

ORDINANCE No. 5509

ATTACHMENT 1

LEASE AGREEMENT

(12/04/2019)

GROUND LEASE AGREEMENT

Between

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

and

VIRGIN TRAINS USA LLC, a Delaware limited liability company

Date: _____

GROUND LEASE AGREEMENT

THIS GROUND LEASE 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, on September 17, 2019, VTUSA delivered an unsolicited proposal to the City requesting a ground lease of City owned land upon which VTUSA desires to construct a passenger train station and a garage facility for the purpose of offering Virgin passenger intercity rail service to the City (the “**Proposal**”).

WHEREAS, VTUSA has constructed and is operating a privately owned, passenger high-speed (expected to reach speeds of at least 110 miles per hour between West Palm Beach, Florida and Cocoa, Florida and up to 125 miles per hour between Cocoa, Florida and Orlando airport) railway system along the Florida East Coast Railway LLC’s (“**FEC**”) corridor (the “**Corridor**”) with passenger train stations in Miami, Fort Lauderdale and West Palm Beach and a planned extension to Orlando (the “**System**”).

WHEREAS, the City is experiencing continued growth and is seeking alternative transportation options to reduce impact on the City’s roadways.

WHEREAS, as part of the System, VTUSA has made substantial investments to upgrade and build necessary infrastructure, and acquire five new train sets that operate on the Corridor, which currently connects downtown Miami to downtown West Palm Beach.

WHEREAS, VTUSA is prepared to add an additional station in Boca Raton on the Station Parcel (as defined below) and provide passenger train service.

WHEREAS, the City desires, and VTUSA has agreed, to provide the necessary infrastructure and to construct a passenger train station on the Station Parcel and a parking garage facility on the Garage Parcel (as defined below) (collectively the “**Project**”) adjacent to the Corridor, pursuant to the terms and conditions set forth herein.

WHEREAS, the City Council reviewed the Proposal and elected to proceed with the negotiation of a lease agreement with VTUSA, and this Agreement was thereafter prepared for consideration by the parties.

WHEREAS, the City wishes to lease the Property (as defined below) to VTUSA and grant VTUSA a right of first refusal as to the Property and the Parcels (as defined below), on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the Property 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. The following Exhibits are attached to this Agreement and are a part of this Agreement.

Exhibit A – Legal Description of the Property and Depiction of Station Parcel and Garage Parcel

Exhibit B – Legal Description of the Parcels

Exhibit C – Leasehold Mortgagee Provisions

Exhibit D – Memorandum of Agreement

Exhibit E – Preliminary Sketch

Exhibit F – Draw Request Form

Exhibit G – Budget for Parking Garage

Exhibit H – Temporary Easements Agreement

Exhibit I – Library Parcel

Exhibit J – Construction Plan Review and Completion Process

2. **Defined Terms.** Terms used in this Agreement are defined in the Recitals, in the sections where they are first used or have the meanings set forth below.

- 2.1. **Agreement Commencement Date.** The date this Agreement goes into effect pursuant to Section 4 of this Agreement.

- 2.2. **Agreement Year.** The 12-month period commencing on the Agreement Commencement Date and ending on the day immediately preceding the first anniversary of the Agreement Commencement Date, and each successive 12-month period thereafter during the Term.

- 2.3. **Affiliate.** With respect to any person, any entity or individual that, directly or indirectly, through one or more intermediaries, (a) has a ten percent (10%) or more voting or economic interest in such person or (b) controls, is controlled by, or is under common control with such person. For purposes hereof, “control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through ownership of voting shares, by contract or otherwise.

- 2.4. **Approved Site Plan.** Approved Site Plan is defined in Section 14.1 hereof.

- 2.5. **Approved Plans.** Approved Plans is defined in Section 16.2 hereof.

- 2.6. **Assignee.** Assignee is defined in Section 24.2 hereof.

- 2.7. **Assignment.** Assignment is defined in Section 24.2 hereof.

- 2.8. **Attorneys’ Fees.** All reasonable attorneys’ fees and expenses and 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.

- 2.9. **Budget.** The budget for the construction of the Parking Garage as described in Section 12.1.2 is attached hereto as Exhibit G, as may be amended pursuant to Section 16.7.
- 2.10. **Business Day.** Any day other than a Saturday, Sunday, a national holiday or a day City Hall is not open for business.
- 2.11. **Calendar Year.** A 12-month period beginning on January 1 and ending on December 31 of the same year.
- 2.12. **CERCLA.** CERCLA is defined in Section 19.1.1 hereof.
- 2.13. **Changes.** Changes is defined in Section 16.12 hereof.
- 2.14. **Charges.** Charges is defined in Section 11 hereof.
- 2.15. **City Code.** Collectively, the City of Boca Raton Code of Ordinances and the City Charter.
- 2.16. **City Crossing.** The proposed at-grade railroad crossing that would be located in the City of Boca Raton at the intersection of Jeffery Street and the Corridor.
- 2.17. **City Representative.** City Representative is defined in Section 16.10.
- 2.18. **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 (or, if The Wall Street Journal ceases to quote such rate, the highest per annum interest rate published by the Federal Reserve Board in Federal Reserve Statistical Release H.15 (519) (Selected Interest Rates) as the “bank prime loan” rate or, if such rate is no longer quoted therein, any similar rate quoted therein (as determined by the parties acting reasonably) or any similar release by the Federal Reserve Board (as determined by the parties acting reasonably), not to exceed the statutory rate of usury).
- 2.19. **Direct Parking Users.** Users of the Parking Garage (other than the Library Spaces and, if VTUSA has exercised its rights under Section 16.1 and paid the required fee, rental car spaces) that are not Indirect Parking Users.
- 2.20. **Draw Request.** Draw Request is defined in Section 16.7.1 hereof.
- 2.21. **EPA.** EPA is defined in Section 19.1.2 hereof.
- 2.22. **Event of Default.** Event of Default is defined in Section 25 hereof.
- 2.23. **Force Majeure.** Any act of terrorism, insurrection, riot or civil commotion, blockade or embargo, epidemics, pandemics, or quarantine, fire, explosion, or flood, an official or unofficial strike, lockout, go-slow, or other labor dispute, act of God, inability to obtain labor or materials due to governmental restrictions, riot, war, violent act of foreign enemy or armed conflict, named windstorm, in the case of VTUSA, any act of the City that limits or suspends access for train passengers to the Train Station or the Parking Garage, a change in applicable Governmental Requirements that occurs after the effective date of this Agreement that, in each case, has a material adverse effect on a party’s ability to perform its obligations hereunder.

- 2.24. **Garage Direct Revenue.** All revenue generated by the operation of the Parking Garage, other than Parking Indirect Revenue.
- 2.25. **Garage Expenses.** An amount equal to the sum of (a) taxes and direct or third-party operations and maintenance expenses paid during any calendar year in connection with the operation and maintenance of the Parking Garage and the Garage Parcel Permitted Use (except to the extent the same relates to rental car services provided in the Parking Garage), (b) an administrative and overhead fee to VTUSA equal to fifteen percent (15%) of all Garage Revenue, and (c) to the extent Garage Net Income reflected a loss in the prior calendar year(s), the amount of such loss.
- 2.26. **Garage Net Income.** All Garage Revenue less Garage Expenses in any calendar year; provided that, if VTUSA has exercised its rights under Section 16.1 and paid the required fee, revenue or expenses that relate to rental car services provided in the Parking Garage shall not be included in Garage Net Income calculations.
- 2.27. **Garage Parcel.** The portion of the Property to be utilized for the Parking Garage and depicted on Exhibit A attached hereto and made a part hereof.
- 2.28. **Garage Revenue.** Garage Direct Revenue and Parking Indirect Revenue.
- 2.29. **General Contractor.** VTUSA's general contractor(s) for the construction of the Project.
- 2.30. **Good Industry Practice.** The exercise of the degree of skill, diligence and prudence which would reasonably and ordinarily be expected from time to time from a skilled and experienced designer, engineer, construction contractor, manager, operator or developer (as applicable) seeking in good faith to comply with its contractual obligations, complying with all applicable laws and Governmental Approvals, and using accepted design and construction, or operation and maintenance, standards and criteria normally used on similar projects in the State of Florida.
- 2.31. **Governmental Authority.** Any federal, state, county, municipal (including the City) or other governmental department, entity, authority, board, bureau, court, agency, or any instrumentality of any of them.
- 2.32. **Governmental Approval.** Any license, permit, certificate, consent, authorization, or other document issued or approved by a Governmental Authority (whether required by Governmental Requirement or by the terms of this Agreement).
- 2.33. **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.
- 2.34. **Hazardous Substances.** Hazardous Substances is defined in Section 19.1.2 hereof.
- 2.35. **Indirect Parking Users.** Users of the Parking Garage (other than the Library Spaces and, if VTUSA has exercised its rights under Section 16.1 and paid the

required fee, the rental car spaces) that pay a parking fee that is bundled as a part of their train ticket price and not separately identifiable.

- 2.36. **Initial Term.** Initial Term is defined in Section 5.1 hereof.
- 2.37. **Initial Renewal Term.** Initial Renewal Term is defined in Section 5.2 hereof.
- 2.38. **Insurance Trustee.** Insurance Trustee is defined in Section 22.2.2 hereof.
- 2.39. **Leasehold Estate.** The leasehold rights granted to VTUSA under this Agreement.
- 2.40. **Leasehold Mortgage.** A mortgage or mortgages or other similar security agreements given to any Leasehold Mortgagee of the Leasehold Estate, and shall be deemed to include any mortgage or trust indenture under which VTUSA's Leasehold Estate shall have been encumbered subject to the terms and provisions in this Agreement and any agreement entered into between the City and the Leasehold Mortgagee.
- 2.41. **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, 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. No Leasehold Mortgagee (or its designee) may assume the rights and obligations of VTUSA under this Agreement or enter into a New Lease (as defined in Exhibit C) with the City, unless the Leasehold Mortgagee (or its designee) shall have the technical experience, legal rights, and financial resources available to it, either directly or through contract, to operate the Leasehold Estate as contemplated herein and otherwise perform the terms of this Agreement.
- 2.42. **Library.** The City owned library located at NW 2nd Avenue and NW 4th Street and any other approved use or operations at any portion of the Library Parcel.
- 2.43. **Library Parcel.** The parcel of land on which the Library is presently located and described on Exhibit I attached hereto and made a part hereof which encompasses the entire parcel less the Property.
- 2.44. **Library Spaces.** Library Spaces is defined in Section 15.1 hereof.
- 2.45. **Lien.** Lien is defined in Section 18.3 hereof.
- 2.46. **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 (exclusive of consequential, punitive, or special damages).

- 2.47. **Not Materially Damaged.** Not Materially Damaged is defined in Section 22.1 hereof.
- 2.48. **Other Taxes.** Other Taxes is defined in Section 10.2 hereof.
- 2.49. **Parcel A.** The City owned land legally described under the caption “Parcel A” on Exhibit B attached hereto and made a part hereof.
- 2.50. **Parcel B.** The City owned land legally described under the caption “Parcel B” on Exhibit B attached hereto and made a part hereof.
- 2.51. **Parcels.** Together, Parcel A and Parcel B.
- 2.52. **Parking Garage.** A structured parking garage, together with related utilities and other infrastructure, to be constructed on the Garage Parcel adjacent to the Station Parcel as further described in Section 15.1.
- 2.53. **Parking Indirect Revenue.** All revenue generated by Indirect Parking Users. In any calendar year, Parking Indirect Revenue shall be calculated using the following formula:
 Parking Indirect Revenue = A x B x C
 A = Number of entries into and use of a parking space by Indirect Parking Users in such calendar year
 B = (Revenue generated by Direct Parking Users in such calendar year) *divided by* (Number of entries into and use of a parking space by Direct Parking Users in such calendar year), which results in an average parking rate per use for Direct Parking Users for such calendar year
 C = (Number of entries into and use of a parking space by Direct Parking Users in such calendar year) *divided by* (Number of days in such calendar year multiplied by the number of parking spaces in the Parking Garage (other than Library Spaces or rental car spaces)), which results in the average use of entries and is used to estimate the average use of parking spaces by Direct Parker Users for a calendar year
 provided that C can be no less than 0.25 and no greater than 0.75; provided, further, that to the extent VTUSA modifies the way it charges for use of parking spaces in the Parking Garage after the Effective Date, the parties shall reasonably negotiate changes to the definition of “Parking Indirect Revenue”.
- 2.54. **Permitted Use.** Collectively, the Station Parcel Permitted Use and the Garage Parcel Permitted Use.
- 2.54.1. **Station Parcel Permitted Use:** The Station Parcel shall be used for the construction, maintenance and operation of the Train Station, including, but not limited to, the embarking and disembarking of passengers (onto and off of the train) from and on to the platform, ticketing, security screening, passenger waiting lounges, restrooms, other uses contemplated in Section 12.1.1, and accessory uses, including without limitation, food and beverage sales (including alcohol), newsstands, cafes or coffee shops, passenger pick

up and drop off at the Train Station, interior advertisements, parking for bicycles or other motorized and non-motorized transportation instruments, rental car services, private events, dry cleaning drop off and pickup, or concierge services, all of which are ancillary uses which are incidental to the operation of the Train Station, subject to Section 12.1.1. Signage and naming rights in accordance with Governmental Requirements are permitted to the extent in compliance with Section 14.2.

- 2.54.2. **Garage Parcel Permitted Use:** The Garage Parcel shall be used for the construction, maintenance and operation of a parking facility that includes parking for the Train Station customers, visitors to the Library Parcel (subject to the terms hereof, whether or not the Library Parcel continues to be operated as a Library), and the general public, and spaces for rental cars designated in accordance with Section 15.1; in each case, subject to Section 12.1.2. VTUSA is allowed to charge for parking in the amounts set forth herein but in no event shall the Library Spaces defined in Section 15.1 be subject to any parking charge.
- 2.55. **Plans.** Plans is defined in Section 16.1 hereof.
- 2.56. **Property.** The Station Parcel and the Garage Parcel.
- 2.57. **Quiet Zone Notice.** Quiet Zone Notice is defined in Section 12.7 hereof.
- 2.58. **Real Property Taxes.** Real Property Taxes is defined in Section 10.2 hereof.
- 2.59. **Recognition Agreement.** Recognition Agreement is defined in Section 18.1.1 hereof.
- 2.60. **Reconstruction Work.** Reconstruction Work defined in Section 22.3.1 hereof.
- 2.61. **Renewal Term.** Renewal Term is defined in Section 5.2 hereof.
- 2.62. **Rent.** All Minimum Rent (pursuant to Section 7 hereof) and Additional Rent (pursuant to Section 8 hereof) due under this Agreement.
- 2.63. **Repairs.** Repairs is defined in Section 17.4 hereof.
- 2.64. **Right of First Refusal.** Right of First Refusal is defined in Section 34 hereof.
- 2.65. **ROFR Purchase Price.** ROFR Purchase Price is defined in Section 34 hereof.
- 2.66. **Station Parcel.** The portion of the Property to be utilized for the Train Station and the access road depicted on Exhibit A attached hereto and made a part hereof.
- 2.67. **Taking.** Taking is defined in Section 23.1 hereof.
- 2.68. **Temporary Easements Agreement.** Temporary Easements Agreement is defined in Section 15.2 hereof.
- 2.69. **Term.** The Initial Term of the Agreement plus any exercised Renewal Term.
- 2.70. **Train Station.** A passenger train station to be constructed on the Station Parcel to be integrated into the System for the Station Parcel Permitted Use.
- 2.71. **VTUSA-F.** VTUSA-F is defined in Section 24.1 hereof

- 2.72. **Work.** Work is defined in Section 16.4 hereof.
3. **Rules of Construction.**
- 3.1. **City.** The term “City,” as specified or required by the context, means the City of Boca Raton (including all departments or employees) acting in any capacity, including without limitation, its proprietary, governmental, corporate, or other capacity.
- 3.2. **No Waiver of Regulatory Powers.** The City cannot, and hereby specifically does not, waive or relinquish any of its regulatory approval, governmental or enforcement rights and obligations as it may relate to regulations which may govern the Property, any operations at the Property or any other matter that falls within the City’s governmental powers. 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 or electing not to take any other action in accordance with its City Code and all other Governmental Requirements or the exercise of its governmental authority. Nothing in this Agreement is intended to be or shall be considered contract zoning or a limitation of the City’s governmental authority.
- 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 a Governmental Approval is required from the City, the approval will be granted or denied in accordance with applicable Governmental Requirements, practices and procedures, including the exercise of discretion as required or appropriate. Nothing in this Agreement shall be deemed an approval or waiver by the City when acting as a Government Entity.
- 3.4. **Operations.** When this Agreement references operation of trains or the System, it is understood that such operations may be performed by VTUSA or any of its Affiliates, it being understood that VTUSA shall be responsible hereunder for any failure to operate in accordance with the terms of this Agreement.
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. Section 4.1 and 4.2 shall only apply until the Agreement Commencement Date:
- 4.1. **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 or assist a defense of such litigation, and will have the right to terminate this Agreement. The City will have no liability to VTUSA for the City’s decision not to defend or assist in the defense of such litigation or its election to terminate this Agreement.
- 4.2. **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 repeal the ordinance or resolution approving this Agreement,

modify this Agreement (with VTUSA's consent), 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 (i) the City Council's election to repeal the ordinance or resolution approving this Agreement after the filing of a petition for reconsideration, (ii) the City Council's election to not modify this Agreement, or (iii) the failure of the voters to approve the ordinance or resolution authorizing the Agreement.

