Train Station will be smaller than the Fort Lauderdale train station but will contain many of the same elements. The Train Station would have security screening for both passengers and bags at the entry as well two indoor waiting lounges equipped with WIFI and power outlets for our customers. In addition, restrooms and food and beverage would also be available within the Train Station. VTUSA shall open the Train Station promptly following issuance of a temporary certificate of occupancy and operate the System so as to ensure that all regularly scheduled, non-express passenger train service stops at the Train Station. Express, special event, and charter train services are not required to stop at the Train Station.
- 11.2. **Alcoholic Beverages.** VTUSA may obtain and maintain a license from the State of Florida allowing the sale of beer, wine and liquor for consumption at the

Station. The Station shall comply with all requirements of its alcoholic beverage license throughout the Agreement Term.

- 11.3. **Days and Hours of Operation.** The Train Station hours of operation shall be similar to the hours of operation for VTUSA's stations in downtown Fort Lauderdale and sufficient to provide the required service.

VTUSA agrees to open the Train Station for business promptly upon completion of construction and to thereafter continuously, actively and diligently operate the Train Station on the Station Parcel throughout the Term.

- 11.4. **Compliance with Governmental Requirements.** VTUSA shall comply with all Governmental Requirements applicable to the development, construction, use, occupancy, management, lease, operation and maintenance of the Premises, including, without limitation, Governmental Requirements prohibiting discrimination by reason of race, color, religion, sex, national origin, or handicap. VTUSA shall apply for, secure, maintain and comply with all licenses and permits which may be required by any Governmental Authority for the conduct by VTUSA of its business.

- 11.5. **Restrictions on Use.** VTUSA acknowledges that the Property shall be used only for the Permitted Use. VTUSA shall not use or permit the use of the Premises or any part thereof for any of the following: any unlawful or illegal business, use or purpose; any business, use, or purpose which is immoral or disreputable; any hazardous use; any use which could constitute a public or private nuisance; any use which violates in any way any Governmental Approval issued for the Property; or any use which violates a Governmental Requirement applicable to the Property. VTUSA shall not convert the use of the Property or any portion thereof to any time-sharing, time interval or cooperative form of ownership, or to subject the same to any condominium regime. VTUSA will not conduct any auction, bankruptcy, "lost our lease," "going out of business," or similar sale at the Premises.

- 11.6. **Lighting.** All lighting installed at the Premises shall comply with Governmental Requirements, including, without limitation, the City Code.

- 11.7. **Nuisance.** VTUSA will not commit any act which is a nuisance taking into consideration that the Permitted Use. The City agrees that the operation of the Train Station and, therefore, noise from train signal and emissions from trains will not constitute a nuisance. Ordinary and customary activities associated with a train station shall not constitute a nuisance.

- 11.8. **No Smoking.** VTUSA agrees that the Train Station shall be a smoke free environment, and that VTUSA shall use reasonable efforts to prevent any smoking of cigarettes, cigars, and similar products outside of the Train Station on the remainder of the Property.

- 11.9. **Request for Additional Use.** If VTUSA desires to use any portion of the Property for a use that is not a Permitted Use under this Agreement, VTUSA shall seek prior written consent from the City.
12. **“As Is” Condition of the Premises.** VTUSA acknowledges and agrees that it has had the opportunity to perform all inspections and investigations concerning the Property to its satisfaction and that, except as expressly provided in this Agreement, the City is not making and has not made any representations or warranties, express or implied, as to the Property, including but not limited to, title, survey, physical condition, suitability or fitness for any particular purpose, value, financial prospects or condition, or the presence or absence of hazardous substances. VTUSA acknowledges that it will rely solely on VTUSA’s own inspections and investigations of the Property in its determination of whether to proceed with the development of the Property. AS A MATERIAL PART OF THE CONSIDERATION OF THIS LEASE, VTUSA AGREES TO ACCEPT THE PREMISES IN “AS IS” AND “WHERE IS” CONDITION EXISTING ON THE LEASE COMMENCEMENT DATE, WITHOUT ANY EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES OF ANY KIND.
13. **Site Plan.**
- 13.1. **Site Plan Approval.** VTUSA will submit to the City (in its regulatory capacity) a site plan for the Project, which site plan must be approved by the City’s Planning and Zoning Board and the City Council. Upon approval, the site plan approved by the City Council shall be referred to as the “**Approved Site Plan.**”
- 13.2. **Signage.** All signage on the Property must be approved by the Community Appearance Board and the City Council prior to installation. All signage on the Property must comply with the City Code
- 13.3. **Changes to Approved Site Plan.** Any changes to the Approved Site Plan will require submission of an application by VTUSA, a public hearing, and approval by the City Council acting in its regulatory capacity. If at any time in the future changes to the Approved Site Plan do not require approval by the City in its regulatory capacity, VTUSA will nevertheless be required to obtain approval of such changes from the City acting in its proprietary capacity.
14. **Parking and Traffic.**
- 14.1. **Parking per Approved Site Plan.** All parking on the Property shall be in accordance with the Approved Site Plan and shall include a minimum of 455 parking spaces in the Parking Garage to be used by the public for access to the Train Station and Library. The ground floor of the Parking Garage will include a minimum of 55 spaces and those spaces will be reserved for the Library. The balance of the parking spaces will be available to the public but for the primary use of the Train Station.
- 14.2. **Offsite Parking.** Use of any offsite parking arrangement by VTUSA, shall require prior approval by the City Council.

- 14.3. **Parking Fees.** VTUSA shall establish parking fees at the Parking Garage that are no greater than the fees it charges at its downtown Fort Lauderdale and West Palm Beach stations. VTUSA agrees that the Library parking at the ground floor of the Parking Garage will be free of charge to library visitors.
- 14.4. **Parking Enforcement.** VTUSA will be responsible for supervising all activities in the parking areas of the Property and for enforcing all of the parking requirements and restrictions set forth in this Agreement, in the Approved Site Plan, and in the City Code.
- 14.5. **Pedestrian Bridge.**
 - 14.5.1. TBD
15. **Construction of Project.**
 - 15.1. **Construction Plans and Specifications.** VTUSA will be responsible for preparing the construction plans and specifications for the Project (the “**Plans**”). The Plans must conform in all material respects to all applicable Governmental Requirements, the Approved Site Plan, and the Description of the Project attached to this Agreement. The Plans must include, without limitation, the following:
 - 15.1.1. Schematic designs and architectural drawings, including renderings and elevations;
 - 15.1.2. Foundation and structural drawings;
 - 15.1.3. Electrical and mechanical drawings including, without limitation, plans for all lighting facilities affecting the exterior appearance of the Project;
 - 15.1.4. Landscaping plans;
 - 15.1.5. Construction staging and parking plans; and
 - 15.1.6. Final specifications.
 - 15.2. **Submission of Plans.** If required by Governmental Requirements, VTUSA shall submit the Plans, together with a building permit application for the Project. The Plans approved by the City will be referred to as the “**Approved Plans.**”
 - 15.3. **Governmental Approvals.** VTUSA shall secure and pay for any Governmental Approvals required for the construction of the Project, as well as any Governmental Approvals that may be required for any alterations and renovations permitted by this Agreement. The issuance by the City of any approvals or permits for the Project shall not render the City liable for any failure to discover any defect or non-conformance with any Governmental Requirement.
 - 15.4. **Construction Quality.** VTUSA agrees to perform all work (“**Work**”) required to complete the construction of the Project in a good and workmanlike manner in accordance with the Approved Plans and all applicable Governmental Requirements, including, without limitation, the Americans with Disabilities Act. VTUSA agrees that upon completion, the Train Station and Parking Garage shall

be comparable to VTUSA's Fort Lauderdale train station however it is understood that the Train Station will be smaller than the Fort Lauderdale train station. During the course of construction of the Project, VTUSA shall not alter, modify or amend the Approved Plans, or permit construction to progress other than in accordance with the Approved Plans.

15.5. **VTUSA's Obligations During Construction.** During construction, VTUSA shall:

- 15.5.1. Comply with all Governmental Requirements, including, without limitation, the City Code, as to all aspects of the Work, including the hours of construction;
- 15.5.2. Perform and complete the Work in a diligent manner, with no abandonment or cessation of construction for any period exceeding 10 Business Days except in the case of a Force Majeure;
- 15.5.3. Select the means and methods of construction, using only adequate and safe procedures, methods, structures and equipment;
- 15.5.4. Perform all necessary clearing and grading of the Property and the preparation of a compacted pad for the construction of the Project;
- 15.5.5. Furnish, erect, maintain and remove any construction equipment and temporary structures that may be required to perform the Work; be responsible for the safety, efficiency and adequacy of the construction equipment and construction methods used, and be responsible for any damage which may result from any failure of the construction equipment or any failure in the method of construction;
- 15.5.6. Provide all architectural and engineering services, scaffolding, hoists, temporary structures, light, heat, power, toilets, temporary utility connections, equipment, tools and materials and whatever else may be required for the proper performance of the Work;
- 15.5.7. Order and have delivered all materials required for the Work and be responsible for properly securing, protecting and insuring the materials and making certain they remain in good condition;
- 15.5.8. Maintain the Property in a clean and orderly condition at all times commensurate with the public waterfront nature of the Property, and remove all paper, cartons and other debris from the Premises;
- 15.5.9. Protect all Work prior to its completion and acceptance;
- 15.5.10. Preserve all properties adjacent to or leading to the Premises, and restore and repair any such properties damaged as a result of construction of the Project, whether such properties are publicly or privately owned;

- 15.5.11. Implement and maintain in place at all times a comprehensive hurricane and flood plan for the Premises and the Work, and provide a copy of same to the City;
- 15.5.12. Upon completion, deliver to the City an as-built survey and as-built plans and specifications for the Project in both hard copy and electronic formats;
- 15.5.13. Upon completion of the Project, deliver to the City a copy of the final Certificate of Occupancy for the completed Project;
- 15.5.14. Carry on any construction, maintenance or repair activity with diligence and dispatch and use diligent effort to complete the Work in the shortest possible time under the circumstances.
- 15.5.15. Take reasonable precautions to protect property adjacent to the Premises, or property which is in the vicinity of or is in anyway affected by the Work, and be entirely responsible and liable for all damage or injury to all adjacent public and private property as a result of VTUSA's operations.
- 15.5.16. At all times provide adequate construction supervision and enforce discipline and good order among its employees and the General Contractor at the Premises site.
- 15.6. **Community Garden.** VTUSA agrees to relocate any portion of the community garden that is displaced as a result of the Project. The new location of the garden has yet to be determined by the City, however VTUSA will comply with the recommendations of the City and the Boca Raton Junior League as to their recommended location for the new garden. VTUSA agrees to fund the design and relocation of the Community Garden at a cost not to exceed \$xx.
- 15.7. **Funding of the Parking Garage.** The cost of development of the West Aventura Station shall be funded pursuant to the following process
 - 15.7.1. City shall make payment to VTUSA within fifteen (15) days following receipt of a Draw Request in the form of Exhibit E (a "Draw Request"), accompanied by billing statements or invoices evidencing costs contemplated in the Budget and due and payable, which Draw Request shall be deemed to ratify and confirm that the work with respect to which the proceeds are requested has been performed in accordance with the Design Plans in all material respects; Proof that all billing statements or invoices evidencing costs previously submitted by VTUSA and approved by County and paid to VTUSA have been paid, except for those that are the subject of the current Draw Request; and unconditional releases of Liens from all payees under previous Draw Requests.
 - 15.7.2. To the extent there is a dispute with respect to the amount required to be funded by the City under this Section, the City shall fund the undisputed

portion of any payment required hereunder, and any disputed portion of any payment shall be funded, if applicable, following final resolution of such dispute.