5. **Agreement Term.**

5.1. **Initial Term.** The first Term of the Agreement, which will begin on the Agreement Commencement Date and end twenty-nine (29) years thereafter (the "**Initial Term**").

5.2. **Renewal Terms.** VTUSA shall have the option to extend the Term for one additional renewal term of twenty (20) years (the "**Initial Renewal Term**") 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 four years prior to the expiration of the Initial Term, and, thereafter, VTUSA shall be entitled to request, subject to the City's approval, to extend the Term for up to two successive renewal terms of twenty (20) years each at least one year prior to the expiration of the Renewal Term but no earlier than four years prior to the expiration of the applicable Renewal Term (each such renewal term, together with the Initial Renewal Term, each a "**Renewal Term**"). VTUSA shall have the right to exercise the option to extend so long as no default or Event of Default exists at the time of such exercise. A Renewal Term shall only commence to the extent no Event of Default exists and is continuing at the start of such Renewal Term. 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 in Sections 7 and 8 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 Director
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 the City minimum rent ("**Minimum Rent**") of \$1.00 per Agreement Year for each Agreement Year of the Term. VTUSA shall pay the Minimum Rent in advance for the Initial Term and for each Renewal Term.

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. **Improvements.** The parties expressly agree that any funds expended by VTUSA to make improvements on the Property by VTUSA are not intended to constitute Rent and are not made in lieu of paying Rent. Without limiting VTUSA’s obligations set forth in this Agreement, the parties acknowledge that there is no minimum amount required to be expended by VTUSA hereunder for purposes of making improvements on the Property and the improvements are to be made to put the Property in a condition suitable for the operation of the System by VTUSA.
10. **Taxes.**
 - 10.1. **Real Property Taxes.** Subject to the right to contest taxes pursuant to Section 10.3 below, VTUSA shall be responsible for any and all ad valorem property taxes imposed or assessed against the Property, the Train Station and the Parking Garage if and to the extent assessed (“**Real Property Taxes**”) and such Real Property Taxes shall be paid before delinquency by VTUSA. If VTUSA fails to pay any such taxes or charges prior to delinquency, the City, without relieving VTUSA of any liability, may, but is not obligated to, pay any such taxes or charges. Any such taxes or charges 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 due and payable 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.
 - 10.2. **Taxes Other than Real Property Taxes.** Subject to the right to contest taxes pursuant to Section 10.3 below, VTUSA shall timely pay and discharge, before any fine, penalty, interest or cost may be added for nonpayment, any and all taxes, assessments, fees or other costs or charges of any type or nature that are imposed, charged, or assessed on the Property and on personal property maintained on the Property (or on the overall parcel the Property is a part of in which event VTUSA will be responsible for a prorated amount); and public assessments, special assessments, utility taxes, sales taxes and any other taxes, assessments, fees and any other cost or charges of any type or nature that may be imposed, charged or assessed against the Property or VTUSA’s personal property on the Property or parking fees (or on the overall parcel the Property is a part of in which event VTUSA will be responsible for a prorated amount) at any time in the future (“**Other Taxes**”). If VTUSA fails to pay any such taxes or charges prior to delinquency, the City, without relieving VTUSA of any liability, may, but is not obligated to, pay any such taxes or charges. Any such taxes or charges 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 due and payable 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. The parties acknowledge that taxes based on gross receipts, income or similar taxes do not constitute “Other Taxes”.

- 10.3. **Contesting Taxes.** If VTUSA desires, as determined by VTUSA in its reasonable business judgment, to contest the validity or amount of any Real Property Taxes or any Other Taxes, VTUSA shall notify the City. VTUSA shall diligently prosecute such contest (in VTUSA's own name or behalf of the City, or on behalf of both, as it may deem appropriate (so long as any contest on behalf of the City will be consistent with VTUSA's use of the Property), and the City, at VTUSA's expense, will cooperate in any such dispute and contest). In the event of a contest, the disputed charge need not be paid until finally adjudged to be valid, except as otherwise required by Governmental Requirements or any Governmental Authority; provided however that the City, at its sole option, may require that an amount equal to the disputed charge be placed in escrow during the contest unless VTUSA has already paid such amount under protest. At the conclusion of such contest, VTUSA shall pay the charge contested to the extent it is held valid, together with all court costs, interest, penalties, and other expenses relating thereto and will indemnify and hold harmless the City from any costs, expenses, and damages incurred in connection with such proceedings, including reasonable attorneys' fees. If VTUSA or the City obtains or receives a refund of previously paid Real Property Taxes or any Other Taxes, VTUSA shall be entitled to the refund of funds paid by VTUSA and the City will be entitled to a refund of any funds paid by the City. Nothing herein contained, however, shall be construed as to allow any such Real Property Taxes or any Other Taxes to remain unpaid for such length of time as shall permit the Property (or any part thereof) to be sold by Governmental Authority for the non-payment of the same.
11. **Utility Charges.** VTUSA shall pay when due all charges, fees, franchise 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 (regardless of whether the City or any other Governmental Authority is required to provide such service) to any portion of the Property during the Term. If VTUSA fails to pay any Charges on a timely basis, the City will have the right (but not the obligation and without relieving VTUSA of any liability) to pay the Charges. 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 due and payable 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.
12. **Use and Operation of the Property.**
- 12.1. **Permitted Use.**
- 12.1.1. **Station Parcel.** During the Term, VTUSA shall be permitted to use the Station Parcel for the Station Parcel Permitted Use. Any use of the Station Parcel for a use other than the Station Parcel Permitted Use is prohibited. The Train Station shall have (a) security screening for both passengers and bags and (b) indoor waiting lounge space equipped with WIFI and power outlets for customers. Express, special event, and charter train services are

not required to stop at the Train Station. The Train Station shall not open until VTUSA has obtained all necessary regulatory or other third-party approvals, has completed any required testing and commissioning work to ensure safe operations, and VTUSA has complied with Section 17.3; provided however, that the Train Station may not open prior to the opening of the Parking Garage. Any ancillary uses located on the Station Parcel as permitted by the Station Parcel Permitted Use will only be open and available when the Train Station is open for business and shall be accessed solely from within the Train Station. No external signage for such ancillary uses may be placed on the Station Parcel; provided that wayfinding and station name signage shall be permitted provided the same complies with the City's sign code and is approved through the City's approval process.

12.1.2. **Garage Parcel.** During the Term, VTUSA shall be permitted to use the Garage Parcel for the Garage Parcel Permitted Use. Any use of the Garage Parcel for a use other than the Garage Parcel Permitted Use is prohibited. The Parking Garage will have a distinct entrance for the Library. The parking for the Library will be located at the ground level and the train and other public parking will be located on the ramp up from level 1 as well as on levels 2, 3, and 4. The total height of the Parking Garage will not exceed 45' as measured pursuant to the City Code. The northern wall face of the Parking Garage will be no closer than 45' from the north property line without taking into account underground footers and landscaping attached to the garage wall. The Parking Garage will be open for ventilation on three sides with the northern face of the Parking Garage being a solid wall that will have landscaping attached to it. The solid wall will limit the reflection of garage and vehicle lights. VTUSA agrees to open the Parking Garage for business promptly upon completion of construction and obtaining any approvals required to operate the Parking Garage. No external signage for such ancillary uses may be placed on the Garage Parcel; provided that wayfinding, parking rates and other information, and station name signage shall be permitted provided the same complies with the City's sign code and is approved through the City's approval process. The Parking Garage shall not open until VTUSA has complied with Section 17.3.

12.2. **Alcoholic Beverages.** VTUSA may obtain and maintain licenses from the State of Florida allowing the sale of beer, wine and liquor for purchase at the Train Station. VTUSA shall comply with all requirements of its alcoholic beverage licenses throughout the Term. The sale of alcoholic beverages shall be ancillary and incidental to the operation of the Train Station and services provided to its customers. VTUSA shall be solely responsible for complying with all rules and regulations of the State of Florida and the City Codes including, without limitation, hours of operation, signage, licenses, etc. No alcoholic beverages may be sold anywhere on the Garage Parcel.

12.3. **Days and Hours of Operation of the Train Station.** The Train Station hours of operation shall be similar to the hours of operation for VTUSA's station in

downtown Fort Lauderdale and sufficient to provide the required service, unless other arrangements acceptable to the City are made.

- 12.4. **Days and Hours of Operation of the Parking Garage.** The Parking Garage hours of operation shall generally be seven (7) days a week, twenty-four (24) hours a day, subject to closures in the ordinary course of business for necessary maintenance or repairs, unless other arrangements acceptable to the City are made.
- 12.5. **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 Property and the Project, including, without limitation, Governmental Requirements prohibiting discrimination by reason of race, color, religion, sex, national origin, handicap, sexual orientation, gender identity, or any other protected class as determined by federal government, Palm Beach County and/or the City. 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.
- 12.6. **Lighting.** All lighting installed at the Property shall comply with Governmental Requirements, including, without limitation, the City Code. No lights shall be installed on the Property that may be deemed to create a spillover onto any adjacent parcel.
- 12.7. **Nuisance.** VTUSA will not commit any act which is a public nuisance. VTUSA shall comply with that certain Notice to Establish a Quiet Zone on the FEC Railway in the City of Boca Raton, effective May 30, 2018, with respect to the use of horns and sirens as to the trains stopping at the Train Station (the "**Quiet Zone Notice**"). During the Term, VTUSA shall provide the City for its prior approval any amendments to the Quiet Zone Notice that will affect the Property to the extent City approval is required under the Quiet Zone Notice. So long as VTUSA is operating the Train Station in accordance with the Quiet Zone Notice, 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. The City agrees that any additional train noise during the construction of the Parking Garage and the Train Station will not be considered a default under this Section. VTUSA will endeavor to minimize the construction noise and construction hours will be in compliance with the City Code.
- 12.8. **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 including posting signs and assessing fines if violated.
- 12.9. **Security.** VTUSA, at its sole cost and expense, will provide security at the Train Station during the hours of operation of the Train Station and additional hours to the extent VTUSA deems appropriate. VTUSA, at its sole cost and expense, will provide security at the Parking Garage seven (7) days a week, twenty-four (24) hours a day, which security may be in the form of remote, monitored/manned/video

surveillance. If the Library Parcel is sold to a private party and no longer used primarily as a Library, VTUSA shall no longer be required to provide security for the Library Spaces.

- 12.10. **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 and such request may require consideration of an amendment to this Agreement (as determined by the City).
13. **“As Is” Condition of the Property.** Subject to Section 19, 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 AGREEMENT, VTUSA AGREES TO ACCEPT THE PREMISES IN “AS IS” AND “WHERE IS” CONDITION EXISTING ON THE AGREEMENT COMMENCEMENT DATE, WITHOUT ANY EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES OF ANY KIND.
14. **Site Plan and Zoning.**
 - 14.1. **Site Plan Approval.** VTUSA will submit to the City a site plan for the Project, which site plan is subject to consideration by the City’s Planning and Zoning Board and the City Council after submission of a complete application, administrative review, and processing, notice and hearing requests. If and when approved, the site plan approved by the City Council shall be referred to as the “**Approved Site Plan.**” Sketches forming the basis of the site plans for Train Station and the Parking Garage are attached hereto as Exhibit E, and the site plan submitted for approval shall be substantially consistent with such sketches.
 - 14.2. **Signage.** All signage on the Property (including any name placed on the Train Station or the Parking Garage) must comply with the City Code, which may include approval by the Community Appearance Board and the City Council prior to installation.
 - 14.3. **Changes to Approved Site Plan.** Any requested changes to the Approved Site Plan will, to the extent required by applicable law, require resubmission of an application by VTUSA and will be processed as required by the City Code. If at any time in the future, changes to the Approved Site Plan do not require approval by the City under the City Code, VTUSA will nevertheless be required, at its sole cost and expense, to obtain approval of any material changes, as determined by the City.
 - 14.4. **Construction in Public Right of Way.** As part of the site plan approval process, VTUSA will request a license agreement to construct the following improvements within the city’s public right of way: screen enclosures and gates, an entry drive,

hardscape of service yard, refuse handling and dumpster inside screen wall, Florida Power & Light transformer and switch cabin, landscape island to visually screen service wall, Station monument sign, landscape and irrigation, lighting. All services shall be connected and metered to Train Station utility infrastructure. VTUSA will not be allowed to have any building in the right of way.

15. **Parking.**

15.1. **Parking per Approved Site Plan.** All parking on the Property shall be in accordance with the Approved Site Plan and shall include parking spaces in the Parking Garage for the public and for access to and use of the Train Station and Library. The parties acknowledge that the sketch set forth on Exhibit E provides for 455 parking spaces (64 designated for the Library), but that such plans are subject to review by the City's planning and zoning department, which may result in a change in the number of parking spaces. The public parking spaces designated for the Library and located in the Parking Garage are referred to herein as the "**Library Spaces**". Upon completion of the Parking Garage, VTUSA agrees to ensure that the public parking spaces in the Library Parcel plus the Library Spaces equal at least 171 parking spaces. The Library Spaces shall be (a) located on the ground floor of the Parking Garage, (b) accessible from the Library entrance of the Parking Garage, (c) separated from the other entrance to the Parking Garage by a fence as depicted on Exhibit E, (d) with landscaping as depicted on Exhibit E, and (e) reserved for use by City and Library employees, visitors to the Library, and the general public. The balance of the parking spaces will not be reserved and will be available to the train customers and the public on a first come first served basis. The direct pathway from the Library Spaces to the entrance of the Library (other than any portion thereof that crosses a roadway or driveway) will be covered. The parties agree that Library Spaces are allocated to the Library Parcel during the Term, except as determined by the City; therefore, if during the Term the Library ceases operation or the Library Parcel is sold, the Library Spaces will continue to be allocated to the Library Parcel for the new use or for the new owner. The owner of the Library Parcel, if other than the City, shall be responsible for compliance with all parking requirements for its new use other than the Library Spaces. At any time prior to the date that is five (5) years following completion of the later of the Train Station or the Parking Garage, VTUSA shall be entitled to exercise its right use up to fifteen (15) of the spaces in the Parking Garage (that are not Library Spaces) for use by rental cars or other Garage Parcel Permitted Use during the Term upon payment of a use fee per space equal to (a) all funds expended by the City under Section 17.7 divided by (b) the total number of parking spaces in the Parking Garage (other than the Library Spaces). VTUSA shall exercise such right by written notice to the City, along with its calculation of the amount due to the City. The City shall, within thirty (30) days of receipt of such notice, confirm whether it agrees with such calculation and, if not, state the reasons for its disagreement. The parties shall reasonably cooperate to resolve any disagreement with respect to the calculation of such use fee. VTUSA's right to use such spaces for use by rental cars (or any other Garage Parcel Permitted Use) shall commence upon payment of the agreed-to use fee.

- 15.2. **Offsite Parking.** During construction of the Parking Garage, VTUSA and the City shall cooperate in providing offsite parking spaces for the Library visitors at a City owned site as contemplated in Temporary Easements Agreement attached as Exhibit H (the “**Temporary Easements Agreement**”). The parties acknowledge that the sketch set forth on Exhibit H provides for 73 parking spaces, but that such plans are subject to review by the City’s planning and zoning department, which may result in a change in the number of parking spaces; provided that the aggregate number of parking spaces shall be no less than 72 parking spaces. VTUSA shall obtain all necessary Governmental Approvals in connection with the temporary parking lot and shall comply with all Governmental Requirements. VTUSA shall design, construct and maintain a temporary parking lot, at its sole cost and expense, at the site selected by the City to allow for parking as determined by the City, such as pavement, striping, signage, and other requirements for a surface parking lot. The construction of such temporary parking lot shall be completed in accordance with the terms of this Agreement prior to the commencement of vertical construction activity on the Property, and such temporary parking lot shall be maintained by VTUSA until the Parking Garage is completed and open for use. Any construction work (including staging) shall be subject to VTUSA’s submission of construction plans for the temporary parking lot and the City’s administrative review and approval of such plans and subject to any other conditions set forth in the Temporary Easements Agreement. Such plans must reflect at least 72 parking spaces, ingress and egress on 4th Street, and a marked pedestrian cross walk across 4th Street. The City will provide VTUSA with rights to enter and construct the temporary parking lot as shown on the attached Exhibit H which is made a part hereof. After completion of the Parking Garage, VTUSA shall have no obligation to operate or maintain the offsite parking spaces contemplated in this Section 16.2.
- 15.3. **Parking Fees; Garage Revenue.** VTUSA may establish hourly, daily and monthly rates for parking that are no greater than the lesser of the hourly, daily and monthly rates it establishes for parking at its downtown Fort Lauderdale and West Palm Beach stations. At all times during the Term of this Agreement, the Library parking at the ground floor of the Parking Garage will be free of charge to City and Library employees, visitors and the general public. VTUSA may collect and retain Garage Revenue in accordance with this Section 15.3. Within one hundred twenty (120) days of the end of each calendar year following the completion of the Parking Garage, VTUSA shall deliver to the City a statement of Garage Net Income for the preceding calendar year and shall, promptly thereafter (and, in any event, within sixty (60) days), pay to the City an amount equal to fifty percent (50%) of the Garage Net Income, if positive, for such preceding calendar year. No more frequently than once with respect to each statement and within ninety (90) days of receiving the statement, the City shall have the right to perform or commission an inspection or independent audit of the information set forth on such statement following reasonable notice to VTUSA and during business hours. The City shall provide a complete copy of any inspection or audit report to VTUSA. To the extent such inspection or audit reveals that VTUSA has understated the Garage Net Income, VTUSA shall promptly (and, in any event, within thirty (30) days) pay to the City the amount of any shortfall in payment under this Section 15.3. To the

extent such shortfall exceeds five percent (5%) of the total amount that should have been paid by VTUSA with respect to the relevant calendar year, VTUSA shall also reimburse the City for any fees and costs reasonably incurred in connection with such inspection or audit. To the extent VTUSA has overstated the Garage Net Income, VTUSA may take a credit against the next payment due hereunder.

- 15.4. **Parking Enforcement.** VTUSA will be responsible for enforcing all of the parking requirements and restrictions set forth in this Agreement, in the Approved Site Plan, and in the City Code. As a public facility, the Parking Garage will also be subject to policing by the City's Police Department, at such Department's discretion.
- 15.5. **Cooperation with City.** VTUSA shall reasonably cooperate with the City, and the City shall reasonably cooperate with VTUSA, with respect to monitoring and security of the Library Spaces.

16. **Construction of Project.**

- 16.1. **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:
 - 16.1.1. Schematic designs and architectural drawings, including renderings and elevations;
 - 16.1.2. Foundation and structural drawings;
 - 16.1.3. Electrical and mechanical drawings including, without limitation, plans for all lighting facilities affecting the exterior appearance of the Project;
 - 16.1.4. Landscaping plans;
 - 16.1.5. Construction staging and parking plans; and
 - 16.1.6. Final specifications.
- 16.2. **Submission of Plans.** If required by Governmental Requirements or otherwise by the terms of this Agreement, VTUSA shall submit the Plans and any required revision to the Plans, together with a building permit application for the Project including all applicable fees all in such form as required by the Governmental Requirements or the terms of this Agreement to the City. The Plans approved by the City will be referred to as the "**Approved Plans.**" The City's approval of the Approved Plans does not release VTUSA from any building requirements, if applicable, nor does it release VTUSA from any liabilities or obligations under this Agreement or impose any obligations or liabilities to the City under this Agreement.
- 16.3. **Governmental Approvals.** VTUSA shall secure and pay for any Governmental Approvals (including but not limited to any permit fees, impact fees, utility hookup fees, etc. charged by the City or any other Governmental Authority) 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, if required nor does it release VTUSA from any liabilities or obligations under this Agreement or impose any obligations or liabilities to the City under this Agreement. It is understood that the portion of the costs set forth in this Section relating to the initial approvals or permits necessary for the initial construction of the Parking Garage will be paid out of the Budget. If after completion, VTUSA desires to make any modifications to the Parking Garage, any costs associated with the approval process or permitting of such modification will be paid by VTUSA. The City shall reasonably cooperate with VTUSA and use its reasonable efforts to expedite the permitting and approval process in an effort to assist VTUSA in obtaining its Governmental Approvals and achieving its development and construction milestones for the Project (which cooperation shall include the execution and delivery of applications to the extent the same must be executed and delivered by the owner of the Property), it being understood that such assistance will not entail the initiation of or participation in legal actions or proceedings or the expenditure of City funds. VTUSA has indicated to the City that the Project is exempt from the requirements of the Florida Building Code in accordance with the Declaratory Statement No. DS 2014-163, filed on March 23, 2015, by the State of Florida Building Commission. Notwithstanding the foregoing, VTUSA hereby agrees that it shall construct the Parking Garage and any portions of the Train Station to be used for ancillary uses (such as retail sales, sale of food, and beverage services) in accordance with the requirements of the Florida Building Code, the Florida Fire Prevention Code, any local amendments to the Florida Building Code as provided for in Chapter 19 of the City Code and any local amendments to the Florida Fire Prevention Code as provided for in Chapter 7 of the City Code, it being understood that such agreement shall not require VTUSA to obtain a building permit. VTUSA shall also comply with the requirements set forth in Exhibit J in connection with the construction of the Train Station and the Parking Garage.

- 16.4. **Construction Quality.** VTUSA agrees to perform all work (“**Work**”) required to complete the construction of the entire Project in accordance with Good Industry Practice. During the course of construction of the Project, VTUSA shall not alter, modify or amend the Approved Plans in any material respects without the City’s prior approval (which, to the extent the City is acting in its proprietary capacity, shall not be unreasonably withheld, conditioned or delayed). At any time during construction, the City may inspect or assign an inspector to examine the progress; provided however that the assignment of an inspector does not relieve VTUSA of the requirement to schedule and pass all required or appropriate inspections to close out any permit obtained for the Work.
- 16.5. **VTUSA’s Obligations During Construction.** During construction, VTUSA, at its sole cost and expense (except as otherwise provided in this Agreement with respect to the funding of the Parking Garage), shall:
 - 16.5.1. Comply with all Governmental Requirements and the terms of this Agreement, including, without limitation, the City Code, as to all aspects of the Work, including the hours of construction, and, with respect to

construction of the Parking Garage, the Florida Building Code, the Florida Fire Prevention Code, any local amendments to the Florida Building Code as provided for in Chapter 19 of the City Code and any local amendments to the Florida Fire Prevention Code as provided for in Chapter 7 of the City Code;

- 16.5.2. Without limiting the foregoing, comply with the requirements of Florida Statutes §287.055 in connection with the construction of the Parking Garage.
- 16.5.3. Perform and complete the Work in a diligent manner, with no abandonment of construction work for any period exceeding 60 Business Days except in the case of a Force Majeure;
- 16.5.4. Select the means and methods of construction, using only safe procedures, methods, structures and equipment;
- 16.5.5. Perform all necessary clearing and grading of the Property;
- 16.5.6. Furnish, erect, maintain and remove any construction equipment and temporary structures that may be required to perform the Work; be responsible for the safety and efficiency of the construction equipment and construction methods used, and correct and reimburse the appropriate party for any damage which may result from any failure of the construction equipment or any failure in the method of construction including any damages caused to any property adjacent to or leading to the Property or in the Temporary Construction Easement area;
- 16.5.7. 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 reasonably required for the proper performance of the Work;
- 16.5.8. 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;
- 16.5.9. Maintain the Property in a clean and orderly condition at all times, and remove all paper, cartons and other debris from the Property;
- 16.5.10. Protect and insure all Work prior to its completion and acceptance;
- 16.5.11. In addition to the required Insurance, implement and maintain in place at all times a comprehensive hurricane and flood plan for the Property and the Work, and provide a copy of same to the City;
- 16.5.12. 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;
- 16.5.13. Commence construction of the Project by December 31, 2021 and thereafter complete construction of the Project in accordance with Section 17.3 by December 31, 2023;

- 16.5.14. Carry on any construction, maintenance or repair activity with diligence and dispatch and use diligent effort to complete the Work.
 - 16.5.15. Take reasonable precautions to protect property adjacent to the Property, 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 the Work.
 - 16.5.16. At all times provide adequate construction supervision and enforce discipline and good order among its employees and the General Contractor at the Property site.
 - 16.5.17. Comply with, and cause any contractor or other party that provides goods or services through or on behalf of VTUSA to comply with, Section 287.135, Florida Statutes, to the extent applicable.
 - 16.5.18. Construction parking and staging shall, at all times, be contained within the Property and the temporary construction easement described in Section 16.8, and, other than as set forth in the Temporary Easements Agreement, construction parking and staging shall not be within the Library Parcel.
- 16.6. **Community Garden.** VTUSA agrees to relocate 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 be responsible for the design (and redesign as appropriate to obtain approval for the design plan), development of plans, and construction/installation of the replacement garden, at its sole cost, including, without limitation, requirements to prepare the lands and acquire and install all landscape materials in accordance with the plans to be prepared and submitted by VTUSA and approved by the City. VTUSA will be solely responsible for the funding, design, and relocation/ construction/ installation of the Community Garden at a cost not to exceed \$300,000 and the City will provide the land at no cost to VTUSA. Any delay in the relocation or replacement of the garden shall not cause a delay in the approval and commencement of the construction of the Parking Garage or the Train Station. VTUSA will use commercially reasonable efforts to complete the design and development of the Community Garden expeditiously after the City provides VTUSA with access to the relocated property; provided that VTUSA shall complete such design and development within 365 days of the City providing such access.
- 16.7. **Funding of the Parking Garage** The cost of development of the Parking Garage (excluding the Library Spaces) shall be funded by the City as more specifically provided herein and within the Budget attached as Exhibit G. VTUSA shall be responsible for paying for the costs of the Library Spaces. Any changes to such preliminary sketch forming the basis for the Parking Garage site plan required by the City during the Site Plan Approval process that increase the cost of construction (beyond the costs anticipated based upon the sketches and renderings included in Exhibit E and the Budget) shall be at the expense of the City and, to the extent the City is not willing to assume such expenses, VTUSA shall be entitled to terminate

this Agreement. VTUSA shall be entitled to spend savings with respect to one line item in the Budget to pay for cost overruns with respect to another line item in the Budget. Except as provided above, (a) VTUSA shall be solely responsible for funding any cost overruns in excess of the Budget in connection with the Parking Garage, and (b) in no event shall the City have any obligation to fund any portion of the construction of the Parking Garage that exceeds the amount specified in the Budget (as allocated to the non-Library Spaces). In no event shall the proceeds of any Draw Request be used to pay any development or other fee to VTUSA or one of its Affiliates.

- 16.7.1. The City will make progress payments to VTUSA for the construction of the Parking Garage not more often than once per month based on Draw Requests submitted by VTUSA (the “**Draw Request**”). The City will, within thirty (30) days after receipt of each Draw Request or each corrected Draw Request, as the case may be, pay the undisputed portion of such Draw Request or return the application to VTUSA indicating in writing the deficiency or the reasons for refusing payment. In the latter case, VTUSA shall make the necessary corrections and resubmit the application.
- 16.7.2. Progress payments shall be paid based on a percentage of construction completed and materials for the Parking Garage at the Property. Each 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 Agreement in all material respects.
- 16.7.3. Each Draw Request for payment shall be accompanied by the following:
 - (a) A notarized “Affidavit of Disbursement of Previous Periodic Payments to the general contractor and all subcontractors” (or equivalent) from VTUSA for the portion of work invoiced as part of the prior Draw Request;
 - (b) A “Waiver and Release of Lien Upon Progress Payment” (conditioned only to the partial payment) from the general contractor and all subcontractors that are being paid as part of the Draw Request in the manner set forth in Florida Statutes 713.20;
 - (c) Invoices for each item shown on the Draw Request; and
 - (d) A construction schedule update.
- 16.7.4. Before commencing any work for the construction of the Parking Garage, VTUSA shall provide, or shall cause the General Contractor to provide, to the City a certified copy of a payment and performance bond in accordance with the terms of Section 255.05, Florida Statutes, and the City shall be a dual-obligee in respect thereof. City will not make any payment to VTUSA until VTUSA has complied with this requirement.
- 16.7.5. The City shall not be required to fund a Draw Request if, on the required funding date, an Event of Default has occurred and is continuing.

- 16.7.6. Any amounts disbursed by the City in connection with the periodic Draw Requests will be subject to either (a) a ten percent (10%) retainage amount, or (b) in such higher percentage as set forth in the contract between VTUSA and the General Contractor; provided that the City shall not be required to disburse more than the actual cost of each item or the amount for each such item, whichever is less, set forth in the Budget attached hereto. Upon the completion of work under any contract, subject to the requirements of this Section 16.7, the City shall release any retained amounts with respect to such contract to VTUSA. In no event shall there be a double counting of retainage under this Agreement and the contract between VTUSA and the General Contractor.
- 16.7.7. Upon the completion of construction, VTUSA shall be entitled to submit a final Draw Request with respect to any outstanding invoices and retained amounts subject to provision of:
- (a) As built surveys and drawings (including final construction drawings);
 - (b) Invoices for each item shown on the Draw Request;
 - (c) A notarized "Affidavit of Disbursement of Previous Periodic Payments to the general contractor and all subcontractors" (or equivalent) from VTUSA for the portion of work invoiced as part of the prior Draw Request; and
 - (d) A "Waiver and Release of Lien Upon Final Payment" (conditioned only to final payment) from the general contractor and all subcontractors in the manner set forth in Florida Statutes 713.20.
- 16.7.8. 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. In the event any dispute with respect to any Draw Request or any other amount to be funded under this Section that cannot be resolved between VTUSA and the City, VTUSA may, in accordance with the alternative dispute resolution requirements of the Local Government Prompt Payment Act (Sections 218.76, et. seq, Florida Statutes), demand in writing a meeting with and review by the City Manager. The City Manager or his/her designee will conduct the meeting and review. Such meeting and review shall occur within ten (10) Business Days of receipt by the City of VTUSA's written demand. The City Manager, or designee, shall issue a written decision on the dispute within ten (10) Business Days of such meeting. This decision shall be deemed the City's final decision for the purposes of the Local Government Prompt Payment Act.

- 16.8. **Temporary Construction Easement.** The City will provide VTUSA with a temporary construction easement in the form attached hereto as Exhibit H attached hereto and made apart hereof.
- 16.9. **VTUSA to Provide Status Reports.** VTUSA shall keep the City reasonably apprised of the progress of the Work.
- 16.10. **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.
- 16.11. **Utilities.** At all times during the Term of this Agreement, 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 utility connection fees for the Train Station and the cost for the utility connection fees for the Parking Garage are included in the Budget. Upon a request from VTUSA, the City shall reasonably cooperate with VTUSA in connection with the relocation or betterment of utilities during construction of the Project, it being understood that such assistance will not entail the initiation of or participation in legal actions or proceedings or the expenditure of City funds.
- 16.12. **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. 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 and the temporary parking lot set forth in this Agreement will also apply to any permitted Changes to the Project.
17. **Maintenance and Repair of Project.** VTUSA, at all times during the Term and at the expense of VTUSA, shall maintain the Property and Project in accordance with Good Industry Practice.

- 17.1. **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 Property 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.
- 17.1.1. 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.
- 17.1.2. 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.
- 17.2. **Pest Control.** VTUSA shall use a professional pest and sanitation control service to perform inspections of the Project at least once each month (but more frequently if necessary) 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, or appropriate to maintain the Property clean, safe and free from insects, rodents and vermin.
- 17.3. **Landscaping.** VTUSA will be responsible for maintaining all landscaping on the Property, and for sweeping and cleaning the entrances to the Train Station and the Garage, as well as all parking areas, sidewalks, and other improved areas of the Property.
- 17.4. **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, any defective work, 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, electrical, and sewerage systems and equipment.
- 17.5. **Vendors.** Any vendor performing any work on the Property 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 Property, 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 Property and asserted against the City.
18. **Liens.**
- 18.1. **Leasehold Mortgage.** VTUSA may, without the consent of the City, execute, deliver and cause or permit to be recorded against the Leasehold Estate, one Leasehold Mortgage at any time.
- 18.1.1. 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 thirty (30) 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.

- 18.1.2. Notwithstanding anything to the contrary herein provided, if any Leasehold Mortgage directly or indirectly (for example, by appointment of a receiver) forecloses or otherwise obtains possessory interest in the Leasehold Estate, the Leasehold Mortgagee must at all times directly or through its agent, continue to operate the Train Station and the Parking Garage in accordance with the terms of this Agreement.
- 18.2. **Collateral Assignment of Contract Rights.** VTUSA may, without the consent of the City, execute and deliver for the benefit of the Leasehold Mortgagee a collateral assignment of its contractual rights under this Agreement or allow a collateral assignment under debt documents. VTUSA shall provide the City with a copy of any collateral assignment within 10 days from the execution of the same.
- 18.3. **VTUSA’s Duty to Keep Property Free of Liens.** Other than a permitted Leasehold Mortgage, VTUSA shall not create or permit to be created or to remain, and shall within thirty (30) days after VTUSA has notice of the Lien being filed (but no later than sixty (60) days after filing) (i) discharge the Lien or (ii) transfer the transfer the Lien to security in accordance with Section 713.24, at its sole cost and expense, any lien, encumbrance or charge (each, a “**Lien**”) upon all or any part of the Property or upon VTUSA’s leasehold estate arising from (a) the use or occupancy of the Property by VTUSA or a party authorized to use or occupy the Property on behalf of 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 Property by or at the direction of VTUSA or (d) any other reason attributable to VTUSA.
- 18.4. **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 Property, 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 the Leasehold Estate in the Property. The City’s right, title and interest in the Property is not subject to Liens or claims of Liens for improvements made by VTUSA or a party authorized to use or occupy the Property on behalf of VTUSA.