- 15.8. **VTUSA to Provide Status Reports.** VTUSA shall keep the City apprised of the progress of the Work.
- 15.9. **City Representative.** The City may designate one or more employees or agents to be the City's representative for the Project (the "**City Representative**"). The City Representative may, during normal business hours, visit, inspect or appraise the Project, and any materials, contracts, records, plans, specifications and shop drawings relating to the Project, whether kept at VTUSA's offices or at the construction site or elsewhere. VTUSA agrees to cooperate with the City to enable the City Representative to conduct site visits, inspections and appraisals. If the City Representative observes any material deviations from the approved plans, City shall notify VTUSA of the deviations, and VTUSA shall take immediate steps, at its expense, to conform the construction to the approved plans; however, failure by the City Representative or the City to either observe any deviations from the approved plans or notify VTUSA of such deviations shall not (a) constitute a waiver by the City of any of its rights under this Agreement, or (b) render the City liable for any failure to discover any defect or non-conformance with any Governmental Requirement. VTUSA acknowledges that the role of the City Representative under this Agreement is not that of an inspector or other enforcer of Governmental Requirements, although the individual serving as the City Representative may also serve the City as an inspector or enforcer of Governmental Requirements.
- 15.10. **Utilities.** VTUSA shall install or cause to be installed all necessary utility connections for the Project, whether owned publicly or privately. VTUSA will be responsible for payment of all utility connection fees.
- 15.11. **Changes to the Project.** After the Project has been completed, VTUSA will not make any structural alterations or material additions ("**Changes**") to the Project without the City's prior written approval, both in its proprietary and its governmental capacities, which approval shall not be unreasonably withheld as long as the changes comply with the City Code. Any permitted Changes will be made in a good and workmanlike manner, in accordance with Approved Plans, and in accordance with all Governmental Requirements. VTUSA's obligations during construction of the Project set forth in this Agreement will also apply to any permitted Changes to the Project.
16. **Maintenance and Repair of Project.** VTUSA, at all times during the Term, at its expense, shall keep the Property and Project, in good order and repair and in a condition comparable to other VTUSA train stations.
 - 16.1. **Storage and Removal of Trash and Garbage.** VTUSA will provide and maintain vermin-proof receptacles for VTUSA's own use in the event trash or

garbage is temporarily stored outside of the building. VTUSA will be responsible for the removal of trash and garbage from the Premises and will promptly and strictly comply with all Governmental Requirements pertaining to the depositing and removal of trash and garbage from or about the Property.

16.1.1. VTUSA expressly acknowledges that the City is not responsible for solid waste collection for the Property. VTUSA, at its own expense, shall contract with a private hauler for pick-up, collection and removal of all solid waste from the Property.

16.1.2. VTUSA will be responsible for payment of all fees associated with the disposal of waste from the Property, including any collection, disposal, and franchise fees charged by any Governmental Authority.

16.2. **Pest Control.** VTUSA shall use a professional pest and sanitation control service to perform inspections of the Project at least once each month for the purpose of controlling infestation by insects, rodents, and vermin. VTUSA shall promptly perform any corrective or extermination work recommended by the pest and sanitation control service.

16.3. **Landscaping.** VTUSA will be responsible for maintaining all landscaping on the Property, and for sweeping and cleaning the entrances to the Train Station, as well as all parking areas, sidewalks, and other improved areas of the Premises.

16.4. **Repairs.** VTUSA shall promptly make all necessary Repairs to the Property and Project. The term “**Repairs**” includes all necessary repairs and replacements of all structural and non-structural portions of the Project, including, without limitation, the roofs; foundations; interior and exterior walls, windows, doors and entrances; columns and partitions; paved areas; parking areas; signs; floor coverings; and lighting, heating, air conditioning, plumbing, and sewerage systems and equipment.

16.5. **Vendors.** Any vendor performing any work on the Premises must be licensed and insured, and the vendor’s insurance must include the City as an additional insured. If VTUSA uses any uninsured vendor at the Premises, VTUSA will serve as and be deemed to be the insurer, and will be responsible for covering any claims arising out of the vendor’s activities at the Premises and asserted against the City.

17. **Liens.**

17.1. **Leasehold Mortgage.** VTUSA may, without the consent of the City, execute, deliver and cause or permit to be recorded against the Leasehold Estate, one or more Leasehold Mortgages.

17.1.1. VTUSA or any Leasehold Mortgagee shall notify the City, in the manner hereinafter provided for the giving of notice, of the execution of such Leasehold Mortgage and the name and place for service of notice upon such Leasehold Mortgagee. The terms of Exhibit C hereto shall be applicable with respect to any Leasehold Mortgage. Upon such

notification to the City that VTUSA has entered, or is about to enter, into a Leasehold Mortgage, the City hereby agrees for the benefit of such Leasehold Mortgagee, and within twenty (20) days after written request by VTUSA, to execute and deliver to VTUSA and Leasehold Mortgagee the Recognition, Attornment and Assent to Leasehold Mortgage ("Recognition Agreement") containing terms substantially identical to the terms set forth in Exhibit C hereto. The City further agrees that it will comply with all of the covenants and obligations contained in Exhibit C and any such Recognition Agreement.

17.1.2. If a Leasehold Mortgagee does not cure a VTUSA Default (as hereinafter defined) and this Agreement is terminated as provided in Exhibit C, such Leasehold Mortgagee shall be entitled to obtain a new Agreement from the City on the same terms and conditions as this Lease, as provided in Exhibit C; and further, any and all improvements owned by VTUSA prior to such termination shall automatically pass to, vest in and belong to such Leasehold Mortgagee, and shall not become the property of the City unless and until the final expiration or sooner termination of this Agreement not followed by a new Agreement as provided in Exhibit C hereto.

17.1.3. Notwithstanding anything to the contrary herein provided, subject to Section 17.1.4, below, if VTUSA or any successor in interest of VTUSA shall be a Leasehold Mortgagee, it is specifically understood and agreed that there shall be absolutely no personal liability on the part of such Leasehold Mortgagee with respect to any of the terms, covenants and conditions of this Lease, and the City shall look solely to the Leasehold Estate for the satisfaction of each and every remedy of the City in the event of any breach by such Leasehold Mortgagee as VTUSA of any of the terms, covenants and conditions of this Agreement to be performed by VTUSA, such exculpation of personal liability to be absolute and without any exception whatsoever (subject as aforesaid).

17.1.4. If a Leasehold Mortgagee requests reasonable modifications or clarifications to the Agreement which do not adversely affect the City's rights or obligations under this Agreement in any material respect, then the City will cooperate with VTUSA in order to execute reasonable documentation in connection therewith.

17.2. **VTUSA's Duty to Keep Premises Free of Liens.** VTUSA shall not create or permit to be created or to remain, and shall promptly discharge, at its sole cost and expense, any lien, encumbrance or charge (each, a "**Lien**") upon all or any part of the Premises or upon VTUSA's leasehold estate arising from (a) the use or occupancy of the Premises by VTUSA; or (b) by reason of any labor, service or material furnished or claimed to have been furnished to or for the benefit of

VTUSA; or (c) by reason of any construction, Repairs or demolition of all or any part of the Premises by or at the direction of VTUSA.

- 17.3. **City's Interest Not Subject to Liens.** No mechanic's, laborer's, vendor's, materialman's or other similar statutory Lien for such work or materials will attach to or affect the City's interest in all or any part of the Premises, or any assets of the City, or the City's interest in any Rent or other monetary obligations of VTUSA arising under the Agreement. In accordance with Section 713.10 of the Florida Statutes, any and all Liens or Lien rights arising out of the construction of the Project extend only to VTUSA's leasehold interest in the Premises. The City's right, title and interest in the Premises is not subject to Liens or claims of Liens for improvements made by VTUSA.

17.3.1. Nothing contained in this Agreement shall be deemed or construed to constitute the consent or request of the City, either express or implied, to any contractor, subcontractor, laborer or materialman for the performance of any labor or the furnishing of any materials for any specific improvement of, alteration to, or repair of any portion of the Premises.

17.3.2. Nothing contained in this Agreement shall be deemed or construed to give VTUSA any right, power or authority to contract for, or permit the rendering of, any services or the furnishing of materials that would give rise to the filing of any Lien against the City's interest in all or any part of the Premises, or against assets of the City, or City's interest in any Rent and other monetary obligations of VTUSA described in this Agreement.

17.3.3. Any construction agreements entered into between VTUSA and the General Contractor or other contractor in privity with VTUSA must provide that the City will not be liable for any work performed or to be performed on the Premises for VTUSA, or for any materials furnished or to be furnished to the Premises for VTUSA.

17.3.4. If any Lien is filed against the City's interest in the Premises, VTUSA shall (a) notify the City of the Lien on the same or next Business Day after VTUSA has received written or verbal notice of the Lien; and (b) transfer the Lien to security in accordance with Section 713.24 of the Florida Statutes within fifteen days after VTUSA has received written or verbal notice of the Lien.

- 17.4. **Contesting Liens against Leasehold Estate.** If VTUSA desires to contest any Lien filed against VTUSA's interest in the Premises, VTUSA must notify the City of its intention to do so within 30 days after the filing of the Lien. VTUSA, at its sole cost and expense, will protect the City by transferring the Lien to security in accordance with Section 713.24 of the Florida Statutes within 30 days after the filing of the Lien.

17.4.1. A Lien filed against VTUSA's leasehold interest will not constitute an event of default under this Agreement if VTUSA timely transfers the Lien

to security as described above. If the Lien is determined to be valid, VTUSA must satisfy and discharge the Lien within 60 days after its validity is determined.

- 17.5. **VTUSA's Failure to Discharge Lien.** If VTUSA fails to discharge any Lien, the City, without declaring a default under this Agreement and without relieving VTUSA of any liability, may, but shall not be obligated to, discharge or pay such Lien (either by paying the amount claimed to be due or by procuring the discharge of such Lien by deposit or by bonding proceedings). Any amount paid by the City, together with all costs and expenses incurred by the City in paying or discharging the Lien, will constitute Additional Rent and shall be paid immediately by VTUSA to the City on demand with interest at the Default Rate from the date of payment by the City.

18. **Hazardous Substances.**

18.1. **Defined Terms for Purposes of this Section.**

18.1.1. "CERCLA" means the Comprehensive Environmental Response, Compensation and Liability Act.

18.1.2. "Hazardous Substances" means those elements or compounds which are contained in the lists of hazardous substances or wastes now or hereafter adopted by the United States Environmental Protection Agency (the "EPA") or the lists of toxic pollutants designated now or hereafter by Congress or the EPA or which are defined as hazardous, toxic, pollutant, infectious or radioactive by CERCLA or any Superfund law or any Superlien law or any other Governmental Requirement regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereafter in effect

- 18.2. **VTUSA's Covenant.** VTUSA hereby covenants that neither VTUSA nor its agents, employees and contractors will generate, store, use, treat or dispose of any Hazardous Substance, on or at the Premises or any part of the Project, except for Hazardous Substances as are commonly legally used or stored (and in such amounts as are commonly legally used or stored) as a consequence of using the Premises for the Permitted Use, but only so long as the quantities thereof do not pose a threat to public health or to the environment or would necessitate a "response action", as that term is defined in CERCLA, and so long as VTUSA strictly complies with or causes compliance with all Governmental Requirements concerning the use or storage of such Hazardous Substances. VTUSA further covenants that neither the Premises nor any part of the Project shall ever be used by VTUSA or its agents, contractors or employees as a dump site or storage site (whether permanent or temporary) for any Hazardous Substances during the Term.

- 18.3. **Environmental Indemnification.** VTUSA hereby agrees to indemnify, hold harmless, and defend the City (with counsel reasonably approved by City) from and against any and all Losses with respect to, or as a direct or indirect result of, the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission, discharge, or release on or from the Premises or the Project of any Hazardous Substance, including, without limitation, any Losses asserted or arising under CERCLA, any so called federal, state or local "Superfund" or "Superlien" laws, or any Governmental Requirement regulating, relating to or imposing liability, including strict liability, or standards of conduct concerning any Hazardous Substance in breach of the covenant in Section 18.2 above. Excluded from VTUSA's environmental indemnification is (i) any environmental condition which can be determined to have arisen from a pre-existing condition, and (ii) any environmental condition, the source of which is unknown, but which is not the result of the Permitted Use.
- 18.4. **City's Environmental Representation.** The City represents to VTUSA that based upon the environmental report delivered to the City when the City acquired title to the Premises, and since the date of the City's ownership, no notice has been received by the City regarding any Hazardous Substances on the Premises. The City has received no written notice of any underground storage tanks on the Premises or any other environmental issues that would adversely affect the Premises.
- 18.5. **City's Rights.** Upon reasonable cause and provided that prior notice has been sent to VTUSA, if VTUSA fails to remedy a reported environmental condition within a reasonable period of time, the City shall have the right but not the obligation to enter onto the Premises or to take such other actions as it deems necessary or advisable to clean up, remove, resolve or minimize the impact of, or otherwise deal with, any Hazardous Substance following receipt of any notice from any person or entity (including, without limitation, the EPA) asserting the existence of any Hazardous Substance in, on or at the Premises or any part thereof which, if true, could result in an order, suit or other action against VTUSA and/or the City. All reasonable costs and expenses incurred by the City in the exercise of any such rights shall be Additional Rent under this Agreement and shall be payable by VTUSA upon demand with interest at the Default Rate from the date of payment by the City until paid by VTUSA.
- 18.6. **Survival.** This Section 18 shall survive the cancellation, termination or expiration of this Agreement.
19. **Indemnification.**
- 19.1. **VTUSA to Indemnify City.** VTUSA, on behalf of itself and on behalf of visitors, licensees, invitees, guests or persons performing work or using, visiting or occupying the Premises, hereby covenants and agrees to indemnify, hold harmless, and defend the City (with counsel reasonably approved by City) from and against any and all Losses arising out of or in connection with the subject

matter of this Agreement, which Losses are not caused by the City, to the fullest extent permitted by law.