- 18.4.1. 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 Property.
- 18.4.2. 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 Property, or against assets of the City, or City's interest in any Rent and other monetary obligations of VTUSA described in this Agreement.
- 18.4.3. 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 Property for VTUSA, or for any materials furnished or to be furnished to the Property for VTUSA. Prior to entering into such contracts for the Parking Garage, VTUSA shall submit the same to the City for the City's prior written approval not to be unreasonably withheld, conditioned or delayed.
- 18.5. **Contesting Liens against Leasehold Estate.** If VTUSA desires to contest any Lien filed against VTUSA's interest in the Property, VTUSA must notify the City of its intention to do so within thirty (30) days after VTUSA has notice of the filing of the Lien (but no later than sixty (60) days after filing). 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 thirty (30) days after VTUSA has notice of the filing of the Lien (but no later than sixty (60) days after filing). 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 set forth herein.
- 18.6. **VTUSA's Failure to Discharge Lien.** If within thirty (30) days of notice of the Lien (but no later than sixty (60) days after filing), VTUSA fails to (i) discharge the Lien or (ii) transfer the Lien to security in accordance with Section 713.24 of the Florida Statutes, the City, may, declare 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.
19. **Hazardous Substances.**
- 19.1. **Defined Terms for Purposes of this Section.**

- 19.1.1. **“CERCLA”** means the Comprehensive Environmental Response, Compensation and Liability Act.
- 19.1.2. **“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.
- 19.2. **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 Property or any part of the Project, except for Hazardous Substances as are legally used or stored (and in such amounts as are legally permitted to be used or stored) as a consequence of using the Property 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 Property 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.
- 19.3. **Environmental Indemnification.** VTUSA hereby indemnifies, holds harmless, and agrees to defend the City (with counsel selected by the City, at rates offered to the City, and reasonably approved by VTUSA) 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 Property 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. Excluded from VTUSA’s environmental indemnification is (i) any environmental condition which can be determined to have arisen from a pre-existing condition and that could not have reasonably been discovered by VTUSA through inspection conducted prior to the Effective Date, (ii) any Hazardous Substances released by the City or its contractors or agents (other than VTUSA and its contractors and agents), and (iii) any Losses caused by the gross negligence, willful misconduct or bad faith of the City.
- 19.4. **City’s Rights.** Upon reasonable cause and provided that prior notice has been sent to VTUSA, if VTUSA fails to remedy a reported release or existence of Hazardous Substances which is the subject of indemnification as set forth in Section 19.3

within a reasonable period of time from when VTUSA becomes aware of the release or existence of the Hazardous Substance, the City may declare a default under this Agreement and shall have the right but not the obligation to enter onto the Property 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 in, on or at the Property or any part thereof but such election by the City will not release VTUSA from liability hereunder. 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.

19.5. **Survival.** This Section 19 shall survive the cancellation, termination or expiration of this Agreement.

20. **Indemnification.**

20.1. **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 Property, hereby covenants and agrees to indemnify, hold harmless, and defend the City (with counsel selected by the City, at rates offered to the City, and reasonably approved by VTUSA) 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.

20.2. **Indemnification from General Contractor.** VTUSA agrees that any contracts for the Work entered into between VTUSA and the General Contractor, any subcontractor, 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 selected by the City, at rates offered to the City, and reasonably approved by VTUSA) against any Losses arising out of the subject matter of the respective contract, which Losses are not caused by the City.

20.3. **Survival.** This Section 19 shall survive the cancellation, termination or expiration of this Agreement.

21. **Insurance.** Prior to any activity by VTUSA on the Property, 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.

21.1. **General Insurance Provisions.**

21.1.1. All policies must be issued by insurance companies authorized to do business in the State of Florida.

21.1.2. All insurers must maintain an AM Best rating of A or better.

21.1.3. 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.

- 21.1.4. VTUSA's insurance policies will be primary over any and all insurance available to the City, if any, and must be non-contributory.
- 21.1.5. VTUSA will be solely responsible for payment of all deductibles in such policies, and such deductible shall be paid by the Named Insured as identified in such policies (and shall not be paid by the City).
- 21.1.6. The City will be included as an "Additional Insured" on the Commercial General Liability policy and any Business Automobile Liability, Liquor Liability, Pollution Liability, and Commercial Umbrella/Excess Liability policies. VTUSA shall provide to the City an endorsement to such policies evidencing such "additional insured" coverage, which may be in the form of a blanket additional insured endorsement.
- 21.1.7. VTUSA will ensure that each insurance policy shall provide 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.
- 21.1.8. Subject to Section 21.10, VTUSA agrees that the City reserves the right, but not the obligation, to review and/or revise any insurance requirement, including but not limited to, limits, coverages and endorsement based on insurance market conditions affecting the availability of coverage or changes in the scope of work or specifications of construction.
- 21.1.9. All insurance coverage shall be on an "Occurrence" basis. In the event any required coverage is not commercially available on an occurrence basis, a claims-made policy will be sufficient provided said coverage is continued in effect for at least four (4) years after expiration of the term.
- 21.2. **Evidence of Insurance.** Prior to taking possession of the Property and in the case of insurance required during construction, prior to the commencement of construction, and throughout the Term (but, at a minimum, annually), 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 reserves the right to review and reject any insurance policies or any insurer failing to meet the criteria stated herein. 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 and assuring the provision of 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, will be liable to City for any failure by the General Contractor to provide the required insurance, or any deficiency in such coverage and will remain fully liable to the City for all such insurance coverage (regardless of whether the General Contractor is also providing coverage).

- 21.3. **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 10 days notification for non-payment of premium.
- 21.4. **Required Coverages.** VTUSA shall maintain the following insurance coverage throughout the term of the Agreement.
- 21.4.1. **Commercial General Liability Insurance.** Coverage must include, at a minimum: (a) Property 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 \$10,000,000 per occurrence, \$20,000,000 in the aggregate. The use of a Commercial Umbrella/Excess liability policy to achieve the limits required by this paragraph will be acceptable as long as the terms and conditions of the Commercial Umbrella/Excess liability policy are no less restrictive than the underlying Commercial General Liability policy, there are no gaps in coverage, it meets all above requirements, and the Commercial Umbrella/Excess policy is a “follow-form” policy.
- 21.4.2. **Business Automobile Liability Insurance.** VTUSA shall maintain Business Auto Liability Insurance with a minimum limit of not less than \$1,000,000 each occurrence. Coverage shall include liability for Owned, Non-Owned & Hired automobiles. In the event there are no owned automobiles, VTUSA shall maintain coverage for hired & non-owned automobiles used by VTUSA, which may be satisfied by way of endorsement to the Commercial General Liability policy or a separate Business Auto Liability policy.
- 21.4.3. **Railroad Protective Liability.** VTUSA shall maintain Railroad Protective Liability policy with a limit not less than \$2,000,000 per occurrence and \$6,000,000 in the aggregate limit, if any construction or maintenance is being performed within fifty (50) feet of operating railroad tracks or otherwise involves exposures to railroad hazards.
- 21.4.4. **Pollution Liability.** VTUSA shall maintain at a minimum of not less than \$10,000,000 per occurrence/\$10,000,000 annual aggregate providing coverage for damages against but not limited to third-party liability, clean up, corrective action including assessment, remediation and defense costs. The coverage may be included by endorsement to the Commercial General Liability policy or the Commercial Umbrella/Excess Liability policy or as a separate policy.
- 21.4.5. **All Risk Property Insurance.** VTUSA shall maintain property insurance for the Train Station and the Parking Garage. Such Property Coverage (Special Form), to cover the “All Other Perils” portion of the policy, shall be at the Replacement Cost Valuation as determined by a certified property appraiser. Appraisals shall only be required every five (5) years. To the extent available, coverage will extend to furniture, fixtures, equipment and

other personal property associated with the Property. The policy must also provide "Change in Law" coverage with limits acceptable to both City and VTUSA.

21.4.6. **Workers' Compensation.** VTUSA shall maintain 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.

21.4.7. **Liquor Liability Coverage.** VTUSA must maintain Liquor Liability coverage in an amount of not less than \$2,000,000 per occurrence and 6,000,000 in the aggregate. The coverage may be included by endorsement to the Commercial General Liability policy or the Commercial Umbrella/Excess Liability policy or as a separate policy.

21.5. **Additional Coverage Required During Construction.**

21.5.1. **Builder's Risk Insurance.** During all construction activities conducted on the Property, including modifications to Project on the Property 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. The perils of Windstorm and Flood shall carry sub limits to be determined annually and acceptable to the City. If such levels of coverage are not available, VTUSA must carry the full amount of such insurance currently available.

21.5.2. **Contractors.** VTUSA shall require its General Contractor and all subcontractors (unless the General Contractor's insurance provides the required coverage for such subcontractors) to maintain insurance required of VTUSA during construction, provided that the limits of insurance provided by the General Contractor and subcontractors may be lower to the extent reasonable in light of contract value or scope of work. VTUSA will be liable to City for any and all failure by such entities to provide and maintain the required insurance coverage.

21.5.3. **Professional Liability.** VTUSA shall ensure that Errors and Omissions Liability insurance specific to VTUSA's construction activities is obtained by all architects and engineers (or other design professionals) in direct privity with VTUSA and all sub-consultants retained by such architects and engineers who will be performing design services prior to the commencement of any construction activities on the Property and maintained during all such construction activities, including without limitation, the Work. The policy must provide for the reporting of claims for a period of no less than four (4) years following the Substantial Completion of all construction activities related to the Work for which such insurance is procured. The minimum limits of such coverage shall be

\$1,000,000 per occurrence and \$2,000,000 in the aggregate annually and such coverage shall be provided on a project specific basis.

- 21.6. **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.
 - 21.7. **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 or increase in the insurance coverage if the coverage requested is customary and commonly available for properties similar in type, size, use and location to the Property.
 - 21.8. **Appraisal.** The insurance policies will state that they insure the replacement cost of the improvements. 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 (5) year intervals. The selection, subject to approval by the City, and expense of the appraiser will be the sole responsibility of VTUSA. The appraiser will provide a copy of the full report to the City upon completion.
 - 21.9. **City May Procure Insurance if VTUSA Fails To Do So.** If VTUSA (or its General Contractor, subcontractors, architect or engineer, or subconsultants) 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. Whether the City elects, in its discretion to procure or renew such insurance, the failure of VTUSA to procure or renew shall be deemed and event of default under this Agreement. 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.
 - 21.10. **Unavailability.** If, in connection with the future renewal of any insurance which VTUSA is required to maintain or procure hereunder, any insurance term is either not available to VTUSA in the North American insurance market or is subject to an insurance premium that is not commercially reasonable in light of the coverage provided, VTUSA shall notify the City and shall thereafter procure available and commercially reasonable insurance that reasonably covers the relevant risk, if any, such insurance being subject to the City's consent (not to be unreasonably withheld, conditioned or delayed).
22. **Effect of Loss or Damage.**
- 22.1. **Damage to Train Station.** If the Train Station should be damaged by fire or other casualty, VTUSA shall not be entitled to receive any abatement or reduction of Rent. VTUSA shall be entitled, but not obligated (except as otherwise expressly set forth below), to restore the Train Station following the occurrence of any damage by fire or casualty. If, following any such damage by fire or casualty,

VTUSA is not obligated to restore and rebuild the Train Station as expressly set forth below, then, in such event, VTUSA may terminate this Agreement upon written notice to the City, in which event: (i) this Agreement shall terminate as of the date set forth in VTUSA's notice and VTUSA shall thereupon surrender the Property to City pursuant to the terms of Section 29 hereof and, in such event, VTUSA shall continue to owe and pay Rent up to but not beyond the time of such surrender and any prepaid rent shall be refunded by City to VTUSA; and (ii) VTUSA shall, at its option, be entitled to retain all insurance proceeds payable in connection with any such damage or casualty with respect to the Train Station and repair the Parking Garage or disburse all the insurance proceeds for the Parking Garage to the City. Notwithstanding the foregoing, if the cost of repairs or restoration is equal to or less than twenty percent (20%) of the then-current replacement cost of the Train Station ("**Not Materially Damaged**"), then VTUSA shall have no right to terminate this Agreement, and VTUSA shall promptly restore the Train Station to substantially the condition existing before the fire or other casualty. If the Train Station is Not Materially Damaged or VTUSA agrees to repair the same, then VTUSA shall repair the Parking Garage. If VTUSA terminates this Agreement pursuant to this Section, VTUSA shall repair the Parking Garage or provide the insurance proceeds with respect to the Parking Garage to the City.

22.2. **Payment of Insurance Proceeds.** Subject to the covenant to reconstruct set forth in Section 22.4, all sums payable for loss and damage arising out of the casualties covered by the property insurance policies shall be payable:

22.2.1. Directly to VTUSA for reconstruction as set forth in Section 22.4, if no Event of Default exists under this Agreement; or

22.2.2. 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 insurable property or disbursing the funds as set forth above.

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

22.3.1. All insurance proceeds must be applied first to the curing of an Event of Default, and then, subject to the terms above, to the reconstruction, repair or replacement of the Train Station and Parking Garage and the personal property located on the Property and necessary to operate the Project ("**Reconstruction Work**"). The Train Station and Parking Garage and any personal property must be restored to a condition comparable to the condition prior to the loss or damage.

- 22.3.2. 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 the terms of the property insurance policy and an agreed schedule of values approved in advance by the City and VTUSA.
- 22.3.3. 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.
- 22.3.4. After the completion of the Reconstruction Work, any remaining insurance proceeds will be paid to VTUSA.
- 22.4. **Covenant for Commencement and Completion of Reconstruction.** Subject to Section 22.1, 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 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 Property.
- 22.5. **Inadequacy of Insurance Proceeds.** In the event VTUSA does not terminate this Agreement as provided in Section 22.1 above and that insurance proceeds are not adequate to rebuild and restore the damaged improvements on the Property to their previous condition before an insurable loss occurred, VTUSA shall rebuild and restore the Train Station and Parking Garage on the Property and pay any costs of rebuilding and restoration not covered by insurance proceeds. Subject to Section 22.1, VTUSA's obligation to rebuild the Train Station and Parking Garage following a casualty that occurs during the Term shall survive the expiration or earlier termination of this Agreement.
23. **Takings by a Third Party Entity.**
- 23.1. **Complete Taking.** If the entire Property is 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 Station Parcel will be apportioned between the City and VTUSA as of the day immediately prior to the vesting of title in the condemnor, as follows:
- 23.1.1. First, the City shall receive the fair market value (at the time of Taking) of the portion of the Property taken or condemned and considered as vacant, unimproved, and unencumbered;

- 23.1.2. 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
- 23.1.3. The remaining balance of the award shall be divided between the City and VTUSA based on the portion of the assessed value of the 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 Station Parcel and VTUSA shall be entitled to the portion of the assessed value attributable to the Train Station. 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.
- 23.1.4. The entire Garage Parcel award shall be remitted to the City.
- 23.2. **Partial Taking.** If there is a Partial Taking but VTUSA reasonably determines that as a result of the Partial Taking, the Property 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 Property 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 Property, and VTUSA reasonably determines that the remaining portion can be adapted and used to operate the Train Station and Parking Garage in the same manner it was previously operated, then this Agreement shall continue in full force and effect, and City and 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 Property 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:
- 23.2.1. First, to VTUSA to the extent required, pursuant to the terms of this Agreement, for the restoration of the Property;
- 23.2.2. Second, to the City, but only if the City is not the authority condemning the Property, the portion of the award allocated to the fair market value of the Property which is taken, considered as vacant and unimproved;
- 23.2.3. Third, to VTUSA, the amount by which the value of VTUSA's interest in the Property was diminished by the taking or condemnation; and
- 23.2.4. The remaining balance of the award shall be split between the City and VTUSA as set forth in Section 23.1.3 for the Station Parcel and 23.1.4 for

the Garage Parcel, except that VTUSA will receive the entire remaining balance of the award if the City is the authority condemning the Property.

23.2.5. 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 Property contemplated by any Governmental Authority including but not limited to the City.

23.3. **Restoration after Taking.** If this Agreement does not terminate due to a Taking, then:

23.3.1. VTUSA will be required to restore the remaining portion of the Project with due diligence in accordance with the provisions of this Agreement pertaining to alterations and renovations;

23.3.2. 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

23.3.3. If the award is insufficient to pay for the restoration work, VTUSA will be responsible for the remaining cost and expense.

23.4. **Temporary Taking.** If there is a Taking of the temporary use (but not title) of all or any part of the Property, 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 allocated to the Train Station 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 award allocated to the Parking Garage.

23.5. **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.

24. **Assignment and Subletting.**

24.1. **No Assignment or Subletting Without Prior Consent.** Except as expressly provided in this Agreement (including with respect to the Leasehold Mortgage or any foreclosure in connection therewith), VTUSA shall not sell, assign or transfer all or any part of its interest in this Agreement or the Property, by operation of law or otherwise, without the City's prior written consent. For so long as Virgin Trains USA Florida LLC ("VTUSA-F") is an Affiliate of VTUSA, VTUSA shall be entitled to assign all of, or sublet all or a portion of, its rights and obligations hereunder to VTUSA-F, subject to VTUSA-F's assumption of the corresponding obligations under this Agreement. In addition, VTUSA shall be entitled to sublicense parts of the Train Station to vendors and other service providers in connection with the performance of the ancillary uses described in the Station Parcel Permitted Use.

24.2. **Definition of "Assignment" and "Assignee".** As used in this Agreement, the term "Assignment" shall include the sale, assignment (including any assignment in an

Insolvency as further defined below), transfer, mortgage, pledge or hypothecation by VTUSA of all of its interest under this Agreement, the Property . 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, mortgagee, pledgee or other person who receives an Assignment of this Agreement.

24.3. **Certain Excluded Transactions.** Notwithstanding the definition of Assignment set forth above, the following shall not be deemed to be an Assignment hereunder:

24.3.1. An offering of VTUSA's stock to the public pursuant to a registered securities offering;

24.3.2. The transfer of VTUSA's stock on a national securities exchange or through the NASDAQ national market system or other over-the-counter market;

24.3.3. The transfer of VTUSA's stock to its employees pursuant to an employee stock ownership plan or other arrangement with one or more employees;

24.3.4. Any transfer of VTUSA's stock by gift, bequest, inheritance, or for estate planning purposes; or

24.3.5. 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; (b) such transfer shall not result in a single entity owning more than 51% of the stock or membership interests of VTUSA and (c) such transfer shall not affect VTUSA's ability to continue providing train service as set forth in this Agreement.

24.4. **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:

24.4.1. The name and address of the proposed Assignee and its form of organization;

24.4.2. 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;

24.4.3. 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);

24.4.4. A description of any proposed remodeling or renovation of the Project to be conducted by the proposed Assignee; and

24.4.5. Evidence that the proposed Assignee has the financial ability necessary to perform this Agreement, including any necessary contractual rights to cause the operation of train service at the Train Station.

The City shall have a period of one hundred twenty (120) 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. Once the items required above are submitted to the City, the City shall have the right to consent to or deny consent to an Assignment in the City's reasonable discretion; provided that the City provides a written statement summarizing the reasons for any denial. The failure of the City to notify VTUSA in writing of City's election within the 120-day period shall be deemed an approval of the proposed Assignment.

24.5. **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.

24.6. **Transactions Not Requiring the Consent of City.**

24.6.1. VTUSA shall have the right, upon prior notice to the City, but without the City's prior written consent, to assign this Agreement in whole 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 Station Parcel as a Train Station and operate the passenger train service at the Train Station consistent with the requirements contained herein.

24.6.2. 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 VTUSA survives such merger, share exchange or consolidation; 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 Station Parcel as a Train Station and operate the passenger train service at the Train Station in accordance with the requirements contained herein.
- 24.7. **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 and confirming VTUSA is not in default at the time of the Assignment. 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 24.6.2, VTUSA shall be relieved of any obligations under this Agreement first arising or accruing after the date of the assignment.
- 24.8. **Event of Default.** As long as this Agreement has not been terminated, VTUSA's rights under this Section 24 shall not be affected by a prior Event of Default as long as the same shall be cured at the time of (including after giving effect to) the Assignment; provided however that no Assignment may be completed during an Event of Default that is in the grace period or that otherwise remains uncured.
- 24.9. **Unpermitted Assignments.** Any Assignment made in contravention to the terms of this Section shall be null and void and shall be deemed a default by VTUSA under the terms of this Agreement.
- 25. **Events of Default.** Each of the following occurrences shall constitute an "Event of Default" under this Agreement:
 - 25.1. **Failure to Pay Money.** Failure by VTUSA to pay when due any Rent or any other sum of money payable under this Agreement (including, but not limited to, failure to pay Real Property Taxes and Charges), and such failure continues for a period of 10 days after such payment is due. If VTUSA fails to make a timely payment three times within any 12-month period of the Term, an Event of Default shall be deemed to have immediately occurred upon VTUSA's fourth failure to make a timely payment within any 12-month period of the Term without the need for a 10 day grace period. It is intended by the parties that the grace period will protect against infrequent unforeseen clerical errors. Notwithstanding the foregoing, failure to pay insurance premium in respect of insurance required to be obtained and maintained by VTUSA under Section 21 when due shall not be subject to a 10-day grace period and an Event of Default shall be deemed to have immediately occurred.
 - 25.1.1. **Default Interest on Late Payments.** Any payments of Rent will accrue interest at the Default Rate from the due date until paid.
 - 25.1.2. **Default Interest on Payments Made by City.** If the City elects to pay for any item that VTUSA has failed to pay, such payments will accrue interest at the Default Rate from the payment date until VTUSA reimburses the City; provided the City has provided any required notice and cure period

prior to making such payment. The election of the City to make any payments on behalf of VTUSA shall not cure VTUSA's Event of Default hereunder; provided that the same may be cured to the extent VTUSA reimburses the City within sixty (60) days of the City's payment and pays Default Interest thereon from the date of the City payment until the date of the reimbursement.

- 25.2. **Assignment.** Any attempt by VTUSA to make an Assignment of this Agreement or of any interest in the Property other than as expressly permitted by this Agreement.
- 25.3. **Insolvency.**
- 25.3.1. **Voluntary Bankruptcy.** If any petition is filed by VTUSA, as debtor, seeking relief under Chapters 7 or 11 of the United States Bankruptcy Code, 11 U.S.C. Section 101 et seq. (the "Bankruptcy Code"), or any successor thereto;
- 25.3.2. **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 of said petition;
- 25.3.3. **Inability to Pay Debts.** If VTUSA admits in writing its inability to pay its debts;
- 25.3.4. **Levy.** If the Property is levied upon or attached by process of law, and the levy or attachment is not discharged within 30 days; or
- 25.3.5. **Fiduciary.** If a receiver or similar type of appointment or court appointee or nominee of any name or character is made for VTUSA or a substantial part of VTUSA's property, and such receiver or appointee or nominee is not discharged within 30 days of appointment.
- 25.4. **Representations.** If any representations of VTUSA are materially false or misleading at the time when made.
- 25.5. **Commencement of Construction.** VTUSA has not commenced construction of both the Train Station and Parking Garage by December 31, 2021.
- 25.6. **Completion of Construction.** VTUSA has not obtained completed construction of the Train Station and Parking Garage in accordance with Section 17.3, and commenced operation of train service at the Train Station by December 31, 2023.
- 25.7. **Discontinuation or Diminished Service.** If at any time during the Term of this Agreement unless due to a Force Majeure, suspension of service by a Governmental Authority or closure in connection with maintenance, rehabilitation, restoration or as necessary to meeting regulatory requirements, the train service at the Train Station either (a) announces it has permanently stopped operating or (b) operates on a diminished schedule which results in the occurrence of three (3) six (6)-month

periods during which less than an average of five (5) trains per day stop at the Train Station (it being understood that no two (2) six (6)-month period may overlap for purposes of determining the applicability of this Section 26.7), the City may provide written notice to VTUSA of its intention to exercise remedies hereunder and, to the extent VTUSA fails to provide the City with a remedial plan that is reasonably satisfactory to the City within ninety (90) days of such notice and comply with such remedial plan in all material respects, the City may exercise such remedies. Notwithstanding the foregoing, if such train service is suspended for a limited period of no more than 90 days for maintenance or repairs, the same will not be deemed to be a discontinuation under this Section.

25.8. **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 that is not set forth in Sections 25.1 through 25.7 above, 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 180 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 Project continues 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. Failure by VTUSA to vacate the Property at the end of the Term of this Agreement shall be deemed an immediate Event of Default and will not require notice or a 30 days grace period.

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

26.1. **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 specific performance, injunctive and/or other equitable relief, or (iii) to recover possession of the Property and terminate this Agreement. The City shall also have the right to recover its attorney's fees and costs.

26.2. **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.

27. **Force Majeure.** VTUSA shall not be in breach of or in default of any of its non-monetary obligations, including, without limitation, suspension of construction or operational 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 ten (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; provided no such extension shall result in the imposition of a lien on the Property or otherwise result in a loss of the City's ownership of the Property.

28. **Interest in the Project.** Prior to the expiration or termination of this Agreement, the Leasehold Estate in 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 interest 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.
29. **Surrender of Property.** Upon the expiration of the Term or the earlier termination of this Agreement, subject to the rights of a permitted Leasehold Mortgagee, (i) VTUSA shall surrender the Property to the City, (ii) VTUSA shall, at its option, (a) secure or raze the Train Station (or portion thereof if mutually agreed) and remove all furniture, fixtures, and equipment installed in or affixed to the Property owned by VTUSA or (b) remove all furniture, fixtures, and equipment installed in or affixed to the Property owned by VTUSA and remove all of the debris and trash therefrom so as to leave the Station Parcel in reasonably safe condition and title in any personal property, furniture, fixtures or equipment left in the Train Station 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 Property 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, termination, and conveyance as may be reasonably required by the City for that purpose.
30. **Holding Over.** VTUSA shall not use or remain in possession of the Property after the termination of this Agreement. If VTUSA fails or refuses to vacate the Property after the termination or expiration of the Agreement, the same shall be deemed an immediate Event of Default without any grace period and entitle the City will all remedies set forth herein. If the City, in its sole discretion, does not elect to evict VTUSA, then 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.
31. **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.

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

Virgin Trains USA LLC
161 NW 6th Street, 9th Floor,
Miami, Florida 33136
Attention: Patrick Goddard

With a copy to:

Virgin Trains USA LLC
161 NW 6th Street, 9th Floor,
Miami, Florida 33136
Attention: Legal Department

31.2. **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

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

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

32.1.1. 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 Property in accordance with this Agreement;

32.1.2. The execution of this Agreement by VTUSA has been validly authorized;

32.1.3. As of the date of execution, this Agreement is a valid and binding obligation of VTUSA, enforceable in accordance with its terms;

32.1.4. 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

32.1.5. VTUSA has no actual knowledge of any fact or circumstance that would prevent VTUSA from performing in accordance with this Agreement.

32.2. **City's Representations.** The City represents to VTUSA that:

32.2.1. The execution of this Agreement by the City has been validly authorized;

32.2.2. As of the date of execution, this Agreement is a valid and binding obligation of the City, enforceable in accordance with its terms;

32.2.3. The execution and delivery of this Agreement does not violate or conflict with the City of Boca Raton Charter or City Code; and

32.2.4. The City has received no written notice of any fact or circumstance which would prevent the City from performing in accordance with this Agreement.

33. **Representations By Parties.**

33.1. **Representations by the City.** The City hereby represents, warrants and covenants to VTUSA that:

33.1.1. The City is a municipal corporation of the State of Florida; and

33.1.2. The City has obtained the necessary approvals to enter into this Agreement and the person executing this Agreement has the authority to execute this Agreement on behalf of the City.

33.2. **Representations by VTUSA.** VTUSA hereby warrants and represents to the City that:

33.2.1. VTUSA is a duly organized, lawfully existing limited liability company formed in the State of Delaware with authority to do business in the State of Florida and its status is in good standing under the laws of the State of Delaware and the State of Florida;

33.2.2. VTUSA has the full right, power and authority to make, execute, deliver and perform its obligations under this Agreement;

33.2.3. VTUSA's execution and delivery of this Agreement has been authorized by all requisite limited liability company action, and the execution and delivery of this Agreement by VTUSA and the performance of its obligations hereunder will not violate or contravene any agreement or obligation to which VTUSA is a party or by which it is bound;

33.2.4. There is no action, suit, litigation or proceeding pending or, to VTUSA's knowledge, threatened against VTUSA which could prevent VTUSA's entry into this Agreement and/or, in any material respect, performance of its obligations hereunder;

33.2.5. The person signing this Agreement on behalf of VTUSA is duly and validly authorized to do so;

- 33.2.6. Florida East Coast Railway, L.L.C. has granted VTUSA (and/or its Affiliates) the right to operate the System in the manner described herein in accordance with the Corrective Second Amended and Restated Grant of Passenger Service Easement (Miami to West Palm Beach), dated as of October 5, 2017, and recorded in the Official Records of Palm Beach County, Book 29401, Page 235;
- 33.2.7. VTUSA has or reasonably expects to have access to the funds necessary to construct and operate the Project in the manner set forth in this Agreement; and
- 33.2.8. Pursuant to Chapter 13, Article III of the City Code, VTUSA hereby represents and affirms that neither: (i) VTUSA, nor (ii) any current or former (within the last 3 years) officer of VTUSA has been convicted of a public entity crime, as defined in Section 287.133, Fla. Stat. In the event (i) VTUSA, or (ii) any current or former (within the last 3 years) officer of VTUSA has been convicted of a public entity crime, as defined in Section 287.133, Fla. Stat., the City may terminate this Agreement for cause pursuant to the default provisions in Section 25.5 of this Agreement by giving written notice to VTUSA.
34. **Right of First Refusal.** In the event that the City receives an offer from a party to buy all or any portion of the Parcels, the Station Parcel or the Garage Parcel that the City chooses to accept the same (it being understood that the City cannot choose to accept any offer or present such offer to VTUSA prior to December 31, 2024), the City shall provide to VTUSA a right of first refusal which must be exercised by VTUSA within seven (7) Business Days after notice is received from the City (which notice shall include the proposed purchase price (the “**ROFR Purchase Price**”) and material terms of the proposed transaction). In the event VTUSA decides to exercise such right of first refusal (the “**Right of First Refusal**”), VTUSA and the City shall negotiate a purchase and sale agreement in good faith within ninety (90) days of receiving VTUSA’s notice that it is exercising the Right of First Refusal. The purchase and sale agreement shall be on terms substantially similar to those of the initial offer, it being understood that VTUSA shall be given the benefit of any pre-execution site access, diligence or similar period afforded to the original third party purchaser. VTUSA shall also comply with all other procedural requirements of Chapter 13 of the City Code relating to the sale of City property. In the event that VTUSA gives notice that it will not exercise its Right of First Refusal or fails to exercise the same, the City may complete such sale with such third party, provided that the sale price shall not be less than 95% of the ROFR Purchase Price. In the event that (i) the third party purchaser does not complete the purchase transaction, (ii) the City wishes to sell the Parcels, the Station Parcel or the Garage Parcel for less than 95% of the ROFR Purchase Price or (iii) a sales transaction is not completed with another unaffiliated third party on such terms within one (1) year of VTUSA’s election not to exercise the Right of First Refusal, then the Right of First Refusal shall be re-instated. In no event shall this Section 35 be construed as granting VTUSA an option to purchase the Parcels, the Station Parcel or the Garage Parcel or an obligation of the City to sell the Parcels, the Station Parcel or the Garage Parcel.

35. **City Right to Sell Parcels or Property.** City shall not sell the Parcels or the Property prior to December 31, 2024, to any person other than the VTUSA or its Affiliates. In no event shall this Section 36 be construed as granting VTUSA an option to purchase the Parcels or the Property or an obligation of the City to sell the Parcels or the Property.
36. **City Crossing.** Upon the request of the City, VTUSA shall use reasonable efforts to support the City in the opening of the City Crossing, including by joining or signing any necessary applications, it being understood that VTUSA does not have the sole ability to open (nor can it ensure the opening of) the City Crossing, nor shall VTUSA be required to expend funds or incur any liability in connection with the same. The City acknowledges that it will need to close an existing crossing in order to open the City Crossing.
37. **Miscellaneous Provisions (in alphabetical order).**
- 37.1. **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.
- 37.2. **Approvals by the City.** All requests for action or approvals by the City will be sent to the City Manager (with a copy to the City Attorney) for decision as to who within the City, including the City Council, must act or approve the matter on behalf of the City.
- 37.3. **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.
- 37.4. **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.
- 37.5. **City Code.** The transactions hereunder shall be subject to the provisions of Chapter 13, Article III, of the City Code.
- 37.6. **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.
- 37.7. **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.

37.8. Estoppel Certificates.

37.8.1. Within 60 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 Leasehold Mortgagee, a certificate stating, to the best of the parties knowledge based on information available, received, or reviewed through the date specified in the certificate, the following:

- (a) This Agreement (including, but not limited to, Exhibit C) 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;
- (a) 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;
- (b) The Agreement Commencement Date, dates of Renewal Terms, and expiration date of the Term then in effect;
- (c) 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
- (d) 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.

37.8.2. 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.

37.9. **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.

37.10. **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.

- 37.11. **No Liability for Approvals and Inspections.** No approval given by the City in its capacity as landlord under this Agreement, and no inspection or other governmental review or action by the City under this Agreement, will render the City liable for its failure to discover any defects or nonconformance with any Governmental Requirement nor will it be deemed to be an approval of the City as a Governmental Authority, a waiver of any fees or charges that may be charged by the as a Governmental Authority, or a waiver of any rights the City may exercise as a Governmental Authority.
- 37.12. **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. Nothing in this Agreement is intended to grant, create or establish any rights in a third party or as a third party beneficiary.
- 37.13. **No Political Involvement.** During the term of this Agreement, VTUSA, or any employee or associate (as described in City Resolution No. 64-2002), shall not be involved in any political campaign for City elective office nor make financial contribution to any such campaign.
- 37.14. **Public Records Act.** In connection with the Parking Garage, the following shall apply:
- 37.14.1. The City of Boca Raton is a public agency subject to Chapter 119, Florida Statutes. This Agreement requires VTUSA to provide services, and therefore VTUSA shall comply with Section 119.0701, Florida Statutes. Specifically, VTUSA shall:
- (a) Keep and maintain all public records related to the performance of the services.
 - (b) Upon request from the City's custodian of public records, provide the City with a copy of the requested records, or allow the records to be inspected or copied within a reasonable time, at a cost that does not exceed that provided in chapter 119, Florida Statutes, or as otherwise provided by law.
 - (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract.
 - (d) Upon completion or other termination of the contract, keep and maintain the public records required by the City to perform the services. VTUSA shall meet all applicable requirements for retaining public records set out in Florida law.
 - (e) In addition to maintaining the records pursuant to clause (d) above, provide to the City all records that were stored electronically by

VTUSA, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

37.14.2. The failure by VTUSA to comply with the provisions set forth in this Section, or to comply with the City's request for records, shall constitute a breach of this Agreement, and the City shall, in its discretion, have the right to pursue any and all remedies against VTUSA provided for under this Agreement or at law.