- 19.2. **Indemnification from General Contractor.** VTUSA agrees that any contracts for the Work entered into between VTUSA and the General Contractor or other contractor in privity with VTUSA will include an agreement by the General Contractor or other contractor in privity with VTUSA to indemnify, hold harmless and defend the City (with counsel reasonably approved by the City) against any Losses arising out of the subject matter of the respective contract.
- 19.3. **City's Tort Liability.** Any tort liability to which the City is exposed under this Agreement will be limited to the extent permitted by applicable law and subject to the provisions and monetary limitations of Section 768.28, Florida Statutes, as may be amended, which statutory limitations will be applied as if the parties had not entered into this Agreement. The City expressly does not waive any of its rights and immunities under applicable law.
20. **Insurance.** Prior to any activity by VTUSA on the Premises, and at all times during the Term, VTUSA will be responsible for procuring and maintaining the insurance required by this Agreement, at VTUSA's sole cost and expense. In addition, VTUSA will ensure that its General Contractor maintains the applicable insurance coverages set forth in this Agreement.
 - 20.1. **General Insurance Provisions.**
 - 20.1.1. All policies must be issued by insurance companies authorized to do business in the State of Florida.
 - 20.1.2. All insurers must maintain an AM Best rating of A or better.
 - 20.1.3. The terms and conditions of all policies may not be less restrictive than those contained in the most recent edition of the policy forms issued by the Insurance Services Office (ISO) or the National Council on Compensation Insurance (NCCI). If ISO or NCCI issues new policy forms during the policy term of the required insurance, VTUSA will be required to comply with the new policy forms once they are implemented.
 - 20.1.4. VTUSA's insurance policies will be primary over any and all insurance available to the City, if any, and must be non-contributory.
 - 20.1.5. VTUSA and the General Contractor will be solely responsible for payment of all deductibles and retentions contained in their respective insurance policies. The City will be included as an "Additional Insured" on the Commercial General Liability policy and any Automobile Liability, Liquor Liability, and Umbrella Liability policies.
 - 20.1.6. VTUSA will ensure that each insurance policy obtained by it provides that the insurance company waives all right of recovery by way of subrogation against the City in connection with any damage covered by any policy.

- 20.2. **Evidence of Insurance.** Prior to taking possession of the Premises, and throughout the Term, VTUSA must provide satisfactory evidence of the required insurance to the City. Satisfactory evidence of insurance is either (a) a certificate of insurance, or (b) a certified copy of the actual insurance policy. The City, at its sole option, may request a certified copy of any or all insurance policies required by this Agreement. VTUSA acknowledges that VTUSA is the party responsible to the City for providing all insurance required by this Agreement. VTUSA may pass certain insurance obligations on to its General Contractor, but VTUSA will be responsible for making sure that its General Contractor fulfills all insurance requirements of this Agreement, and will be liable to City for any failure by the General Contractor to provide the required insurance.
- 20.3. **Cancellations and Renewals.** All insurance policies must specify that they are not subject to cancellation or non-renewal without a minimum of 30 days notification to VTUSA and the City, and a minimum of 30 days notification for non-payment of premium.

Required Coverages. VTUSA shall maintain the following insurance coverage throughout the term of the Agreement.

- 20.3.1. **Commercial General Liability Insurance.** Coverage must include, as a minimum: (a) Premises Operations, (b) Products and Completed Operations, (c) Incidental Contractual Liability, (d) Personal Injury Liability and (e) Expanded Definition of Property Damage. The minimum limits acceptable are \$3,000,000 per occurrence. The use of an excess/umbrella liability policy to achieve the limits required by this paragraph will be acceptable as long as the terms and conditions of the excess/umbrella policy are no less restrictive than the underlying Commercial General Liability policy, there are no gaps in coverage, and the excess/umbrella policy is a “follow-form” policy.
- 20.3.2. **All Risk Property Insurance.** Property Coverage (Special Form), to cover the “All Other Perils” portion of the policy at the Replacement Cost Valuation as determined by a certified property appraiser. The perils of Windstorm and Flood shall carry sub limits to be determined annually and acceptable to the City. To the extent available, coverage will extend to furniture, fixtures, equipment and other personal property associated with the Premises. The policy must also provide “Law and Ordinance” coverage with limits acceptable to both City and VTUSA.
- 20.3.3. **Business Interruption Insurance.** Business Interruption coverage utilizing a Gross Earnings Value form with limits equal to 6 months of VTUSA’s projected profits associated with the Premises. VTUSA will be responsible for adjusting the limits of the policy annually based on VTUSA’s audited annual financial statement for the Premises.
- 20.3.4. **Workers’ Compensation.** Workers’ Compensation Insurance with limits sufficient to comply with Florida Statute §440. In addition, VTUSA must

obtain Employers' Liability Insurance with limits of not less than: (a) \$500,000 Bodily Injury by Accident, (b) \$500,000 Bodily Injury by Disease, and (c) \$500,000 Bodily Injury by Disease, each employee.

20.3.5. **Liquor Liability Coverage.** Liquor Liability coverage in an amount of not less than \$3,000,000 per occurrence. The Liquor Liability policy must name the City as an additional insured.

20.4. **Additional Coverage Required During Construction.**

20.4.1. **Builder's Risk Insurance.** During all construction activities conducted on the Premises, including modifications to Project on the Premises costing in excess of \$500,000.00, VTUSA shall carry Builder's Risk insurance, including the perils of wind and flood, with minimum limits equal to the "Completed Value" of the Project being erected or the total value of the modifications being made, to the extent available. If such levels of coverage are not available, VTUSA must carry the full amount of such insurance currently available.

20.4.2. **Professional Liability.** VTUSA shall ensure that Architects and Engineers Errors and Omissions Liability insurance specific to VTUSA's construction activities is obtained prior to the commencement of any construction activities on the Premises, including without limitation, the Work. The policy must provide for the reporting of claims for a period of three years following the Substantial Completion of all construction activities related to the Work for which such insurance is procured. The minimum limits acceptable are \$1,000,000 per occurrence and \$2,000,000 in the aggregate annually.

20.5. **Premiums and Renewals.** VTUSA shall insure that all premiums for the insurance required by this Agreement are paid as they become due. VTUSA shall renew or replace each policy prior to the policy expiration date, and promptly deliver to the City all original Certificates of Insurance and copies of all renewal or replacement policies.

20.6. **Adequacy of Insurance Coverage.** The City has the unilateral right to periodically review the adequacy of the insurance coverage required by this Agreement. The City may require a change in the insurance coverage if the coverage requested is customary and commonly available for properties similar in type, size, use and location to the Premises

20.7. **Appraisal.** As long as the insurance provided under the Agreement by VTUSA contains typical escalation and standard law and ordinance provisions which would automatically increase the amount of insurance provided as the cost of construction increases or complies with applicable laws and codes increase the cost of construction., the City will not require a replacement cost value appraisal. If, however, the insurance policies provided hereunder do not contain such provisions, the City may require a replacement cost value appraisal from a

licensed and certified appraiser at five year intervals. The selection and expense of the appraiser will be the sole responsibility of VTUSA. VTUSA will provide a copy of the full report to the City upon completion.

- 20.8. **City May Procure Insurance if VTUSA Fails To Do So.** If VTUSA refuses, neglects, or fails to secure and maintain in full force and effect any or all of the insurance required by this Agreement, the City, at its option, may procure or renew such insurance. In that event, all sums paid by the City for insurance will be treated as Additional Rent, and will be payable by VTUSA to the City together with interest at the Default Rate from the date the sums were paid by the City to the date of reimbursement by VTUSA.
21. **Effect of Loss or Damage.** Any loss or damage to the Premises caused by fire or other casualty will not operate to terminate this Agreement or to relieve or discharge VTUSA from the performance and fulfillment of any of VTUSA's obligations pursuant to this Agreement, including without limitation, the payment of Rent, or the payment of any money to be treated as Additional Rent, as the same may become due and payable. The City's acceptance or approval of any insurance agreement will not relieve or release or be construed to relieve or release VTUSA from any liability, duty or obligation set forth in this Agreement.
- 21.1. **Proof of Loss.** If all or any portion of the Premises is damaged or destroyed (including without limitation, any personal property furnished or installed in the Premises), VTUSA shall promptly make proof of loss in accordance with the terms of the insurance policies, and shall proceed promptly to collect or cause to be collected all valid claims which may have arisen against insurers or others based upon the damage or destruction. VTUSA shall give City written notice within 48 hours of any material damage or destruction. For purposes of this Section, "material damage or destruction" means either (a) any casualty or other loss with a repair cost in excess of \$500,000, based on reasonable standards; or (b) any casualty or other loss that will have a material adverse effect on the day to day operations of the Premises, regardless of the repair cost.
- 21.2. **Payment of Insurance Proceeds.** All sums payable for loss and damage arising out of the casualties covered by the property insurance policies shall be payable:
- 21.2.1. Except as may otherwise be required by a Leasehold Mortgagee, directly to VTUSA, if no Event of Default exists under this Agreement; or
- 21.2.2. If an Event of Default exists, then to an insurance trustee (the "**Insurance Trustee**") with the proceeds to be held by the Insurance Trustee for disbursement pending establishment of reconstruction, repair or replacement costs. The Insurance Trustee will be a commercial bank or trust company designated by VTUSA and approved by the City. If an Event of Default has occurred and remains uncured, the Insurance Trustee will apply the proceeds first to curing the Event of Default, and then to the rebuilding, replacing and repairing of the Premises.

21.3. **Disposition of Insurance Proceeds for Reconstruction.**

21.3.1. All insurance proceeds must be applied first to the curing of an Event of Default, and then to the reconstruction, repair or replacement of the Premises and the personal property of VTUSA contained in the Premises (“**Reconstruction Work**”). The Premises and any personal property must be restored to a condition comparable to the condition prior to the loss or damage.

21.3.2. The Insurance Trustee will disburse to VTUSA the amount of insurance proceeds that are required for the Reconstruction Work. VTUSA will submit invoices or proof of payment to the Insurance Trustee for payment or reimbursement according to an agreed schedule of values approved in advance by the City and VTUSA.

21.3.3. If the City and VTUSA cannot agree on a schedule of values, the schedule of values will be determined by an appraisal for the Reconstruction Work mutually acceptable to City and VTUSA.

21.3.4. After the completion of the Reconstruction Work, any remaining insurance proceeds will be paid to VTUSA.

21.4. **Covenant for Commencement and Completion of Reconstruction.** VTUSA agrees to commence the Reconstruction Work as soon as practicable, but in any event within 60 days after the insurance proceeds for the destroyed or damaged Project and/or personal property have been received by VTUSA or the Insurance Trustee and the permit to perform the Reconstruction Work has been issued. VTUSA shall diligently and continuously seek to submit an application for a building permit for the Reconstruction Work within 30 days after receipt of the insurance proceeds by VTUSA or the Insurance Trustee. VTUSA agrees to fully complete the Reconstruction Work as expeditiously as possible under the circumstances. With respect to any Reconstruction Work, VTUSA will comply with all provisions of this Agreement regarding renovation or alteration of the Premises.

21.5. **Inadequacy of Insurance Proceeds.** In the event that insurance proceeds are not adequate to rebuild and restore the damaged Premises to their previous condition before an insurable loss occurred, VTUSA shall rebuild and restore the Premises and pay any costs of rebuilding and restoration not covered by insurance proceeds. VTUSA’s obligation to rebuild the Premises following a casualty that occurs during the Term shall survive the expiration or earlier termination of this Agreement.

22. **Takings.**

22.1. **Complete Taking.** If the entire Premises are taken or condemned for any public or quasi-public use or purpose, by right of eminent domain or by purchase in lieu thereof (in each case, a “**Taking**”), then this Agreement will cease and terminate as of the date on which the condemning authority takes possession. If this

Agreement is so terminated, the entire award for the Premises or the portion taken will be apportioned between the City and VTUSA as of the day immediately prior to the vesting of title in the condemnor, as follows:

22.1.1. First, the City shall receive the fair market value (at the time of Taking) of the portion of the Premises taken or condemned and considered as vacant, unimproved, and unencumbered;

22.1.2. Second, VTUSA shall be entitled to the fair market value (at time of Taking) of its interest under this Agreement and in the Project from the date of the taking through the remainder of the Term, including any Renewal Terms; and

22.1.3. The remaining balance of the award shall be divided between the City and VTUSA based on the portion of the assessed value of the Premises attributable to the Property (as reflected in the most recent records of the Palm Beach County Property Appraiser), as compared to the portion of the assessed value attributable to the Project. The City shall be entitled to the portion of the assessed value attributable to the Property and VTUSA shall be entitled to the portion of the assessed value attributable to the Project. By way of example only, in the event that the portion of the assessed value attributable to the Property is 30%, the City shall be entitled to 30% of the remaining balance of the award and VTUSA shall be entitled to 70% of the remaining balance of the award.