37.14.3. **IF VTUSA HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO VTUSA'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 561-393-7740, BRCITYCLERK@MYBOCA.US, CITY HALL, CITY CLERK, 201 W. PALMETTO PARK ROAD, BOCA RATON, FL 33432.**

37.15. **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.

37.16. **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, if any, shall be paid by VTUSA.

37.17. **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.

37.18. **Representatives Not Individually Liable.** No official, representative, employee, agent, or licensee 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.

- 37.19. **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.
- 37.20. **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.
- 37.21. **Sovereign Immunity.** Nothing herein shall constitute, or be construed as, a waiver of sovereign immunity by the City or as a waiver beyond the limits set forth in Florida Statute, Section 768.28, or of any defense available to the City as set forth in Section 768.28, Florida Statutes, or in any other provisions of Florida law.
- 37.22. **Standard of Conduct.** The implied covenant of good faith and fair dealing under Florida law is expressly adopted in this Agreement; provided however that this standard does not limit the City's right to act in its sole discretion as expressly set forth in this Agreement.
- 37.23. **Successors and Assigns.** This Agreement binds and inures to the benefit of the City and VTUSA, and their respective permitted successors and assigns (in the case of VTUSA as set forth in Section 24), except to the extent expressly limited by this Agreement.
- 37.24. **Survival.** If any provision or obligation in this Agreement by its nature imposes an obligation to continue after termination, such section shall survive the cancellation, termination or expiration of this Agreement.
- 37.25. **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 any development schedule or timetable set forth herein or delivered by VTUSA to the City in connection hereof.
- 37.26. **Tri-Rail.** The parties acknowledge that VTUSA has had discussions with the South Florida Regional Transportation Authority about providing access to Tri-Rail with respect to certain portions of the System. The parties agree that nothing in this Agreement precludes the potential operation of Tri-Rail by the South Florida Regional Transportation Authority on the Corridor. The design of the platform and rail improvements at the Train Station will be done in such a way as to ensure that the facilities can be extended in the future to accommodate South Florida Regional Transportation Authority commuter trains, if such service is initiated.
- 37.27. **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.
- 37.28. **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 AGREEMENT, INCLUDING ANY EXHIBITS, OR SCHEDULES ATTACHED TO THIS AGREEMENT; (b) ANY OTHER DOCUMENT OR INSTRUMENT NOW OR HEREAFTER EXECUTED AND DELIVERED IN CONNECTION WITH THIS AGREEMENT; OR (c) THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT. THIS WAIVER SHALL SURVIVE THE TERMINATION OR EXPIRATION OF THIS AGREEMENT.

[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: _____

Print Name: _____

Date: _____

Signature: _____

ATTEST:

Print Name: _____

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 _____, as _____ of the City of Boca Raton, on behalf of the City. He/She 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/She is personally known to me or has produced _____ as identification.

[SEAL]

Notary Public, State of Florida

Exhibit A

Legal Description of the Property and Depiction of Station Parcel and Garage Parcel

Attached.

EX-01



1 LEASE AREA
EX-01 SCALE: 1"=30'-0"

Sheet No.

Project Manager:
DORRIS M. MALACOFF
City of Jacksonville

Scale: 1/8"=1'-0"
Date: 12/2/2015

Drawn By:
DORRIS M. MALACOFF

Checked By:

REVISIONS

400 NW 2ND AVENUE BOCA RATON, FL 33432

STATION + GARAGE

VIRGIN TRAINS BOCA

CONSULTANT INFO/LOGO



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7

6

5

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3

2

1

K

J

I

H

G

F

E

D

C

B

A

DIXIE HIGHWAY (US -1)

FLORIDA EAST COAST RAILROAD

LEASE AREA

PLATFORM

TRACK 1

TRACK 2

TRACK 3

TRACK 4

TRACK 5

TRACK 6

TRACK 7

TRACK 8

TRACK 9

TRACK 10

TRACK 11

TRACK 12

TRACK 13

TRACK 14

TRACK 15

TRACK 16

N.W. 4TH STREET
W/ PUBLIC BIKE-WAY
(P.S. 100-10-10-10)

PROPOSED PEDESTRIAN
CROSSING

BLOCK 3
BOSTON HILLS
SECTION 1111
(P.S. 100-10-10-10)

TRACT 11
LIBRARY COMMONS
(P.S. 100-10-10-10)

ONE STORY BUILDING
BELOW EXISTING PUBLIC LIBRARY
PROPOSED FLOOR PLANS (P.S. 100-10-10-10)

LIBRARY COMMONS
(P.S. 100-10-10-10)

TRACT 12

TRACT 13

TRACT 14

TRACT 15

TRACT 16

TRACT 17

TRACT 18

TRACT 19

TRACT 20

TRACT 21

TRACT 22

TRACT 23

TRACT 24

TRACT 25

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EX-01
Sheet No.

Principal:
Project Director:
Drawn by:
Checked by:

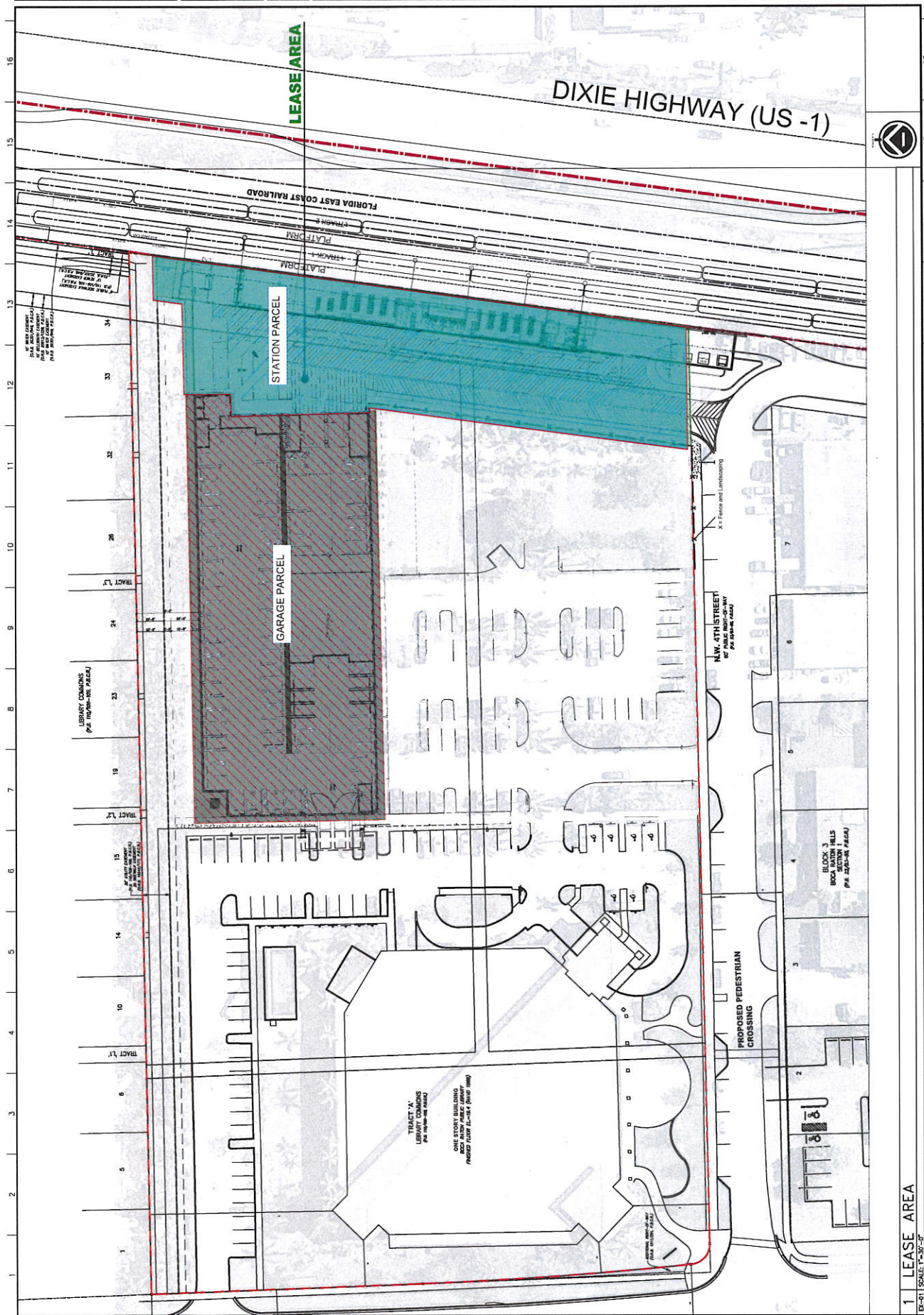
Drawing Title:
Scale:
Project No.:
Plot Date:

REVISIONS
1
2
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VIRGIN TRANS BOCA
STATION + GARAGE
400 NW 2ND AVENUE BOCA RATON, FL 33432

CONSULTANT
INFO/LOGO

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
FLORIDA EAST COAST RAILROAD
12801 WEST BAY DRIVE SUITE 400 BOCA RATON, FL 33432
11.17.2013
11.17.2013
11.17.2013
11.17.2013
11.17.2013
11.17.2013

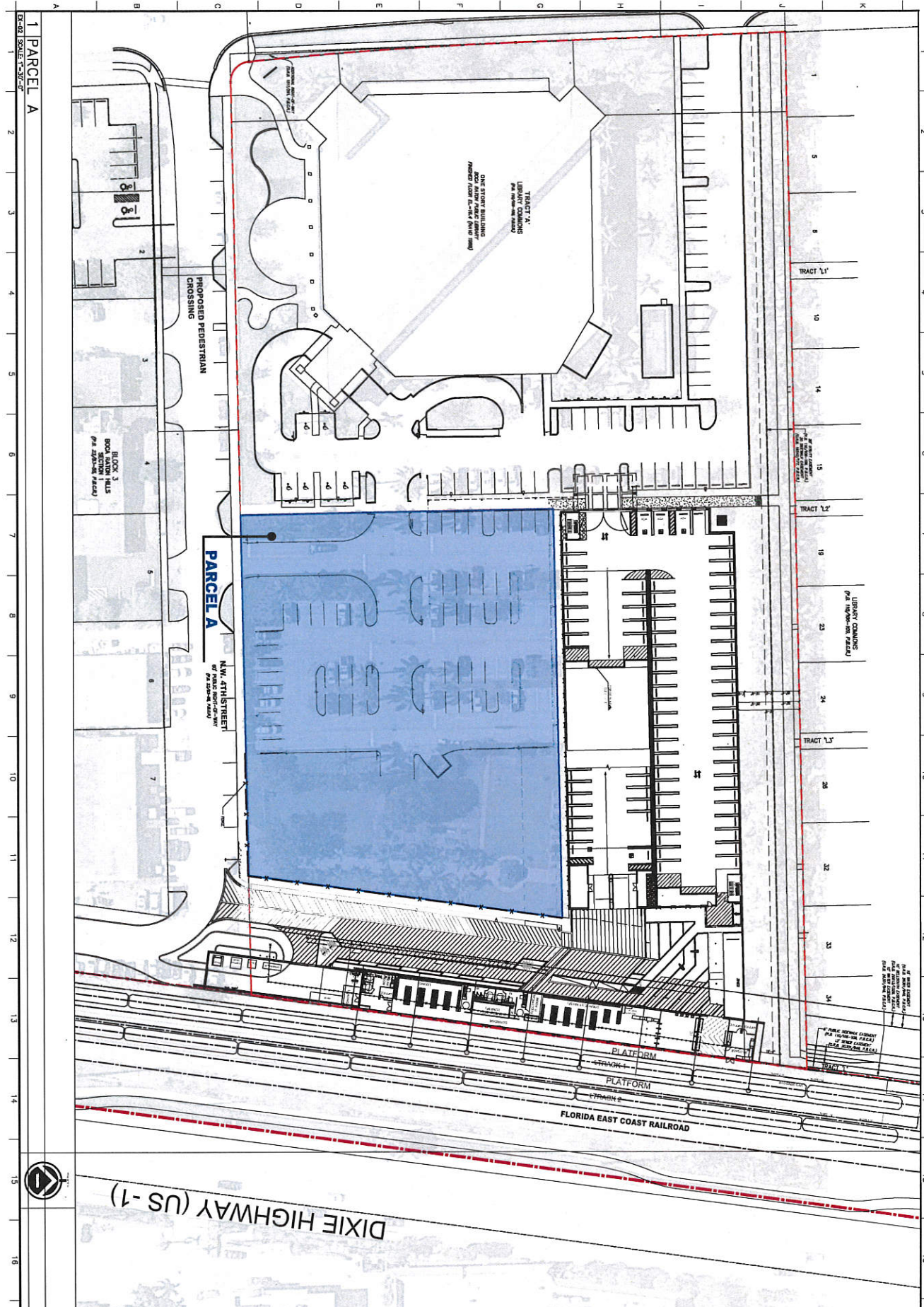


1 | LEASE AREA
EX-01 | SCALE: 1:250'-0"

Exhibit B

LEGAL DESCRIPTION OF THE PARCELS

Attached.



Sheet No.
EX-02

Principal:
Project Director:
Drawn by:
Checked by:

Scale: 1/8" = 1'-0"

Project No.: 19051.00
Date: 12/27/2019

LEASANT
ESSEMENT
DANERMAN

NO.	REVISIONS

VIRGIN TRAINS BOCA STATION + GARAGE
400 NW 2ND AVENUE BOCA RATON, FL 33432

CONSULTANT
INFO/LOGO

RLC
14100 NW 22nd St., Suite 200, Boca Raton, FL 33432
Tel: 561 335 0315 Fax: 561 335 0037
www.rlcarchitect.com

Copyright RLC Architects, P.A., 2019
STATE OF FLORIDA REGISTERED ARCHITECTS No. AA00000001

THE DRAWINGS AND ALL THE OTHER INSTRUMENTS, RECORDS AND PLANS
HEREIN ARE THE PROPERTY OF RLC ARCHITECTS, P.A. AND NO PART THEREOF
SHALL BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY
MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING,
OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE
WRITTEN PERMISSION OF RLC ARCHITECTS, P.A.

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 Agreement. 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; provided however to the following express conditions:

- (a) The Leasehold Mortgagee must agree to assume, in writing for the benefit of the City, all of the obligations of VTUSA under this Agreement in the event that the Leasehold Mortgagee forecloses or otherwise obtains possessory interest, directly or indirectly, of the Leasehold Estate; and
- (b) If the Leasehold Mortgagee forecloses or otherwise obtains possessory interest, directly or indirectly, the Leasehold Mortgagee, directly or through its agent, must continue to operate the Station Parcel as a Train Station and operate the passenger train service at the Train Station consistent with the requirements contained herein so there is no disruption in service.

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 or exclude any parcel from the Agreement without Leasehold Mortgagee's prior written consent; except in the manner set forth in the Agreement. Any such termination 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, 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. 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. Nothing herein shall prevent the City from removing any personal property of the City located within the Parking Garage.

5. **INTENTIONALLY OMITTED.**

6. **Additional Leasehold Mortgage 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 Agreement, 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; provided that failure of the City to provide the Leasehold Mortgagee with a copy of a default notice shall not affect the validity of the default notice to VTUSA under the Agreement. 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 Agreement, the Agreement shall not be terminated because of an Event of Default until and unless:

(A) With respect to a monetary default, Leasehold Mortgagee has not cured such default or breach within ten (10) days following the expiration of any of VTUSA's notice and cure period set forth in the Agreement; and

(B) With respect to a non-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 periods set forth in the Agreement or, if such default or breach is curable but cannot be cured within such time period, (1) Leasehold Mortgagee has not notified the City within such time period that it intends to cure such default or breach, or (2) Leasehold Mortgagee has not diligently commenced to cure such default or breach, or (3) Leasehold Mortgagee does not prosecute such cure to completion.

(C) 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 non-monetary default,

the cure periods set forth above (except with respect to a cure of the Event of Default set forth in Section 25.7) 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 Non-Monetary Default.

(iii) Notwithstanding anything provided to the contrary in the Agreement, the Agreement shall not be terminated because of an Event of Default which is not capable of being cured by Leasehold Mortgagee (such as a misrepresentation by VTUSA or bankruptcy; provided however that in no event shall an Event of Default under Section 25.7 be considered a default not capable of being cured by the 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 but during normal business hours, 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 Agreement, 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

(vi) Provided that at all times the Train Station shall remain operational and train service is not disrupted, 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 Agreement; 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 Agreement, 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) **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 Agreement, 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 Agreement; 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; subject, however to the following express conditions:

(A) The Transferee must agree to assume, in writing for the benefit of the City, all of the obligations of VTUSA under this Agreement in the event that the

Transferee forecloses or otherwise obtains possessory interest, directly or indirectly, of the Leasehold Estate; and

(B) If the Leasehold Mortgage forecloses or otherwise obtains possessory interest, directly or indirectly, the Transferee, directly or through its agent, must continue to operate the Station Parcel as a Train Station and operate the passenger train service at the Train Station in accordance with the requirements contained herein so there is no disruption in service.

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

(d) **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 Agreement, 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 Agreement) 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.

(e) **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.

(f) **New Lease 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 Lease shall be for the remainder of the Term of the Agreement, 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 Agreement.

(ii) The New Lease shall be executed by the City within ninety (90) 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 Lease 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 Agreement.

(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 then-existing Monetary Defaults, and all Non-Monetary Defaults capable of cure following execution of the New Lease.

(g) **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.

7. **Bankruptcy Provisions.**

(a) So long as the Leasehold Mortgage shall remain outstanding, and in the event of a bankruptcy filing (voluntary or involuntary) as to VTUSA, 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. 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 Agreement; (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 Agreement; 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 actual possession of the Property granted to VTUSA under the Agreement.

(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, including all other rejection damages allowable pursuant to the Bankruptcy Code, 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 preceding sentence, a notice that Leasehold Mortgagee elects to (i) assume the Agreement, 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 Agreement, (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 31 of the Agreement.

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 non-exercise 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 Agreement.

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 1** 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 “**Project**.”

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. **Term.** The initial term of the Agreement is twenty-nine (29) years, commencing on the Agreement Commencement Date.
- 2.5. **Renewal Terms.** The Tenant has the option of extending the term of the Agreement for an additional period of twenty (20) years and, thereafter, the Tenant and the Landlord may, by mutual agreement, further extend the term of the Agreement for two more successive periods of twenty (20) years each, in each case, in accordance with, and subject to the terms of, 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 Property, 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 Property. The Landlord's right, title and interest in the Property 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: _____

By: _____
City Manager

Signature: _____

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 1 to Memorandum of Agreement

Legal Description of the Property

Exhibit E

PRELIMINARY SKETCH

See Area in Green

Attached.

EX-01



1 LEASE AREA
EX-01, SCALE: 1/8"=1'-0"

Sheet No.

Checked by:
Project Director:
D:\CITIZEN\LEASING\EX-01

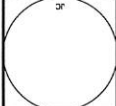
Printed:
Date: 12/27/2013
Project No.: 137091.00
Scale: 1/8"=1'-0"

Drawing Title:
LEASE -
EASEMENT
DAGRAM

REVISIONS

VIRGIN TRAINS BOCA
STATION + GARAGE
400 NW 2ND AVENUE BOCA RATON, FL 33432

CONSULTANT
INFO/LOGO



RLC CONSULTANTS, P.A.
1515 SW 15TH AVENUE, SUITE 200
MIAMI, FL 33135
TEL: 305.444.4444
WWW.RLCCONSULTANTS.COM

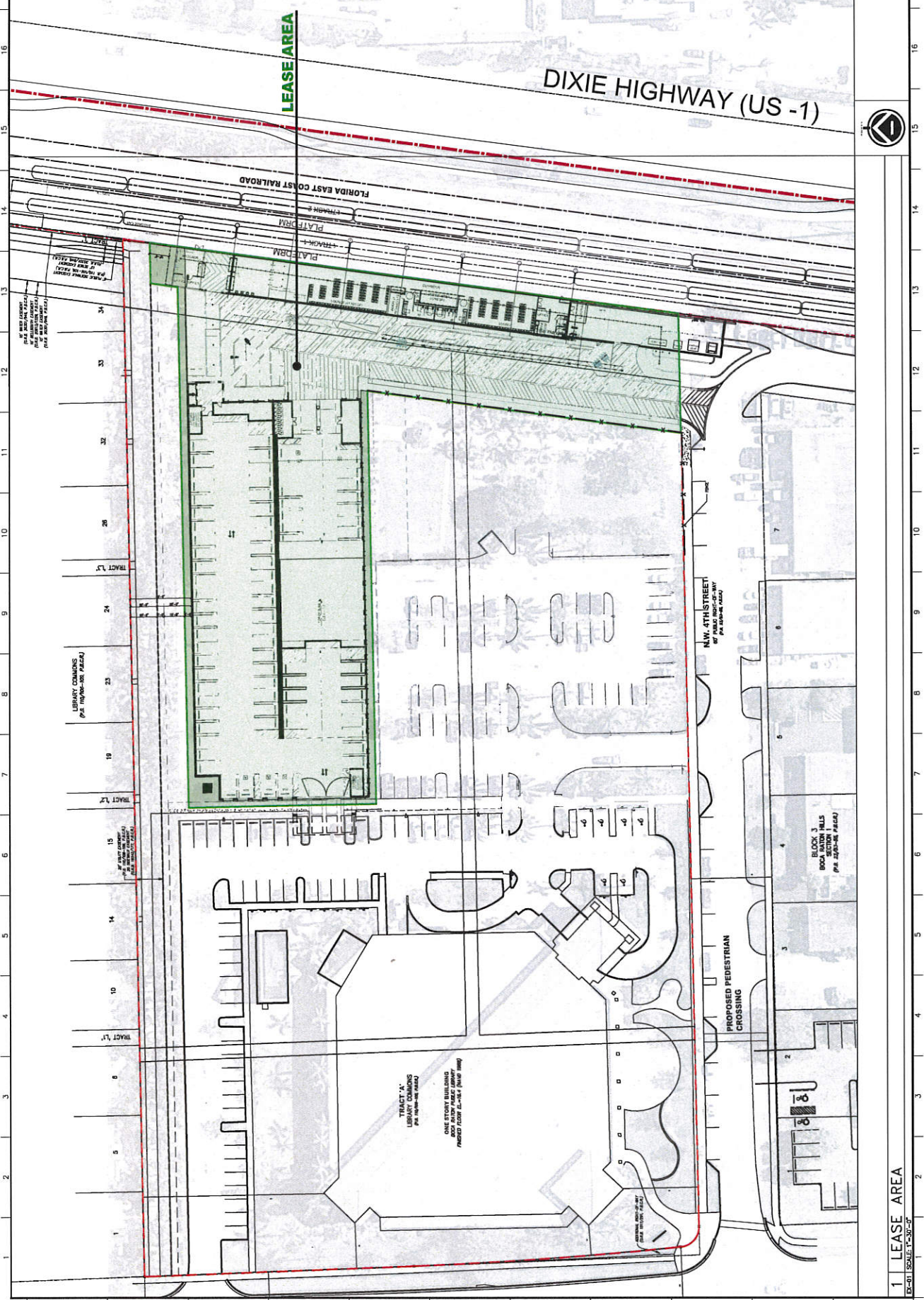


Exhibit F

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 Ground Lease 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 which request VTUSA hereby affirms is in compliance with and satisfies the requirements of Section 16.7 of the Agreement. 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 G

PARKING GARAGE BUDGET

Attached.

Boca Raton Garage	
Building Construction	\$10,680,082
Operating Supplies & Equipment	\$210,000
I.T. / Telecom Equipment and Cabling	\$20,000
Security Systems & Operating Equipment	\$190,000
Professional Fees	\$970,000
Architecture	\$400,000
Structural Engineering	\$80,000
MEP Engineers	\$45,000
Lighting Design	\$30,000
Landscape Architect	\$40,000
Civil Engineering	\$150,000
Security Consultant	\$10,000
Wayfinding/Signage	\$25,000
Construction Material Testing	\$80,000
Professional Fee Reimbursable Items	\$10,000
Private Provider (Permits, Plan Reivew, Inspections)	\$100,000
Insurance	\$250,000
Project Insurance	\$250,000
SUBTOTAL (Before Contingency)	\$12,110,082
Contingency	\$1,816,512
Project Contingency	\$1,816,512
Subtotal Station Garage Budget	\$13,926,594

Total Parking Spaces	455
Price per space	\$30,608
64 Library Parking Spaces Paid by VTUSA	\$1,958,906
City of Boca Raton Share of Parking Garage Budget	\$11,967,689

Exhibit H

TEMPORARY EASEMENTS AGREEMENT

This instrument prepared by
or under the direction of:
Kolleen Cobb, Esq.
Florida East Coast Industries
700 NE 1st Avenue, Suite 1620
Miami, Florida 33136

TEMPORARY EASEMENTS AGREEMENT

THIS TEMPORARY EASEMENT AGREEMENT (the "Easement Agreement"), made this _____ day of _____, 20__ (the "Effective Date"), by and between _____ (the "Grantee"), and the CITY OF BOCA RATON, a municipal corporation existing under the laws of the State of Florida (the "Grantor").

WITNESSETH that for and in consideration of the sum of One Dollar (\$1.00) and other valuable considerations, receipt and sufficiency of which is hereby acknowledged, the Grantor and the Grantee hereby agree as follows:

1. Subject to all the terms and conditions of this Easement Agreement, Grantor hereby gives, grants, bargains and releases to the Grantee, (i) a non-exclusive temporary easement (the "Parking Easement") to construct and maintain (including, but not limited to paving, striping, signage, and other requirements for a surface parking lot), at Grantee's sole cost and expense, a temporary surface parking lot containing at least 72 parking spaces to be used by employees or visitors to the Library and the general public on the location depicted on **Exhibit "1"** (the "Parking Easement Property") and (ii) a non-exclusive, temporary construction easement (the "Construction Easement" and collectively with the Parking Easement the "Temporary Easements") to occupy and use the property described on **Exhibit "2"** attached hereto and by reference made a part hereof (the "Construction Easement Property" and collectively with the Parking Easement Property the "Easement Property"), solely for the purposes of constructing the Parking Garage and Train Station all as defined in that certain Ground Lease Agreement entered into by Grantor and Grantee, as evidenced by that certain Memorandum of Lease dated _____ and recorded in Official Records Book ___, Page ___ of the Public Records of Palm Beach County, Florida (the "Agreement"). The Parking Easement shall run from the Effective Date and continue thereafter until completion and opening of the Parking Garage. The Construction Easement shall run from the Effective Date and continue thereafter until completion of the Project as defined in the Agreement, but no later than December 31, 2023; provided that until the temporary parking lot is open, the construction activities shall not limit access to the Library's (as defined in the Agreement) existing parking spaces. The construction of such temporary parking lot shall be completed prior to the commencement of vertical construction of the Project. All terms not defined herein shall have the definition ascribed to them in the Agreement.

2. At all time during the term of this Easement Agreement, Grantee shall maintain all insurances required by the Agreement and provided that if Grantor's property is damaged or destroyed by Grantee, Grantee shall restore such property so damaged or destroyed to the condition existing immediately prior to such damage or destruction.

Further, the Grantee shall require all contractors engaged by the Grantee to perform work at or about the Easement Property to carry the types of insurance in at least the coverage limits specified in Section 20 of the Agreement.

Evidence that the insurance coverage required hereunder is in place by contractors shall be furnished to Grantor upon request and prior to the commencement of work on or about the Easement Property. In addition, renewal certificates shall be provided to Grantor at least thirty (30) days prior to the expiration date of the then current policy. All such certificates shall state that the Grantor shall be notified in writing thirty (30) days prior to cancellation of any such insurance and that the Grantor is an additional insured thereunder.

3. Grantee hereby agrees to indemnify, defend and hold harmless Grantor as set forth in Section 19 of the Agreement. The provisions of this paragraph 3 shall survive the expiration or any termination of this Easement Agreement.

4. Before use by Grantee of the area within the Construction Easement Property currently used for parking spaces, Grantee shall erect a barricade or fence of a type specified and installed in accordance with specifications provided by Grantor, along all boundaries of the Easement Property, and thereafter shall maintain, repair and/or replace said barricade or fence at Grantee's sole cost and expense until completion of the construction of the Project. Commencing on the Effective Date, Grantee may fence and use the areas of the Construction Easement Property not currently used for parking spaces. When the barricade or fence is in place, and to expedite the inspection of it, Grantee shall notify Grantor pursuant to the notice provisions hereof of the installation of the same. In the event Grantee does not notify Grantor that the barricade or fence around the Construction Easement Property, including the portion currently used for parking spaces, is in place within ten (10) days after completion of the temporary parking lot, Grantor, in its sole discretion, may terminate this Easement Agreement upon notice to Grantee and Grantee shall immediately vacate and surrender the Construction Easement Property in accordance with the requirements of this Easement Agreement.

5. Grantee shall not create or permit to be created or to remain, and shall within thirty (30) days of the Lien being filed (i) discharge the Lien or (ii) transfer the transfer the Lien to security in accordance with Section 713.24, at its sole cost and expense, any lien, encumbrance or charge (each, a "Lien") upon all or any part of the Easement Property from (a) the use or occupancy of the Easement Property by Grantee or a party authorized to use or occupy the Easement Property on behalf of Grantee; or (b) by reason of any labor, service or material furnished or claimed to have been furnished to or for the benefit of Grantee; or (c) by reason of any construction, repairs or demolition of all or any part of the Easement Property by or at the direction of Grantee,

6. At all during the term of this Easement Agreement, Grantee shall comply with the

requirements regarding Hazardous Substances as set forth in Section 18 of the Agreement. The provisions of this paragraph 6 shall survive the expiration or any termination of this Easement Agreement.

7. Grantee agrees to perform all work required within the Easement Property to complete the construction of the temporary parking lot and the entire Project in accordance with Good Industry Practice (as defined in the Agreement).

8. Grantee agrees to comply with all Governmental Requirements, including, without limitation, the City Code, the Florida Building Code, and the Fire Prevention Code, as to all aspects of the Work, including the hours of construction and all applicable provisions set forth in Section 15.5 of the Agreement except that Grantee shall not be required to obtain a building permit.

9. Grantee, at all times during the term of this Easement Agreement, and at the expense of Grantee, shall maintain the Easement Property and the temporary parking lot in accordance with Good Industry Practice.

10. This Easement 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.

11. Time is of the essence in the performance of all obligations of each party under this Easement Agreement.

12. No official, representative, employee, agent, or licensee of the Grantor will be personally liable to Grantee or any successor in interest for any amount which may become due to Grantee for any obligations of Grantor under this Easement Agreement, or in the event of any default or breach by the Grantor.

13. This Easement 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 Easement Agreement is effective only after execution and delivery by the parties.

14. The making, execution and delivery of this Easement Agreement by Grantor has been induced by no representations, statements, warranties, or agreements other than those contained herein. This Easement Agreement embodies the entire understanding of the parties and there are no further or other agreements or understandings, written or oral, in effect between the parties relating to the subject matter hereof.

15. 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 EASEMENT AGREEMENT, INCLUDING ANY EXHIBITS, OR SCHEDULES ATTACHED TO THIS EASEMENT AGREEMENT; (b) ANY OTHER DOCUMENT OR INSTRUMENT NOW OR HEREAFTER EXECUTED AND DELIVERED IN CONNECTION WITH THIS EASEMENT AGREEMENT; OR (c) THE TRANSACTIONS CONTEMPLATED BY THIS EASEMENT

AGREEMENT. THIS WAIVER SHALL SURVIVE THE TERMINATION OR EXPIRATION OF THIS EASEMENT AGREEMENT.

[REMAINDER OF THE PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the said Grantor has signed and sealed these presents the day and year first above written.