22.2. **Partial Taking.** If there is a Partial Taking but VTUSA reasonably determines that as a result of the Partial Taking, the Premises cannot be operated by VTUSA for the Permitted Use, then VTUSA may terminate this Agreement upon written notice to City delivered no more than 45 days after VTUSA and City have been notified of the portion of the Premises to be condemned. If VTUSA elects to terminate this Agreement, the condemnation award shall be split as if there was a complete condemnation. However, if there is a Taking of a portion of the Premises, and VTUSA reasonably determines that the remaining portion can be adapted and used to operate the Station in the same manner it was previously operated, then this Agreement shall continue in full force and effect, and City, if requested by VTUSA, shall reasonably negotiate modified terms of the Agreement that allow VTUSA to proceed with the Agreement. If the parties are unable to agree on modified Agreement terms, then VTUSA shall have the right to cancel this Agreement no later than 45 days after VTUSA and City have been notified of the portion of the Premises to be condemned. If VTUSA does not elect to terminate the Agreement, the parties shall proceed in accordance with the terms hereof and the award shall be apportioned as follows:

22.2.1. First, to VTUSA to the extent required, pursuant to the terms of this Agreement, for the restoration of the Premises;

- 22.2.2. Second, to the City, but only if the City is not the authority condemning the Premises, the portion of the award allocated to the fair market value of the Premises which are taken, considered as vacant and unimproved;
 - 22.2.3. Third, to VTUSA, the amount by which the value of VTUSA's interest in the Premises was diminished by the taking or condemnation; and
 - 22.2.4. The remaining balance of the award shall be split between the City and VTUSA as set forth in Section 22.1.3, except that VTUSA will receive the entire remaining balance of the award if the City is the authority condemning the Premises.
 - 22.2.5. The City represents to VTUSA that as of the date of the execution of this Agreement, the City has no knowledge of any Taking of the Premises contemplated by any Governmental Authority including but not limited to the City.
- 22.3. **Restoration after Taking.** If this Agreement does not terminate due to a Taking, then:
- 22.3.1. VTUSA will be required to restore the remaining portion of the Premises with due diligence in accordance with the provisions of this Agreement pertaining to alterations and renovations;
 - 22.3.2. The entire proceeds of the award will be deposited and treated in the same manner as insurance proceeds are to be treated under this Agreement until the restoration work has been completed and VTUSA and the City have received their respective shares of any remaining balance of the award; and
 - 22.3.3. If the award is insufficient to pay for the restoration work, VTUSA will be responsible for the remaining cost and expense.
- 22.4. **Temporary Taking.** If there is a Taking of the temporary use (but not title) of all or any part of the Premises, this Agreement will remain in full force and effect, but only to the extent reasonable. There will be no abatement of any amount or sum payable by VTUSA under this Agreement. VTUSA will receive the entire award for any temporary Taking to the extent it applies to the period prior to the end of the Term, and the City will receive the balance of the award.
- 22.5. **Payment of Fees and Costs.** All fees and costs incurred in connection with any condemnation proceeding will be paid in accordance with the law governing condemnation proceedings, as determined by the court, if appropriate.
23. **Assignment and Subletting.**
- 23.1. **No Assignment or Subletting Without Prior Consent.** Except as expressly provided in this Agreement, VTUSA shall not sell, assign or transfer all or any part of its interest in this Agreement or the Premises, by operation of law or otherwise, without the City's prior written consent.

- 23.2. **Definition of “Assignment” and “Assignee”.** As used in this Agreement, the term "**Assignment**" shall include the sale, assignment, transfer, mortgage, pledge, hypothecation, or subletting of this Agreement, the Premises, or any part of either. The transfer, in one or a series of related transactions, of a majority of VTUSA's voting shares shall be deemed to be an Assignment. The term "**Assignee**" refers to each assignee, subtenant, mortgagee, pledgee or other person who receives an Assignment of this Agreement.
- 23.3. **Certain Excluded Transactions.** Notwithstanding the definition of Assignment set forth above, the following shall not be deemed to be an Assignment hereunder:
- 23.3.1. An offering of VTUSA's stock to the public pursuant to a registered securities offering;
- 23.3.2. The transfer of VTUSA's stock on a national securities exchange or through the NASDAQ national market system or other over-the-counter market;
- 23.3.3. The transfer of VTUSA's stock to its employees pursuant to an employee stock ownership plan or other arrangement with one or more employees;
- 23.3.4. Any transfer of VTUSA's stock by gift, bequest, inheritance, or for estate planning purposes; or
- 23.3.5. The transfer of a majority of VTUSA's voting shares without the consent of the City; provided that (a) there shall be no diminution in the net worth of VTUSA following such transfer as compared to the net worth of VTUSA prior to such transfer; and (c) if such transfer of VTUSA's voting shares results in a single entity owning more than 51% of the stock or membership interests of VTUSA.
- 23.4. **Procedure for Obtaining the City's Consent.** If VTUSA desires to make an Assignment which requires the City's prior written consent hereunder, VTUSA shall send a written request to the City to approve the Assignment, which request shall include the following information:
- 23.4.1. The name and address of the proposed Assignee and its form of organization;
- 23.4.2. The material terms and conditions of the proposed Assignment, including, without limitation, the financial terms of the proposed Assignment and the proposed commencement date of the proposed Assignment);
- 23.4.3. Financial statements for the three most recently completed fiscal years of the proposed Assignee and such other financial information as the City shall reasonably request (or if the proposed Assignee has not been in existence for at least three years, such financial statements as are available); and
- 23.4.4. A description of any proposed remodeling or renovation of the Project to be conducted by the proposed Assignee,

The City shall have a period of 30 days following receipt of the request within which to notify VTUSA in writing that the City elects to either (a) deny VTUSA the right to consummate the Assignment or (b) permit VTUSA to assign this Agreement or sublet the Premises. The City shall have the right to consent to or deny consent to an Assignment in the City's reasonable discretion. The failure of the City to notify VTUSA in writing of City's election within the 30-day period shall be deemed a denial of consent to the proposed Assignment.

- 23.5. **Effect of the City's Consent to Assignment.** Any consent given by the City to an Assignment shall apply only to the specific transaction thereby authorized and shall not relieve VTUSA or any approved Assignee from the requirement of obtaining the prior written consent of the City to any further Assignment. No consent by the City to any Assignment shall be effective unless and until there shall have been delivered to the City an agreement in recordable form, executed by VTUSA and the proposed Assignee, whereby the Assignee assumes all obligations of this Agreement to be done and performed for the balance then remaining in the Term. Any Assignee of this Agreement shall be bound by and be liable under all the terms, covenants and conditions contained in this Agreement throughout the Term. Upon acceptance by the City of the Assignee, and execution by VTUSA and the Assignee of an assignment and assumption agreement approved by and consented to by the City, VTUSA shall be released from any further obligations arising out of the Agreement subsequent to the Assignment.
- 23.6. **Transactions Not Requiring the Consent of City.** VTUSA shall have the right, upon prior notice to the City, but without the City's prior written consent:
- 23.6.1. To assign this Agreement to (i) any direct or indirect wholly-owned subsidiary or (ii) any wholly-owned subsidiary of any parent corporation of which VTUSA is a direct or indirect wholly-owned subsidiary, all such assignments subject, however to the following express conditions:
- (a) The Assignee must assume in writing for the benefit of the City all of the obligations of VTUSA under this Agreement; and
 - (b) The Assignee must continue to operate the Premises as the Station then being operated by VTUSA;
- 23.6.2. To assign this Agreement in connection with the sale of all or substantially all of the business of VTUSA, whether such sale is effected through a sale of all or substantially all of the capital stock of VTUSA; a sale of all or substantially all of the assets of VTUSA; or a merger, share exchange or consolidation involving VTUSA, whether or not the VTUSA survives such merger, share exchange or consolidation;
- 23.7. **Condition to Assignments Not Requiring City's Consent.** As a condition to any Assignment which does not require the consent of the City, the Assignee shall execute and deliver to the City a written agreement pursuant to which the Assignee assumes all obligations of VTUSA under the Agreement for the balance

of the Term. No such Assignment shall be deemed to release VTUSA from continuing liability under this Agreement; however, in the event of an Assignment made pursuant to Section 23.6.2, VTUSA shall be relieved of any obligations under this Agreement first arising or accruing after the date of the assignment.

23.8. **Event of Default.** As long as this Agreement has not been terminated, VTUSA's rights under this Section 27 shall not be affected by an Event of Default as long as the same shall be cured at the time of the Assignment.

24. **Events of Default.** Each of the following occurrences shall constitute an "Event of Default" under this Agreement:

24.1. **Failure to Pay Money.** Failure by VTUSA to pay when due any Rent or any other sum of money payable under this Agreement, and such failure continues for a period of 10 days after written notice of the failure of payment. The City shall only be required to provide such written notice and 10-day grace period two times within any 12-month period of the Term, and an Event of Default shall be deemed to have immediately occurred upon VTUSA's third failure to make a timely payment within any 12-month period of the Term. It is intended by the parties that the notice and grace period will protect against infrequent unforeseen clerical errors.

24.1.1. **Default Interest on Late Payments.** Any payments of Rent will accrue interest at the Default Rate from the due date until paid.

24.2. **Assignment.** Any attempt by VTUSA to make an Assignment of this Agreement or of any interest in the Premises other than as expressly permitted by this Agreement.

24.3. **Failure to Perform Other Covenants.** The failure or refusal of VTUSA to fulfill or perform any other covenant, agreement, or obligation of VTUSA under this Agreement if such failure continues for a period of 30 days after written notice to VTUSA. If VTUSA's failure to perform is capable of cure, but cannot reasonably be cured within 30 days, then VTUSA shall have an additional 90 days within which to cure the default, but only if (a) VTUSA commences to cure the default within the initial 30-day period and thereafter continues diligently to perform all actions necessary to cure the default; and (b) the Premises continue to operate in the ordinary course of business to the extent reasonable taking into account the nature of the alleged failure to perform the covenant, agreement, or obligation in question

24.4. **Bankruptcy.**

24.4.1. **Voluntary Bankruptcy.** If any petition is filed by VTUSA, as debtor, seeking relief under Chapters 7 or 11 of the United States Bankruptcy Code or any successor thereto;

24.4.2. **Involuntary Bankruptcy.** If any petition is filed against VTUSA, as debtor, instituting a case under Chapters 7 or 11 of the United States

Bankruptcy Code or any successor thereto and VTUSA is unable to dismiss the involuntary bankruptcy action within 60 days after filing;

24.4.3. **Inability to Pay Debts.** If VTUSA admits in writing its inability to pay its debts, or if a receiver, trustee or other court appointee is appointed for all or a substantial part of VTUSA's property and such receiver, trustee or other appointee is not discharged within 90 days after appointment;

24.4.4. **Levy.** If the Premises are levied upon or attached by process of law, and the levy or attachment is not discharged within 30 days; or

24.4.5. **Receiver.** If a receiver or similar type of appointment or court appointee or nominee of any name or character is made for VTUSA or its property, and the receiver or appointee or nominee is not discharged within 90 days of appointment.

25. **Remedies for VTUSA's Default.**

25.1. **Legal and Equitable Remedies.** If the City shall claim that an Event of Default exists, the City shall have the right, subject to the provisions of Exhibit C and any Recognition Agreement executed pursuant to the provisions of this Agreement, to institute from time to time an action or actions (i) to recover damages (exclusive of consequential, punitive, or special damages), (ii) for injunctive and/or other equitable relief, or (iii) only in the event of an Event of Default which has resulted or is reasonably likely to result in irreparable and material damage to the Property, to recover possession of the Property and terminate this Agreement. Notwithstanding the foregoing, the City agrees that VTUSA shall have thirty (30) days after commencement by the City of any proceedings to file an appropriate pleading in the action initiated by the City to contest the claim of the Event of Default or to cure such Event of Default; no action shall be taken by the City during such thirty (30) day period to regain possession of the Property from VTUSA or to terminate this Agreement. If the Event of Default is not cured, the City's rights and VTUSA's obligations shall be resolved by the final determination made by the court in which the City's proceedings were initiated. For purposes hereof, a "final determination" shall occur when the judgment or order entered can be enforced by execution, issuance of a writ of restitution, judicial sale or specific enforcement and no such judgment or order shall be considered final for purposes hereof during the pendency of a stay of execution in connection with an appeal. Notwithstanding anything herein to the contrary, if there is a monetary default which arises out of a dispute as to an amount owed or the amount of an offset, this Agreement shall not terminate if VTUSA pays to the City the amount the court determines to be owed within the period of time permitted by law, or ten (10) days after such determination if no such grace period is permitted.

25.2. **Personal Liability.** Notwithstanding any provision contained in this Agreement to the contrary, no personal liability or personal responsibility shall be asserted or enforceable against any of VTUSA's directors, officers, shareholders, employees, agents, constituent partners, members, beneficiaries, trustees or representatives.

- 25.3. **Remedies Cumulative; Waiver.** The rights and remedies of the parties to this Agreement, whether provided by law or by this Agreement, are intended to be cumulative and concurrent. The exercise by either party of any one or more of its remedies will not preclude the exercise by a party, at the same or different times, of any other remedies for the same default or breach, or of any of its remedies for any other default or breach by the other party. No waiver of any default or Event of Default under this Agreement will extend to or affect any other existing or subsequent default or Event of Default, or impair any rights, powers or remedies of a party in connection with any other default or Event of Default. A party's delay or omission in exercising any right, power or remedy will not be construed as a waiver of any default or Event of Default or constitute acquiescence to the default or Event of Default.
26. **Force Majeure.** VTUSA shall not be considered in breach of or in default of any of its non-monetary obligations, including, without limitation, suspension of construction activities, by reason of unavoidable delay due to a Force Majeure. Upon the occurrence of a Force Majeure, VTUSA shall send notice to the City within 10 Business Days advising the City of the estimated period of delay resulting from the Force Majeure. If a Force Majeure occurs, any deadline or time period affected by the Force Majeure shall be extended for the period of the Force Majeure.
27. **Ownership of Project.** Prior to the expiration or termination of this Agreement, title to the Project will remain in VTUSA, subject to the terms and conditions of this Agreement governing the construction, use, and operation of the Project. VTUSA's right, title, interest, and estate in and to the Project shall not be separable from VTUSA's leasehold estate in the Property granted by this Agreement. The City will all times hold fee simple title to the Property.
28. **Surrender of Premises.** Upon the expiration of the Term or the earlier termination of this Agreement by mutual agreement of the parties or by a final order from a court with jurisdiction, title to the Project (including all furniture, fixtures, and equipment installed in or affixed to the Premises and owned by VTUSA, but excluding any proprietary items, including trade items and other fixtures or personalty specifically identifying VTUSA or the Station name, and excluding any artwork which is not permanently affixed to the Project) will automatically pass to, vest in and belong to the City or its successor in ownership, free and clear of all Liens, without need of any further action being taken by the City or VTUSA. It shall be lawful for the City or its successor in ownership to re-enter and repossess the Premises without process of law. To confirm the automatic vesting of title as provided in this Section, VTUSA shall execute and deliver such further assurances and instruments of assignment and conveyance as may be reasonably required by the City for that purpose.
29. **Holding Over.** VTUSA shall not use or remain in possession of the Premises after the termination of this Agreement. If VTUSA fails or refuses to vacate the Premises after the termination or expiration of the Agreement, VTUSA shall become a tenant at sufferance and liable for Rent and all other expenses, obligations and payments at one and one-half

times the rate in effect for the immediately preceding year of the Term of this Agreement. There shall be no renewal whatsoever of this Agreement by operation of law.

30. **Notice.** All notices, demands, requests and other communications required under this Agreement must be given in writing and must be delivered by (a) hand delivery, with a receipt issued by the party making such delivery; (b) United States certified mail, return receipt requested, or (c) a nationally recognized overnight delivery service which provides delivery confirmation. Notice will be deemed to have been given upon receipt or refusal of delivery by one of the foregoing three methods. Any party may designate a change of address by written notice to the other party, received by such other party at least ten days before the change of address is to become effective.

30.1. **Notice to VTUSA.** Notice to VTUSA under this Agreement must be sent to:

With a copy to:

With a copy to:

30.2. **Notice to City.** Notice to the City under this Agreement must be sent to:

City of Boca Raton
201 West Palmetto Park Road
Boca Raton, Florida 33432
Attention: Leif J. Ahnell, City Manager
Telephone: 561 393 7700
Facsimile:
Email: BocaCM@ci.Boca-Raton.fl.us

With a copy to:

City Attorney's Office
City of Boca Raton
201 West Palmetto Park Road
Boca Raton, Florida 33432
Attention: Diana Grub Frieser, City Attorney
Telephone: 561 393 7718
Facsimile: 561 393 7780
Email: dgfrieser@ci.boca-raton.fl.us

31. **Representations Regarding Authority of the Parties.**

31.1. **VTUSA's Representations.** VTUSA represents to City that:

31.1.1. VTUSA is a Delaware limited liability company duly formed and validly existing, qualified to do business in Florida, with full power and authority to enter into this Agreement, to lease the Property, and to develop, construct, operate and manage the Premises in accordance with this Agreement;

- 31.1.2. The execution of this Agreement by VTUSA has been validly authorized;
 - 31.1.3. This Agreement is a valid and binding obligation of VTUSA, enforceable in accordance with its terms;
 - 31.1.4. The individual signing this Agreement is an authorized officer of VTUSA and has full power and authority to sign this Agreement on behalf of VTUSA and to cause VTUSA to perform its obligations under this Agreement; and
 - 31.1.5. VTUSA has no actual knowledge of any fact or circumstance that would prevent VTUSA from performing in accordance with this Agreement.
- 31.2. **City's Representations.** The City represents to VTUSA that:
- 31.2.1. The execution of this Agreement by the City has been validly authorized;
 - 31.2.2. This Agreement is a valid and binding obligation of the City, enforceable in accordance with its terms;
 - 31.2.3. The execution and delivery of this Agreement does not violate or conflict with the City of Boca Raton Charter or City Code; and
 - 31.2.4. The City has received no written notice of any fact or circumstance which would prevent the City from performing in accordance with this Agreement.
32. **Option to Purchase TOD Parcel.** VTUSA shall have the Option pursuant to the terms set forth on Exhibit F attached hereto.
33. **Miscellaneous Provisions (in alphabetical order).**
- 33.1. **Amendments.** No amendment to this Agreement will be binding on any party unless in writing and signed by all parties. The City is not obligated to spend any money or undertake any obligation in connection with an amendment proposed or requested by VTUSA. If VTUSA requests an amendment to this Agreement or any other action by City, VTUSA must reimburse City for all third-party costs incurred by City (including but not limited to costs of third-party consultants and attorneys). Before the City takes action regarding any request, VTUSA must deposit with the City the estimated amount of third-party costs, as reasonably determined by the City.
 - 33.2. **Approvals by the City.** All requests for action or approvals by the City will be sent to the City Manager for decision as to who within the City, including the City Council, must act or approve the matter on behalf of the City.
 - 33.3. **Attorneys' Fees.** In the event either party to the Agreement institutes legal proceedings in connection with the Agreement, each party shall be responsible for its own Attorney's Fees.
 - 33.4. **Brokers.** City and VTUSA represent to each other that neither party has engaged a real estate broker or other person entitled to payment of a commission in

connection with this Agreement. VTUSA is responsible for, and will hold the City harmless with respect to, the payment of any commission claimed by or owed to any real estate broker or other person retained by VTUSA who is entitled to a commission as a result of the execution and delivery of this Agreement. The City is responsible for, and will hold VTUSA harmless with respect to, the payment of any commission claimed by or owed to any real estate broker or other person retained by the City who is entitled to a commission as a result of the execution and delivery of this Agreement

- 33.5. **City Representatives Not Individually Liable.** No elected official, representative or employee of the City will be personally liable to VTUSA or any successor in interest for any amount which may become due to VTUSA for any obligations of City under this Agreement, or in the event of any default or breach by the City.
- 33.6. **Counterparts.** This Agreement may be signed in counterparts, each one of which is considered an original, but all of which constitute one and the same instrument. This Agreement is effective only after execution and delivery by the parties.
- 33.7. **Entire Agreement.** This Agreement and the Exhibits constitute the sole agreement of the parties with respect to its subject matter. Any prior written or oral agreements, promises, negotiations, representations or communications not expressly set forth in this Agreement are of no force or effect.
- 33.8. **Estoppel Certificates.**
- 33.8.1. Within 20 days after written request by either City or VTUSA, the other party will execute, acknowledge and deliver to the requesting party or to any actual or prospective Lender, a certificate stating the following:
- (a) This Agreement is in full force and effect and has not been modified, supplemented or amended in any way, or, if there have been modifications, the Agreement is in full force and effect as modified, identifying the modification agreement. If the Agreement is not in force and effect, the certificate will so state;
 - (b) This Agreement, as modified if applicable, represents the entire agreement between the parties as to the subject matter, or, if it does not, the certificate will so state;
 - (c) The Agreement Commencement Date, Rent Commencement Date, dates of Renewal Terms, and expiration date of the Term then in effect;
 - (d) To the knowledge of the certifying party, all conditions under the Agreement to be performed up to that date by the City or VTUSA, as the case may be, have been performed or satisfied and, as of the date of the certificate, there are no existing

defaults, defenses or offsets which the City or VTUSA, as the case may be, has against the enforcement of the Agreement by the other party. If such conditions have not been satisfied or if there are any defaults, defenses or offsets, the certificate will so state; and

- (e) All payments due from VTUSA under this Agreement have been paid in full as of the date of the certificate. If any payments due under the Agreement have not been paid, the certificate will so state.

33.8.2. The party to whom the certificate is issued may rely on the matters set forth in the certificate. In delivering the certificate, neither VTUSA nor the City, nor any individual signing the certificate on a party's behalf, will be liable for the accuracy of the statements made in the certificate, but rather will be estopped from denying the veracity or accuracy of the statements. Any certificate required to be made by the City or VTUSA pursuant to this paragraph will be deemed to be made by the City or VTUSA, as the case may be, and not by the person signing the certificate.

- 33.9. **Governing Law.** This Agreement will be governed by Florida law. This Agreement is subject to and must comply with the Charter and City Code of the City of Boca Raton, as they exist on the date of execution of the Agreement.
- 33.10. **Holidays.** Whenever a notice or performance due under the Agreement falls on a Saturday, Sunday or on a legal holiday recognized by the City, the notice or performance will be postponed to the next following Business Day.
- 33.11. **No Liability for Approvals and Inspections.** No approval given by the City in its capacity as landlord under this Agreement, and no inspection of the Premises by the City under this Agreement, will render the City liable for its failure to discover any defects or nonconformance with any Governmental Requirement.
- 33.12. **No Partnership or Joint Venture.** Nothing contained in this Agreement is intended or is to be construed in any manner or under any circumstances whatsoever as creating or establishing the relationship of co-partners, or creating or establishing the relationship of a joint venture between the City and VTUSA, or as constituting VTUSA as the agent or representative of the City for any purpose or in any manner whatsoever.
- 33.13. **Radon.** 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 and radon testing may be obtained from the county public health unit for Palm Beach County.
- 33.14. **Recording; Documentary Stamps.** After the Agreement Commencement Date has been determined, a memorandum of this Agreement, in the form attached as

Exhibit D, shall be recorded by the City in the Public Records of Palm Beach County, Florida. The cost of recording, and the cost of any required documentary stamps, shall be paid by VTUSA. The parties will cooperate in structuring the transaction contemplated by this Agreement to reduce such costs, provided the structure does not have any adverse consequence for the City.

- 33.15. **Section Headings.** The headings of any sections or subsections of this Agreement are for convenience only and will not affect the interpretation of this Agreement.
- 33.16. **Severability.** If any provision of this Agreement is held to be illegal or unenforceable in a judicial proceeding or by virtue of any present or future Governmental Requirement, then provided that the fundamental terms and conditions of this Agreement remain legal and enforceable, the illegal or unenforceable provision shall be severed and shall be inoperative, and the remainder of the Agreement will remain operative and binding on the parties.
- 33.17. **Successors and Assigns.** This Agreement binds and inures to the benefit of the City and VTUSA, and their respective permitted successors and assigns, except to the extent expressly limited by this Agreement.
- 33.18. **Standard of Conduct.** The implied covenant of good faith and fair dealing under Florida law is expressly adopted in this Agreement.
- 33.19. **Time is of the Essence.** Time is of the essence in the performance of all obligations of each party under this Agreement, including VTUSA's adherence to the Development Schedule.
- 33.20. **Venue.** Venue for any disputes arising out of this Agreement and for any actions involving the enforcement or interpretation of this Agreement will be in the State courts of the 15th Judicial Circuit of Palm Beach County, Florida.
- 33.21. **Waiver of Jury Trial.** EACH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL ACTION, PROCEEDING, CAUSE OF ACTION OR COUNTERCLAIM ARISING OUT OF OR RELATING TO (a) THIS LEASE, INCLUDING ANY EXHIBITS, OR SCHEDULES ATTACHED TO THIS LEASE; (b) ANY OTHER DOCUMENT OR INSTRUMENT NOW OR HEREAFTER EXECUTED AND DELIVERED IN CONNECTION WITH THIS LEASE; OR (c) THE TRANSACTIONS CONTEMPLATED BY THIS LEASE. THIS WAIVER SHALL SURVIVE THE TERMINATION OR EXPIRATION OF THIS LEASE.

[SIGNATURE PAGES TO FOLLOW]

The parties are signing this Agreement on the dates set forth below their respective signatures.

Witnesses (two required):

CITY OF BOCA RATON, a Florida municipal corporation

Signature: _____

By: _____
Mayor

Print Name: _____

Date: _____

Signature: _____

ATTEST:

Print Name: _____

B _____ y _____ :

City Clerk

APPROVED AS TO FORM AND SUFFICIENCY
FOR THE USE AND RELIANCE OF THE CITY
OF BOCA RATON ONLY:

By: _____
City Attorney

ACKNOWLEDGMENT

STATE OF FLORIDA
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me on _____ ,
by _____ , as Mayor of the City of Boca Raton, on behalf of the City. He is
personally known to me or has produced _____ as identification.

[SEAL]

Notary Public, State of Florida

[SIGNATURE BLOCKS CONTINUE ON FOLLOWING PAGES]

Witnesses (two required):

VIRGIN TRAINS USA LLC, a Delaware limited liability company

Signature: _____

By: _____

Print Name: _____

Name: _____

Signature: _____

Title: _____

Print Name: _____

Date: _____

ACKNOWLEDGMENT

STATE OF FLORIDA
COUNTY OF MIAMI-DADE

The foregoing instrument was acknowledged before me on _____, by _____ as _____ of **VIRGIN TRAINS USA LLC**, a Delaware limited liability company, on behalf of the company. He is personally known to me or has produced _____ as identification.

[SEAL]

Notary Public, State of Florida

Exhibit A

Legal Description of the Property

Exhibit B

Description of the TOD Parcel

EXHIBIT "C"

LEASEHOLD MORTGAGE PROVISIONS

The terms and provisions set forth in this Exhibit "C" shall be applicable to Leasehold Mortgage executed by VTUSA with respect to the Leasehold Estate and the rights of the Leasehold Mortgagee in connection therewith, are incorporated into and shall constitute a part of the Agreement and shall control in the event of any conflict with the provisions of the Lease. Terms which are defined in the Agreement shall have the same meanings when used herein.

1. **Assent.** The City does hereby assent to each Leasehold Mortgage, any assignment of VTUSA's rights in and to the Agreement in connection with such Leasehold Mortgage, and to any subsequent sale or transfer of the Leasehold Estate as permitted in such any security instrument following a foreclosure or transfer in lieu thereof.

2. **Limitations on the City's Right to Terminate.** Until all obligations of VTUSA to the Leasehold Mortgagee (the "Loan Obligations") shall have been completely paid and performed, and the Leasehold Mortgage shall have been discharged, the City shall not take any action to terminate the Agreement or exercise any other remedy for default in the obligations of VTUSA thereunder without first complying with the requirements of Paragraph 6 hereof.

3. **No Modifications.** Until the Loan Obligations shall have been completely paid and performed, and the Leasehold Mortgage shall have been discharged, the City and VTUSA shall not by joint action terminate, amend, modify or exclude any parcel from the Agreement without Leasehold Mortgagee's prior written consent. Any such termination, amendment, modification or exclusion without Leasehold Mortgagee's prior written consent shall not be binding upon VTUSA, its successors or assigns.

4. **Removal of Collateral.** the City agrees that Leasehold Mortgagee shall have the right to remove from the Property any of VTUSA's Personal Property (as defined in the Lease), whenever Leasehold Mortgagee shall elect to enforce the security interests given by VTUSA therein, either during the Term of the Agreement or within thirty (30) days after the expiration or the early termination thereof, or for such additional period required by the entry of any order prohibiting Leasehold Mortgagee's timely enforcement of such rights. Furthermore, the City hereby disclaims any title to or rights in VTUSA's Personal Property and confirms the City's waiver and release of any landlord's lien, encumbrance or other interest which the City may now or hereafter have or acquire therein under the Agreement or applicable law.

5. **No Merger.** If the ownership of the fee and leasehold interests of the Property become vested in the same person or entity, then as long as the Leasehold Mortgage shall remain outstanding, such occurrence shall not result in a merger of title unless such

merger is approved or required by the Leasehold Mortgagee pursuant to the terms of the Leasehold Mortgage and/or the loan agreement, if any, related to the indebtedness secured by the Leasehold Mortgage.

6. Additional Leasehold Mortgagee Protection Provisions. The terms and conditions set forth below in this Paragraph 6 shall be binding upon the City as if fully set forth in the Lease, and to the extent of any inconsistency between the terms and provisions contained in the Agreement and the terms and conditions set forth below in this Paragraph 6, the terms and conditions set forth below in this Paragraph 6 shall govern and control:

(a) Notices to Leasehold Mortgagee; Leasehold Mortgagee's Right to Cure.

(i) The City shall send to Leasehold Mortgagee, by certified or registered mail, a true, correct and complete copy of any notice to VTUSA of a default by VTUSA under the Agreement at the same time as and whenever any such notice of default shall be given by the City to VTUSA, addressed to Leasehold Mortgagee at the address last furnished to the City by such Leasehold Mortgagee. No notice by the City shall be deemed to have been given unless and until a copy thereof shall have been so given to and received by Leasehold Mortgagee. VTUSA irrevocably directs that the City accept, and the City agrees to accept, performance and compliance by Leasehold Mortgagee of and with any term, covenant, agreement, provision, condition or limitation on VTUSA's part to be kept, observed or performed under the Agreement with the same force and effect as though kept, observed or performed by VTUSA.

(ii) Notwithstanding anything provided to the contrary in the Lease, the Agreement shall not be terminated because of a VTUSA Default until and unless:

(A) Notice of any such default or breach shall have been delivered to Leasehold Mortgagee in accordance with the provisions of Paragraph 6(a)(i) above;

(B) With respect to a monetary default, Leasehold Mortgagee has not cured such default or breach within thirty (30) days following the expiration of any of VTUSA's notice and cure period set forth in the Lease; and

(C) With respect to a nonmonetary default, Leasehold Mortgagee has not cured such default or breach within fortyfive (45) days following the expiration of any of VTUSA's notice and cure periods set forth in the Agreement or, if such default or breach is curable but cannot be cured within such time period, (aa) Leasehold Mortgagee has not notified the City within such time period that it intends to cure such default or breach, or (bb) Leasehold Mortgagee has not diligently commenced to cure such default or breach, or (cc) Leasehold Mortgagee does not prosecute such cure to completion.

Furthermore, notwithstanding anything to the contrary contained herein, if Leasehold Mortgagee determines to foreclose or cause its designee to foreclose the

Leasehold Mortgage or to acquire or cause its designee to acquire the Property or to succeed or cause its designee to succeed to VTUSA's possessory rights with respect to the Property or to appoint a receiver before it effectuates the cure of any nonmonetary default, the cure periods set forth above shall be extended by any period during which foreclosure proceedings, or legal proceedings to succeed to VTUSA's possessory rights, or proceedings to appoint the receiver are conducted, as the case may be. Any such proceedings shall be commenced promptly after the notice of default is delivered to Leasehold Mortgagee and shall be diligently prosecuted. Promptly after Leasehold Mortgagee or a designee of Leasehold Mortgagee acquires the Property pursuant to foreclosure proceedings or otherwise or succeeds to VTUSA's possessory rights or promptly after a receiver is appointed, as the case may be, Leasehold Mortgagee or its designee shall cure said NonMonetary Default.

(iii) Notwithstanding anything provided to the contrary in the Lease, the Agreement shall not be terminated because of a VTUSA Default which cannot be cured by Leasehold Mortgagee following its acquisition of the Property by foreclosure or transfer in lieu thereof.

(b) **The City's Consents.** the City hereby consents to, and agrees that the Leasehold Mortgage may contain provisions for any or all of the following:

(i) An assignment of VTUSA's share of the net proceeds from available insurance coverage or from any award or other compensation resulting from a total or partial taking of the Property by condemnation;

(ii) The entry by Leasehold Mortgagee upon the Property, without notice to the City or VTUSA, to view the state of the Property;

(iii) A default by VTUSA under the Agreement being deemed to constitute a default under the Leasehold Mortgage;

(iv) An assignment of VTUSA's right, if any, to terminate, cancel, modify, change, supplement, alter, renew, or amend the Lease, including, without limitation, VTUSA's right under Section 365(h)(1) of the Federal Bankruptcy Code to elect to treat the Agreement as terminated, and an assignment of all of VTUSA's other rights under the Federal Bankruptcy Code to the extent assignable;

(v) An assignment of any Sublease to which the Leasehold Mortgage is subordinated; and

(i) The following rights and remedies (among others) to be available to Leasehold Mortgagee upon the default under any Leasehold Mortgage:

(A) The foreclosure of the Leasehold Mortgage pursuant to a power of sale, by judicial proceedings or other lawful means and the sale of the Property to the

purchaser at the foreclosure sale and a subsequent sale or sublease of the Property by such purchaser if the purchaser is a Leasehold Mortgagee or its nominee or designee;

(B) The appointment of a receiver, irrespective of whether Leasehold Mortgagee accelerates the maturity of all indebtedness secured by the Leasehold Mortgage;

(C) The right of Leasehold Mortgagee or the receiver appointed under subparagraph (B) above to enter and take possession of the Property, to manage and operate the same, to collect the subrentals, issues and profits therefrom and any other income generated by the Property or the operation thereof and to cure any default under the Leasehold Mortgage or any default by VTUSA under the Lease; or

(D) An assignment of VTUSA's right, title and interest under the Agreement in and to any deposit of cash, securities or other property which may be held to secure the performance of the Loan Obligations, including, without limitation, the covenants, conditions and agreements contained in the Leasehold Mortgage, in the premiums for or dividends upon any insurance provided for the benefit of any Leasehold Mortgagee or required by the terms of the Lease, as well as in all refunds or rebates of taxes or assessments upon or other charges against the Property, whether paid or to be paid.

(c) **No Cancellation or Voluntary Surrender; Subordination; Modification.** Without the written consent of Leasehold Mortgagee, the City agrees not to accept a cancellation or voluntary surrender of the Agreement or to amend or modify the Agreement at any time while the Leasehold Mortgage shall remain a lien on the Property; and any such attempted cancellation, surrender or modification of the Agreement without the written consent of Leasehold Mortgagee shall be null and void and of no force or effect. the City and VTUSA further agree for the benefit of Leasehold Mortgagee that, so long as any such Leasehold Mortgage shall remain a lien on said Property, the City and VTUSA will not subordinate the Lease, or any New Agreement entered into pursuant to Paragraph 6(g) below, to any mortgage or deed of trust that may hereafter be placed on the City's Reversionary Estate in the Property.

(d) **Permitted Transfers.**

(i) It is acknowledged that the Leasehold Mortgage may be assigned by Leasehold Mortgagee in accordance with its terms. Notwithstanding anything stated to the contrary in the Lease, the following transfers shall be permitted and shall not require the approval or consent of the City:

(A) A transfer of the Property at foreclosure sale under the Leasehold Mortgage, whether pursuant to the power of sale contained therein or a judicial foreclosure decree, or by an assignment in lieu of foreclosure, or

(B) Any subsequent transfer by Leasehold Mortgagee or its nominee or designee if Leasehold Mortgagee, or such nominee or designee, is the purchaser at such foreclosure sale or under such assignment in lieu of foreclosure.

(ii) Any such transferee shall be liable to perform the obligations of VTUSA under the Agreement only so long as such transferee holds title to the Property, provided that upon any conveyance of title, such transferee's transferee expressly assumes and agrees to perform all of the obligations under the Lease; provided further, that the liability of any Leasehold Mortgagee that obtains title to the Property shall be limited to Leasehold Mortgagee's interest in the Property.

(iii) Following the transfer, if any, described in Paragraph 6(d)(i) above, all noncurable defaults existing under the Agreement prior to such transfer shall be deemed waived without further notice or action of any party.

(e) **Estoppel Certificates.** the City shall execute and/or deliver to any person, firm or entity specified by VTUSA (i) provided that such be the case, a certificate stating that the Agreement is in full force and effect, that, to the City's knowledge, VTUSA is not in default under the Lease, that the Agreement has not been modified or supplemented in any way and containing such other factual certifications concerning the Agreement (including, without limitation, the certifications contained herein and in the Lease) as such person, firm or entity may reasonably request, and (ii) copies of the documents creating or evidencing the Agreement certified by the City as being true, correct and complete copies thereof.

(f) **Waiver of Subrogation.** Upon written request of Leasehold Mortgagee, any policy of property insurance insuring the City shall contain an endorsement waiving the insurer's right of subrogation as against Leasehold Mortgagee and VTUSA.

(g) **New Agreement to Leasehold Mortgagee.** If the Agreement is terminated because of VTUSA's default thereunder or for any other reason or is extinguished for any reason (including, without limitation, rejection of the Agreement by a trustee in bankruptcy), then Leasehold Mortgagee may elect to demand a new lease of the Property (the "New Lease") by written notice to the City within thirty (30) days after such termination. Upon any such election, the following provisions shall apply:

(i) The New Agreement shall be for the remainder of the Term of the Lease, effective on the date of termination, at the same rent and shall contain the same covenants, agreements, conditions, provisions, restrictions and limitations as are then contained in the Lease. Such New Agreement shall be subject to all thenexisting Subleases.

(ii) The New Agreement shall be executed by the City within thirty (30) days after receipt by the City of notice of Leasehold Mortgagee's or such other acquiring person's election to enter into a New Lease.

(iii) Any New Agreement and the leasehold estate created thereby shall, subject to the same conditions contained in the Agreement and in this Exhibit, continue to maintain the same priority as the Agreement with regard to any Leasehold Mortgage or any other lien, charge or encumbrance affecting the Property. Concurrently with the execution and delivery of the New Lease, the City shall assign to the tenant named therein all of its right, title and interest in and to moneys, if any, then held by or payable to the City which VTUSA would have been entitled to receive but for the termination of the Lease.

(iv) If VTUSA refuses to surrender possession of the Property following such termination by the City, then the City shall, at the request of Leasehold Mortgagee or such other acquiring person, institute and pursue diligently to conclusion the appropriate legal remedy or remedies to oust or remove VTUSA. Any such action taken by the City at the request of Leasehold Mortgagee or such other acquiring person shall be at Leasehold Mortgagee's or such other acquiring person's sole expense, and Leasehold Mortgagee or such other acquiring person, as applicable, shall indemnify and hold harmless the City from any liability in connection therewith.

(v) The Leasehold Mortgagee or such other acquiring person shall cure all thenexisting Monetary Defaults, and all NonMonetary Defaults capable of cure following execution of the New Lease.

(h) **No Fee Mortgages.** the City shall not encumber the City's Reversionary Estate in the Property or any part thereof with a deed of trust, mortgage or other security instrument except as otherwise expressly permitted pursuant to Section 10.02 of the Lease.

7. **Bankruptcy Provisions.**

(a) So long as the Leasehold Mortgage shall remain outstanding, the right of election arising under Section 365(h)(1) of the Bankruptcy Code, 11 U.S.C. §101 et seq. (the "Bankruptcy Code") shall be exercised by Leasehold Mortgagee and not by VTUSA. Any exercise or attempted exercise by VTUSA of such right of election in violation of the preceding sentence shall be void.

(b) However, if despite the foregoing provision Leasehold Mortgagee is not permitted to exercise such right of election and the City (or any trustee of the City) shall reject the Agreement pursuant to Section 365(h) of the Bankruptcy Code, (i) VTUSA shall without further act or deed be deemed to have elected under Section 365(h)(1)(A) of the Bankruptcy Code to remain in possession of the Property for the balance of the Term of the Lease; (ii) any exercise or attempted exercise by VTUSA of a right to treat the Agreement as terminated under Section 365(h)(1)(A) of the Bankruptcy Code shall be void; (iii) the Leasehold Mortgage shall not be affected or impaired by such rejection of the Lease; and (iv) the Agreement shall continue in full force and effect in accordance

with its terms, except that VTUSA shall have the rights conferred under Section 365(h)(1)(B) of the Bankruptcy Code.

(c) For purposes of Section 365(h) of the Bankruptcy Code, the term "possession" shall mean the right to possession of the Property granted to VTUSA under the Agreement whether or not all or part of the Property has been subleased.

(d) If VTUSA shall reject the Agreement pursuant to Section 365(a) of the Bankruptcy Code, the City shall serve on Leasehold Mortgagee notice of such rejection, together with a statement of all sums at the time due under the Agreement (without giving effect of any acceleration) and of all other defaults under the Agreement then known to the City. Leasehold Mortgagee shall have the right, but not the obligation, to serve on the City within thirty (30) days after service of the notice provided in the proceeding sentence, a notice that Leasehold Mortgagee elects to (i) assume the Lease, and (ii) cure all defaults outstanding thereunder (x) concurrently with such assumption as to defaults in the payment of money, and (y) within sixty (60) days after the date of such assumption as to other defaults, except for defaults of the type specified in Section 365(b)(2) of the Bankruptcy Code. If Leasehold Mortgagee serves such notice of assumption, then, as between the City and Leasehold Mortgagee (i) the rejection of the Agreement by VTUSA shall not constitute a termination of the Lease, (ii) Leasehold Mortgagee may assume the obligations of VTUSA under the Agreement without any instrument or assignment of transfer from VTUSA, (iii) Leasehold Mortgagee's rights under the Agreement shall be free and clear of all rights, claims and encumbrances of or in respect of VTUSA, and (iv) Leasehold Mortgagee shall consummate the assumption of the Agreement and the payment of the amounts payable by it to the City pursuant to this Section at a closing to be held at the offices of the City (or its attorneys) within thirty (30) days after Leasehold Mortgagee shall have served the notice of assumption hereinabove provided. Upon a subsequent assignment of the Agreement by Leasehold Mortgagee, Leasehold Mortgagee shall be relieved of all obligations and liabilities arising from and after the date of such assignment.

8. **Notices.** Any notices to Leasehold Mortgagee shall be in writing and shall be given in accordance with the provisions of Section 13.01 of the Lease.

9. **Continued Effectiveness.** The rights of Leasehold Mortgagee, and the obligations of the City and VTUSA arising hereunder shall not be affected, modified or impaired in any manner or to any extent by (a) any renewal, replacement, amendment, extension, substitution, revision, consolidation, modification or partial termination of any of the Loan Obligations; (b) the validity or enforceability of any document evidencing or securing the Loan Obligations; (c) the release, sale, exchange or surrender, in whole or in part, of any collateral security, now or hereafter existing, for any of the Loan Obligations; (d) any exercise or nonexercise of any right, power or remedy under or in respect of the Loan Obligations; or (e) any waiver, consent, release, indulgence, extension, renewal, modification, delay or other action, inaction or omission in respect of the Loan

Obligations, all whether or not any the City shall have had notice or knowledge of any of the foregoing and whether or not it shall have consented thereto.

10. **Recognition Agreement.** Upon reasonable request of any Leasehold Mortgagee, the City agrees to execute and deliver to such Leasehold Mortgagee an agreement, in recordable form, setting forth and confirming the terms of this Exhibit for the benefit of such Leasehold Mortgagee, and such other matters as such Leasehold Mortgagee may reasonably request or require, including without limitation, modifications to the Agreement which do not have a material adverse affect on the City's rights or obligations under the Agreement or the City's Reversionary Estate, and do not decrease VTUSA's obligations under the Lease.

Exhibit D

Memorandum of Agreement

PREPARED BY AND RETURN TO:

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE (“Memorandum”) is entered into as of _____ by the **CITY OF BOCA RATON**, a Florida municipal corporation whose post office address is 201 West Palmetto Park Road, Boca Raton, FL 33432 (“**Landlord**”) and **VIRGIN TRAINS USA LLC**, a Delaware limited liability company, whose post office address is 161 NW 6th Street, 9th Floor, Miami, Florida 33136 (“**Tenant**”).

Recitals

Landlord is the owner of the real property located in the City of Boca Raton, Florida, and more particularly described in **Exhibit A** to this memorandum (“**Property**”).

Landlord and Tenant have entered into that certain Ground Agreement dated _____ (“**Agreement**”), whereby Landlord has leased the Property and all improvements now or hereafter located on the Property to Tenant on the terms and conditions set forth in the Agreement. The Property and the improvements are collectively the “**Premises**.”

Landlord and Tenant wish to execute and record this Memorandum in the Public Records of Palm Beach County, Florida in order to memorialize the Agreement and to provide notice to third parties of certain provisions contained in the Agreement.

NOW, THEREFORE, in consideration of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. **Recitals.** The foregoing recitals are true and correct and are incorporated herein by reference.
2. **Terms of Agreement.**
 - 2.1. **Landlord.** The Landlord under the Agreement is the City of Boca Raton, a Florida municipal corporation, whose mailing address is 201 West Palmetto Park Road, Boca Raton, FL 33432.

- 2.2. **Tenant.** The Tenant under the Agreement is **VIRGIN TRAINS USA LLC**, a Delaware limited liability company, whose post office address is 2710 East Camelback Road, Suite 200, Phoenix, AZ 85016.
- 2.3. **Agreement Commencement Date.** The Agreement Commencement Date is _____.
- 2.4. **Rent Commencement Date.** The date that is 15 months after the earlier to occur of (i) issuance of a building permit for the Permitted Use defined in the Agreement, or (ii) the date that the Tenant is open for business to the general public.
- 2.5. **Agreement Term.** The initial term of the Agreement is 50 years, commencing on the Rent Commencement Date and terminating 50 years thereafter.
- 2.6. **Renewal Terms.** The Tenant has the option of extending the term of the Agreement for five successive periods of ten years each, on the conditions set forth in the Agreement.
3. **Landlord's Interest Not Subject to Liens.** No mechanic's, laborer's, vendor's, materialman's or other similar statutory lien for such work or materials will attach to or affect the Landlord's interest in all or any part of the Premises, or any assets of the Landlord, or the Landlord's interest in any Rent or other monetary obligations of Tenant arising under the Agreement. In accordance with Section 713.10 of the Florida Statutes, any and all liens or lien rights arising out of the construction of the Improvements extend only to Tenant's leasehold interest in the Premises. The Landlord's right, title and interest in the Premises is not subject to Liens or claims of Liens for improvements made by VTUSA.

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum of Agreement as of the day and year set forth above.

[SIGNATURE BLOCKS ON FOLLOWING PAGES]

The parties have executed this Memorandum of Agreement as of the dates set forth below their respective signatures.

Witnesses (two required):

CITY OF BOCA RATON, a Florida
municipal corporation

Signature: _____

By: _____

Mayor

Print Name: _____

Signature: _____

By: _____

City Manager

Print Name: _____

Date: _____

ATTEST:

By:

City Clerk

APPROVED AS TO FORM AND SUFFICIENCY
FOR THE USE AND RELIANCE OF THE CITY
OF BOCA RATON ONLY:

By: _____

City Attorney

ACKNOWLEDGMENT

STATE OF FLORIDA
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me on _____ ,
by _____ and _____ , as Mayor and Manager,
respectively, of the City of Boca Raton, on behalf of the City. They are personally known to me
or have produced _____ as identification.

[SEAL]

Notary Public, State of Florida

[SIGNATURE BLOCKS CONTINUE ON FOLLOWING PAGES]

Witnesses (two required):

VIRGIN TRAINS USA LLC, a Delaware limited liability company

Signature: _____

By: _____

Print Name: _____

Name: _____

Signature: _____

Title: _____

Print Name: _____

Date: _____

ACKNOWLEDGMENT

STATE OF FLORIDA
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me on _____, by _____ as _____ of **VIRGIN TRAINS USA LLC**, a Delaware limited liability company, on behalf of the company. He is personally known to me or has produced _____ as identification.

[SEAL]

Notary Public, State of Florida

Exhibit A to Memorandum of Agreement

Legal Description of the Property

Exhibit E

DRAW REQUEST

[VTUSA LETTERHEAD]

DRAW REQUEST NO. _____

TO: CITY OF BOCA RATON

DATE _____

PROJECT Parking Garage at Boca Raton Train Station

LOCATION Boca Raton, Florida

FOR PERIOD ENDING _____, 201__

In accordance with the Lease and Option Agreement between Virgin Trains USA LLC, a Delaware limited liability company (“VTUSA”), and the City of Boca Raton, dated _____, 2019 , which provides for the allocation of \$_____ for the construction and development of a parking garage at the Boca Raton Train Station being developed by VTUSA station (the “Project”), VTUSA requests that \$_____ be advanced from the funds allocated by the City for the Project. The proceeds shall be used to pay the billing statements and invoices attached hereto.

The City is hereby instructed to use the following instructions as directed by VTUSA for either disbursement of proceeds:

Account Name:
Account Number:
Bank Name:
City & State:
ABA #:

VIRGIN TRAINS USA LLC, a Delaware limited liability company

By: _____
Name: _____
Title: _____
Date: _____

Exhibit F
OPTION TO PURCHASE PROVISIONS

1 Grant of Option

(a) City hereby grants to VTUSA the exclusive and irrevocable option (the "Option") to purchase certain City owned land proximately located to the Station Parcel and the Garage Parcel show in in outline in Exhibit " ___ "" hereto and made a part hereof (the "Option Land), upon the terms and provisions of this paragraph ___. The Option shall expire at 5:00 p.m., Boca Raton time on, December 31, 2021 (the "Expiration Date"), which date may be extended in accordance with Paragraph 2(b). Prior to the Expiration Date, the Option shall run with the land and be binding upon the Option Land and any improvements thereupon. The Option shall remain in effect until it expires or VTUSA purchases all of the Option Land. VTUSA may exercise the Option to a portion of the Option Land that is less than all of the Option Land described herein. If VTUSA exercises the Option as to a portion of the Option Land less than all of the Option Land, at its election, VTUSA may: i) terminate the Option as to the remaining portion of the Option Land not purchased; or ii) retain the Option as to the remaining Option Land until such time as the Option expires or is terminated, or VTUSA purchases the remaining Option Land.

(b) The Option shall only be exercisable during the period commencing on the date hereof and ending at the Expiration Date (the "Option Term"). As consideration for the Option during the Option Term, VTUSA has delivered to City on the date hereof the sum of and 00/100 Dollars (\$00) in the form of check payable to City (the "Option Consideration") which shall be held by City and shall be applied as hereinafter provided. VTUSA may request an extension of the Option Term for no more than two (2) additional six (6) month terms ("Extension") by payment of an additional and 00/100 Dollars (\$) for each Extension no later than the date of the commencement of each Extension of the Option Term

Any additional payment made hereunder shall be considered part of the Option Consideration, and shall be held by City, shall be non-refundable but credited to or applied against the Purchase Price. VTUSA shall have the right to the Extensions as to any portion of the Option Land not previously purchased by VTUSA at the time VTUSA exercises its right to the Extension(s).

(c) The Option, as to all or a portion of the Option Land, may be exercised by VTUSA by delivery to City during the Option Term or the Extensions by notice, in writing, of the exercise of

the Option. The foregoing notice to be given in the manner provided in Paragraph ___ hereof. Upon giving such notice, VTUSA shall deposit in an interest bearing account with _____ (“Escrow Agent”) within five (5) business days of opening of an escrow account the sum of _____ Dollars (\$_____) (which deposit together with any interest thereon is referred to as the “Deposit”) to be applied as hereinafter provided.

(d) If VTUSA fails to timely exercise the Option as provided herein prior to the Expiration Date as to all or a portion of the Option Land, the Option as to the remaining portion of the Option Land whereupon the Option has not been exercised shall expire and VTUSA shall have no right to purchase the Option Land or any remaining portion thereof. In such event City shall retain the Option Consideration as its sole and exclusive consideration for the Option and City shall be entitled to no other remedy or recourse whatsoever against VTUSA arising out of VTUSA’s failure to exercise the Option.

(e) The Option Consideration and the Deposit shall each be applied against the Purchase Price upon Closing (as hereinafter defined).

___.2. Purchase Price. The purchase price of the Option Land shall be the fair market value of the Option Land according to an appraisal report made as of less than 6 months before the date of introduction of the Approving Ordinance for sale (the “Purchase Price”). The appraisal report shall be by an appraiser mutually acceptable to the City Council and VTUSA

--.3. Expenses and Prorations. VTUSA and the City agree, with respect to the payment of costs, expenses and prorations at the Closing, that:

(a) VTUSA shall pay: (i) to its designated title agent the cost of the Commitment (as hereinafter defined); (ii) to its designated title agent the premium for the Title Policy (as hereinafter defined) and all endorsements thereto; (iii) the cost of the Survey; (iv) the cost of recording the Deed (as hereinafter defined), and (v) the cost of all documentary stamp taxes due on the Deed, and (vi) the cost of publication of the notice for the Approving Ordinance.

(b) The Option Land is currently exempt from real estate and personal property taxes since the City is a governmental entity. VTUSA shall be responsible for all real estate and personal property taxes (and any other assessments) on or against the Option Land following the Closing Date (as hereinafter defined).

--.4. Title and Survey. VTUSA shall have the right, at VTUSA's cost and expense, to obtain: (a) a commitment (the "Commitment") from a title agent selected by VTUSA (the "Title Agent") for the issuance of an ALTA Owner's Title Insurance Policy (6/17/06) with Florida modifications insuring VTUSA's marketable title to the Option Land (the "Title Policy") from a national title insurance company acceptable to VTUSA (the "Title Company") for the amount of the Purchase Price, and (b) a survey of the Option Land (the "Survey") prepared by a registered land surveyor. VTUSA shall take title to the Option Land at Closing subject to all title and survey exceptions existing on the Effective Date (the "Permitted Exceptions"). The City shall satisfy, at or prior to Closing, any matters affecting title to the Option Land first appearing after the Effective Date other than those requested or caused by VTUSA (but in no event shall the City be required to expend more than Ten Thousand (\$10,000) Dollars towards satisfaction of such title matters).

--.5 Inspections; As-Is Transaction.

(a) The City hereby grants VTUSA and VTUSA's agents, employees, representatives and contractors (collectively, "Agents") the right, while this Agreement remains in effect, to enter and go upon the Option Land at any time prior to Closing to perform any test, inspection, or investigation, and to undertake any other action on and/or relating to the Option Land (the "Inspections"), as VTUSA in its sole discretion deems necessary or desirable. Any such entry shall only be during normal business hours and after a minimum of three (3) business days advance, written notice to the City (unless the City objects to the requested entry date/time, in which case an alternate date and time shall be agreed upon). Provided, however, no physically intrusive tests, including without limitation Phase II environmental testing, shall be performed until advance notice is provided to, and agreed upon by, the City and such notice shall expressly advise the City of the nature, type, dates, and scope of the test/inspection as well as required restoration. Immediately after each entry upon the Option Land by VTUSA or any of its Agents, VTUSA shall restore the Option Land substantially to the same condition that it was in immediately prior to such entry. VTUSA shall indemnify, defend and hold the City harmless against any and all claims, demands, and liabilities, including reasonable attorneys' fees and costs (at trial and through appeal, if applicable), arising out of or related to the Inspections of the Option Land or the VTUSA's entry onto the Option Land (by VTUSA or VTUSA's Agents).

(b) Prior to commencement of investigations on the Option Land VTUSA will provide the City a certificate of insurance for (i) Comprehensive Commercial General Liability of Two Million (\$1,000,000) Dollars combined single limit per occurrence for bodily injury and property damage and Two Million (\$2,000,000) Dollars general aggregate for bodily injury and property damage, and (ii) workers compensation within applicable statutory limits, all of which insure VTUSA's indemnity obligations hereunder. VTUSA shall provide the City with a certificate(s) of insurance as well. All insurance policies shall name the City as an additional insured and provide

for thirty (30) calendar days prior to written notice to the City in the event of termination, cancellation, or any material change to the requirements as set forth in this Paragraph. Except for workers compensation, all insurance policies shall be primary without right of contribution from any of the City's insurance carriers.

(c) Notwithstanding the inspection rights set forth in subparagraph (a) above, VTUSA acknowledges and agrees that VTUSA is purchasing the Option Land in its "AS-IS, WHERE-IS" condition with all faults and defects, latent and patent, and without any warranties or representations, either express or implied, of any kind, nature, or type whatsoever from the City (except for express representations and warranties set forth in paragraph __ of this Agreement). Without in any way limiting the generality of the immediately preceding sentence, VTUSA and the City further acknowledge and agree that the City has not made, will not make, does not make and specifically negates and disclaims any representation and/or warranty of any kind or character whatsoever made, whether express or implied, oral or written, of, as to, concerning or with respect to the Option Land (except for express representations and warranties set forth in paragraph 8 of this Agreement).

--.6. City Ordinance Authorizing Sale. City's obligations under this Agreement is subject to, and conditioned upon, the adoption of an ordinance authorizing the sale of the Option Land to VTUSA (the "Approving Ordinance") which has been duly advertised and adopted at a public hearing of the City in accordance with Chapter 13, Article III of the City Code. Accordingly, this Agreement and the sale of the Option Land by the City to VTUSA shall be subject to the terms and provisions of Chapter 13, Article III of the City Code, and this Agreement shall not be binding on the City until the Approving Ordinance is adopted and takes effect.

--.7. Development Approvals. VTUSA's intended use of the Option Land is to create a TOD to be integrated into and with the railway station and parking garage to be developed by VTUSA on the adjoining parcels conveyed to VTUSA under the Conveyance Agreement ("VTUSA's Intended Use"). VTUSA confirms and acknowledges that as of the Effective Date, the City's Zoning Code does not provide a TOD zoning category. Accordingly, without representation or warranty as to the likelihood of obtaining any required land use change, creation of a TOD (or similar) Zoning with Land Development Regulations, a rezoning of the Option Land to TOD (if a TOD zoning ordinance is adopted), a Development Agreement with the City (as applicable) and Site Plan Approval for the TOD, VTUSA shall have the right, during the term of this Agreement and at VTUSA's sole cost, expense and risk, to apply for, seek and obtain all land use and zoning approvals, permits, orders, development orders, site plans, and plats, and other approvals and authorizations, all as VTUSA deems necessary or desirable for VTUSA's Intended Use (all of the foregoing, after issuance and expiration of all applicable appeals periods, being referred to herein

individually as an "Approval" and collectively as the "Approvals"). City agrees to assist VTUSA in VTUSA's efforts to obtain the Approvals as specified herein. In that regard, City agrees to execute within a reasonable period after written request from VTUSA an owner's authorization form (for application by a contract VTUSA) at the request of VTUSA in connection with all petitions, applications, consents and other instruments as VTUSA may request so as to permit VTUSA to apply for the Approvals prior to Closing. City shall have no obligation whatsoever, beyond execution of the aforesaid authorization, to assist VTUSA's efforts to obtain the Approvals. City covenants and agrees not to withdraw any authorization made to the applicable governmental authorities in connection with the foregoing unless requested in writing by VTUSA or in the event of a default hereunder by VTUSA or a termination of this Agreement. Notwithstanding City's agreement to cooperate with VTUSA's efforts to seek and obtain the Approvals, any delay or denial in VTUSA's receipt of the Approvals will not limit, affect or delay VTUSA's obligations under this Agreement. Furthermore, and notwithstanding anything to the contrary contained herein, VTUSA shall not be authorized to apply for any Approval(s), and City shall not provide authorization (or otherwise cooperate), unless and until VTUSA provides a written, legal opinion to the City sufficient to confirm that (in the event VTUSA does not proceed to purchase the Option Land for any reason whatsoever), the issuance of any Approval(s) will not adversely impact or restrict the continued current use and operation of the Option Land and such continued use and operation will remain lawful and compliant with all applicable zoning and land use regulations.

--.8. Easements in Favor of City. If the City determines, in its sole discretion, that it is necessary to adequately protect its interests with regard to streets, water, sewer or electric service (individually or collectively "Infrastructure"), then on or before the date of Closing it may cause to be executed and recorded a perpetual easement in its favor. In the event that either party determines, in its sole discretion, that it is necessary or desirable to relocate the Infrastructure after Closing, the parties or their successors in interest shall execute such instruments as may be necessary for abandonment of any existing easement and relocation of the same. If VTUSA elects to relocate the Infrastructure under this paragraph, the City shall cooperate with VTUSA's request and shall not unreasonably withhold, condition, or delay approval of the same. If either party determines that it is necessary or desirable to relocate the -Infrastructure, the requesting party shall be solely responsible for the costs of relocating any easement including survey and documentation costs. The legal description of any easement to be executed by VTUSA after Closing shall be provided by the City.

--.9. Closing. Subject to the conditions of this Option , the closing of the purchase and sale of the Option Land (the "Closing") shall take place no more than fifteen (15) business days after the Expiration Date, or within such time as may be necessary to satisfy any disapproved title exceptions pursuant to Paragraph __.4 above, at 1:00 p.m. at the offices of the City Attorney or

at such other date, time and place as the parties may agree in writing. At Closing, VTUSA shall furnish City with copies of appropriate documents demonstrating that VTUSA is duly authorized, validly existing and in good standing in the State of Florida and has the requisite authority to consummate the transactions contemplated hereby, together with such other documents as the Title Company may require. City shall deliver to VTUSA exclusive possession of the Option Land at Closing.

--.10. Remedies. VTUSA and City hereby agree that if the Option is exercised by VTUSA and if thereafter the purchase and sale of the Option Land is not completed after the conditions contained in Paragraph 11 have been waived or satisfied because of a breach of this Agreement by Purchaser, the Deposit shall be released by Escrow Agent to City and any other funds including the Option Consideration paid or released to City shall be retained by City as liquidated damages in lieu of all other damages and in lieu of all other remedies, legal or equitable, which City may have against Purchaser. The parties hereby acknowledge and agree that the extent of damages to City occasioned by such a breach would be impossible or extremely impracticable to ascertain, and that the Deposit and Option Consideration represent fair and reasonable consideration under the circumstances existing at the date of this Agreement for City having been prevented from selling the Option Land to a third party and for City's expenses in connection with this transaction. If the purchase is not consummated because of such a breach by Purchaser, the Escrow Agent shall release the Deposit to City upon City's demand, without further instructions, directions, or authorizations from VTUSA being required, this Agreement constituting irrevocable joint escrow instructions to the Escrow Agent to release such sum to City, such release of the Deposit being City's sole and exclusive remedy. If the purchase and sale of the Option Land is not completed because of a breach of this Agreement by City, including without limitation, failure to deliver title as required VTUSA may elect as its sole remedy either: (a) to declare this Agreement terminated in which event the Deposit shall be refunded to VTUSA upon Purchaser's demand; or (b) seek to specifically enforce the provisions of this Agreement.