Witnesses (two required):

CITY OF BOCA RATON, a Florida municipal corporation

Signature: _____

By: _____
Mayor

Print Name: _____

By: _____
City Manager

Signature: _____

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: _____
Print Name: _____

By: _____
Name: _____

Signature: _____
Print Name: _____

Title: _____
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]

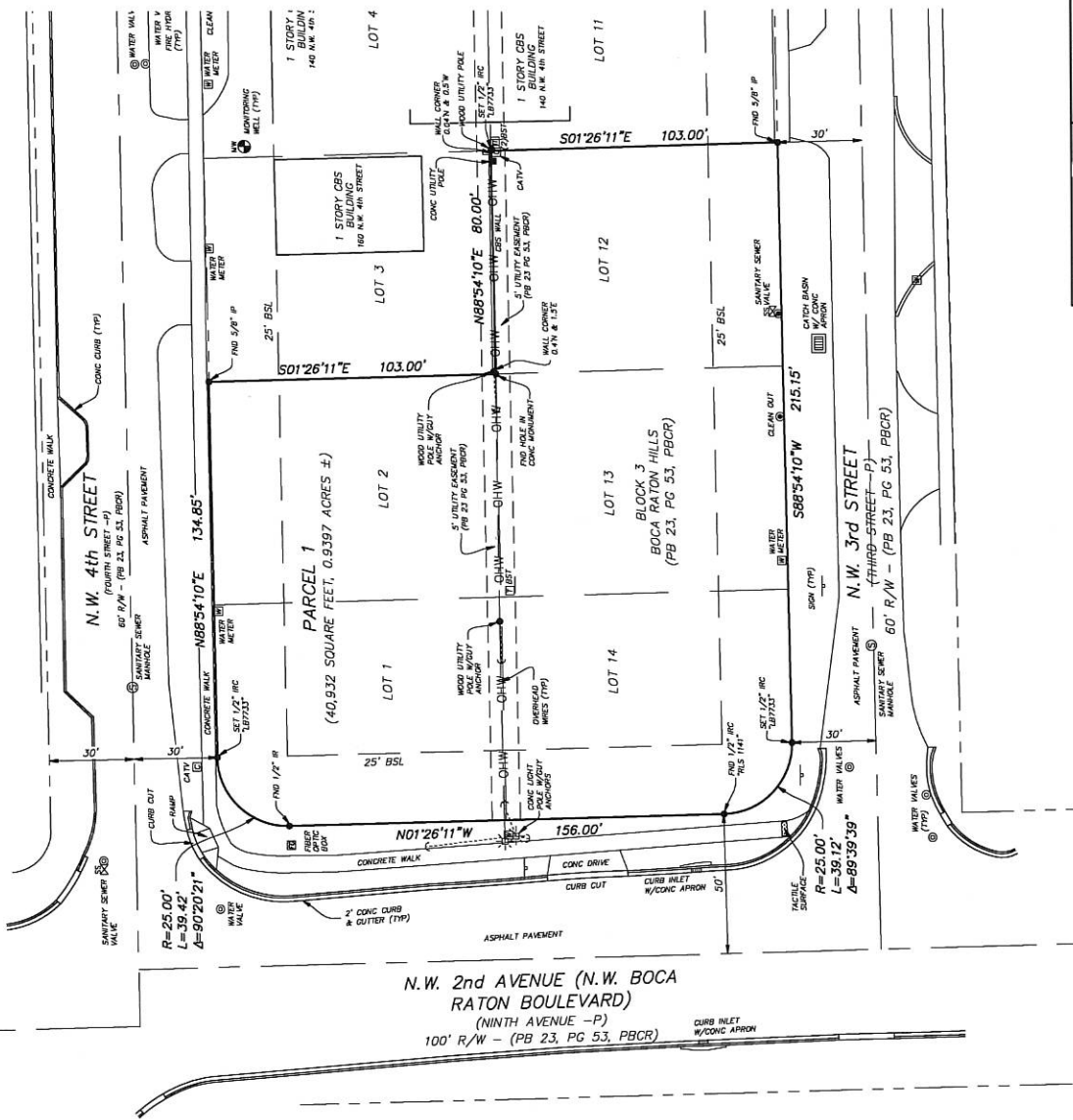
Notary Public, State of Florida

Exhibit "1"

Parking Easement Property

[See attached legal description]

TRACT A
LIBRARY COMMONS
(PB 110, PG 105, PBCR)



LEGAL DESCRIPTION:
OFFICIAL RECORDS BOOK 4855, PAGE 487
OFFICIAL RECORDS BOOK 4855, PAGE 487

LOTS 1, 3, 13 AND 14, BLOCK 3, PLAT OF BOCA RATON HILLS SECTION 1, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 23, PLAT BOOK 53, PAGE 53, PBCR, BOCA COUNTY, FLORIDA, LESS THAT PART OF LOTS 1 AND 14, BLOCK 3, BEING THE EXTERNAL AREAS FORMED BY INTERVENEING THE FOOT RADIIUS OF THE CURVATURE OF THE WEST LINE OF LOT 1, AND THE SOUTH AND WESTERLY LINES OF SAID LOT 14, SAID LOTS 1, 3, 13 AND 14, BLOCK 3, TOGETHER WITH:

FOLD NO. 08-43-47-19-31-9043-0120
OFFICIAL RECORDS BOOK 4855, PAGE 487

LOT 12, BLOCK 3, BOCA RATON HILLS, SECTION 1, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 23, PLAT BOOK 53, PBCR, BOCA COUNTY, FLORIDA, LESS THAT PART OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA,

SAND LOTS STATE, LYING AND BEING IN THE CITY OF BOCA RATON, BOCA COUNTY, FLORIDA, IN ACCORDANCE WITH THE FOLLOWING 46,932 SQUARE FEET, 0.932 ACRES, IN ACCORDANCE, MORE OR LESS.

SURVEYOR'S NOTES:
1. NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.
2. THIS SURVEY IS BASED ON THE ORIGINAL SURVEY RECORDS, RIGHTS-OF-WAY, EASEMENTS, CONVEYANCES, OR OTHER INSTRUMENTS OF RECORD BY BOCA PROFESSIONAL SURVEYOR & MAPPER, INC., AN ASSUMED MERIDIAN, AND ARE RELATIVE TO THE NORTH LINE BLOCK 3.
3. UNDERGROUND FOUNDATIONS AND INSTALLATIONS WERE NOT LOCATED. ONLY SURFACE EVIDENCE OF SUBTERRANEAN USE IS SHOWN.
4. THE LAND DESCRIPTION SHOWN HEREON WAS PREPARED BY THIS SURVEYOR IN ACCORDANCE WITH THE FLORIDA LAND SURVEYING PRACTICE AS REQUIRED FOR THIS TYPE OF SURVEY.

LEGEND:
PBCR = PALM BEACH COUNTY RECORDS
CONC = CONCRETE
CONC CURB = CONCRETE CURB
CONC DRIVE = CONCRETE DRIVE
CONC DRIVE W/ CONC APRON = CONCRETE DRIVE WITH CONCRETE APRON
CONC DRIVE W/ CONC APRON & GUTTER = CONCRETE DRIVE WITH CONCRETE APRON AND GUTTER
CONC DRIVE W/ CONC APRON & GUTTER (TYP) = CONCRETE DRIVE WITH CONCRETE APRON AND GUTTER (TYPICAL)
CONC DRIVE W/ CONC APRON & GUTTER (TYP) = CONCRETE DRIVE WITH CONCRETE APRON AND GUTTER (TYPICAL)
CONC DRIVE W/ CONC APRON & GUTTER (TYP) = CONCRETE DRIVE WITH CONCRETE APRON AND GUTTER (TYPICAL)
CONC DRIVE W/ CONC APRON & GUTTER (TYP) = CONCRETE DRIVE WITH CONCRETE APRON AND GUTTER (TYPICAL)
CONC DRIVE W/ CONC APRON & GUTTER (TYP) = CONCRETE DRIVE WITH CONCRETE APRON AND GUTTER (TYPICAL)
CONC DRIVE W/ CONC APRON & GUTTER (TYP) = CONCRETE DRIVE WITH CONCRETE APRON AND GUTTER (TYPICAL)
CONC DRIVE W/ CONC APRON & GUTTER (TYP) = CONCRETE DRIVE WITH CONCRETE APRON AND GUTTER (TYPICAL)

SURVEYOR'S CERTIFICATE:
I HEREBY CERTIFY THAT THIS SURVEY IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF, AND THAT I AM A LICENSED SURVEYOR AND MAPPER IN ACCORDANCE WITH THE STATE OF FLORIDA LAWS AND STANDARDS OF PRACTICE AS REQUIRED FOR THIS TYPE OF SURVEY.

DATE SIGNED: _____
MICHAEL D. KUMKIEWICZ
REGISTERED PROFESSIONAL SURVEYOR AND MAPPER
FLORIDA LICENSE NO. 10001008

REVISION	DATE	BY	CHK

BOUNDARY SURVEY
LOTS 1, 3, 13 AND 14, BLOCK 3
PLAT BOOK 23, PAGE 53, PBCR
BOCA RATON, PALM BEACH COUNTY, FLORIDA

Exhibit "2"

Construction Easement Property



EX-03

Sheet No.

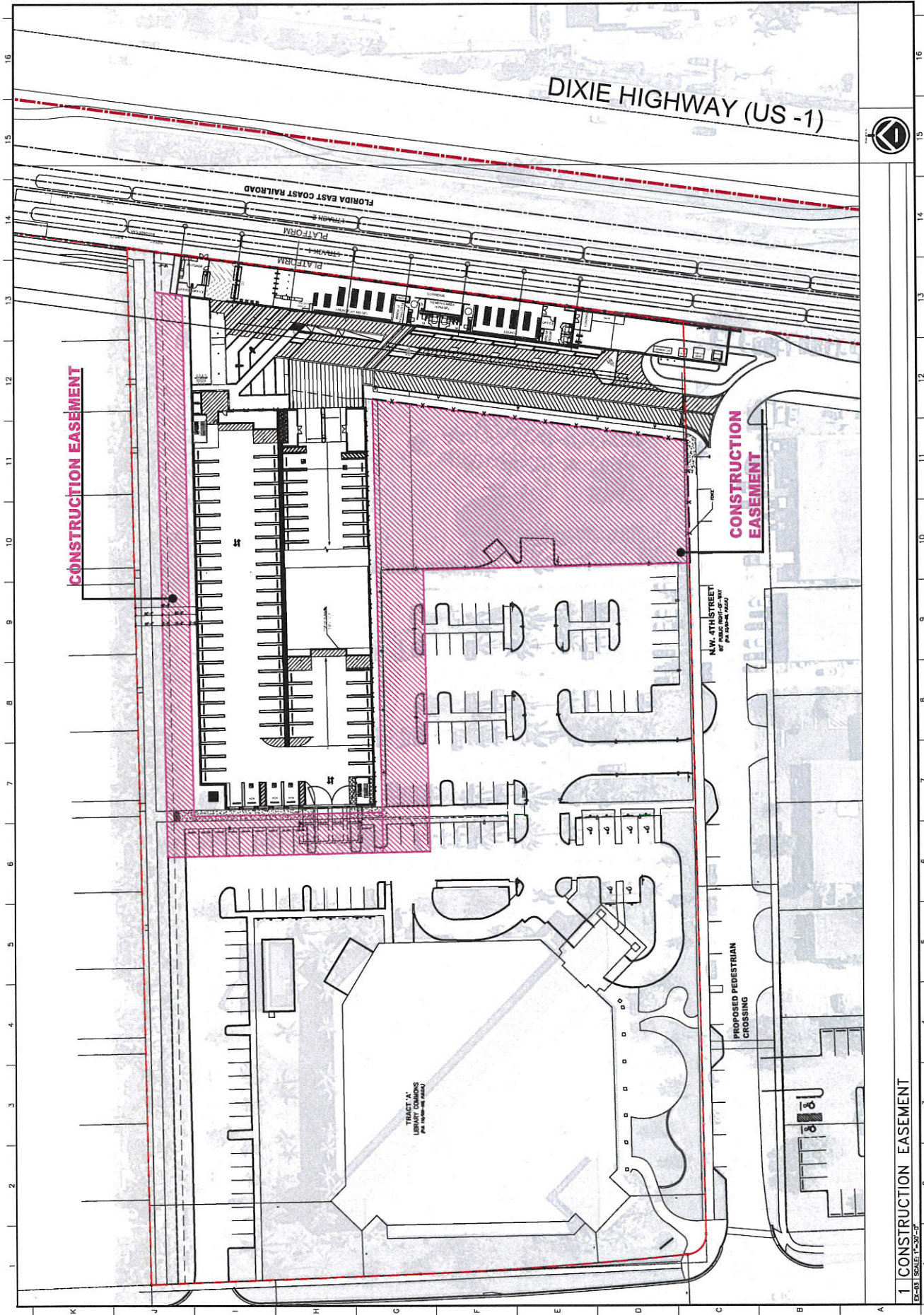
Drawn by: JG
Checked by: JG
Project Manager: JG
Project No.: 13001-00
Proj. Date: 12/27/2013

REVISIONS
Drawing Title: CONSTRUCTION EASEMENT

VIRGIN TRAINS BOCA STATION + GARAGE
400 NW 2ND AVENUE BOCA RATON, FL 33492

CONSULTANT INFO/LOGO

RC
14 000 SW 15TH AVENUE SUITE 100
MIAMI, FL 33187
TEL: 305.444.1000
WWW.RCENGINEERS.COM
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1 CONSTRUCTION EASEMENT
E-C-03 SCALE: 1/8"=1'-0"

Exhibit I

LIBRARY PARCEL

Attached.



EX-01

1 LEASE AREA

EX-01 SHEET 1-001-01

Sheet No.

Project Manager:
DORIS M. MALACOTT

Project No.: 10001-00

Project Date: 12/17/2010

Scale: AS SHOWN

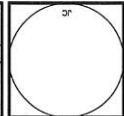
Drawing Title:
LEASE -
STATION
DIAGRAM

REVISIONS

No.	Description

VIRGIN TRAINS BOCA
STATION + GARAGE
400 NW 2ND AVENUE BOCA RATON, FL 33432

CONSULTANT
INFO/LOGO



RLC CONSULTANTS
1415 N.W. 10TH AVENUE, SUITE 200
FORT LAUDERDALE, FL 33311
TEL: 954.376.1000 FAX: 954.376.1007
WWW.RLCCONSULTANTS.COM

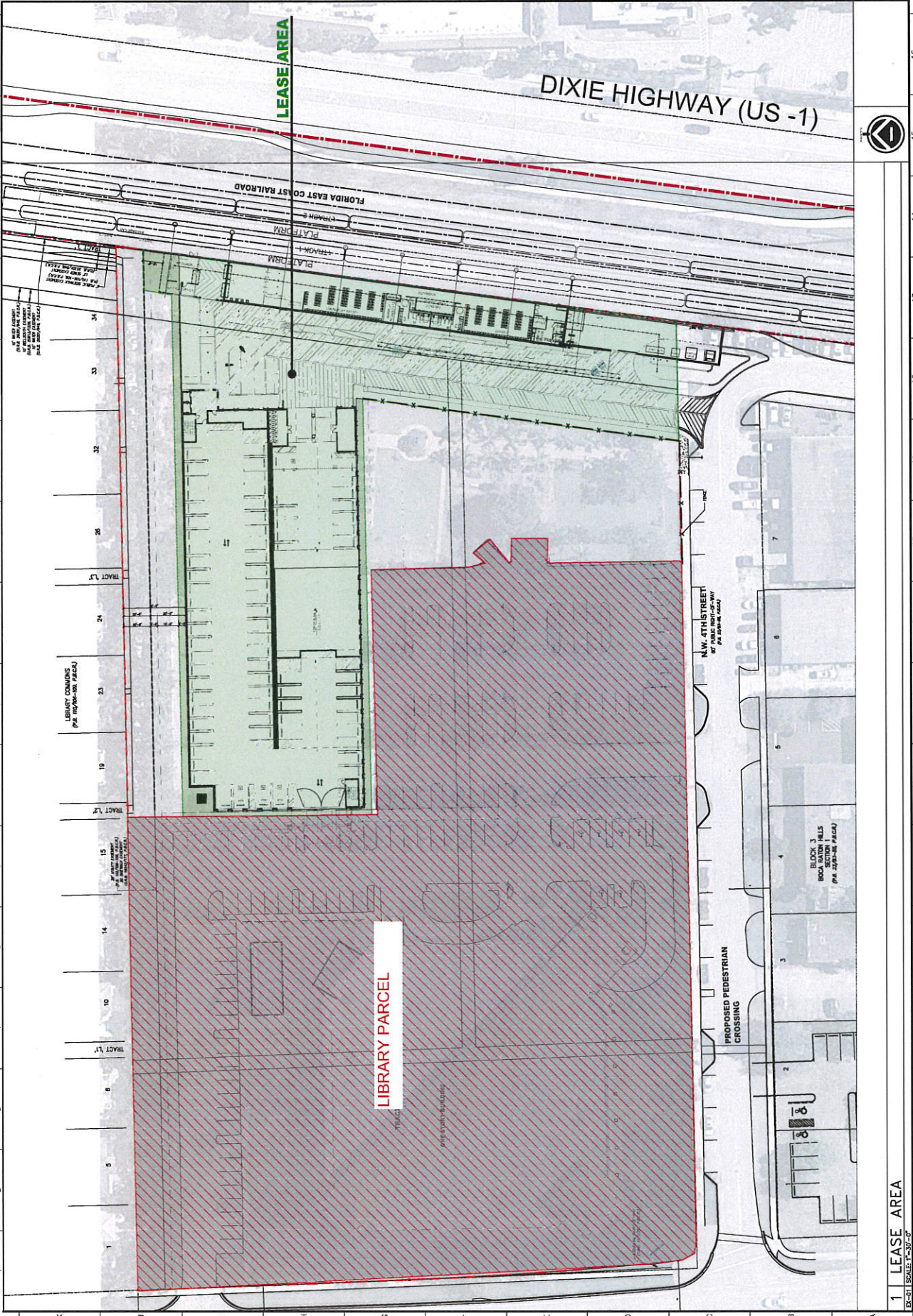


Exhibit J

CONSTRUCTION PLAN REVIEW AND COMPLETION PROCESS

Plan Review

1. Engage state certified Private Provider (PP) that is registered in Palm Beach County
2. Submit construction set of plans to PP for review of structural, mechanical, electrical, plumbing, ADA and life safety to be in compliance with latest version of the Florida Building Code, Florida Life safety Code and all applicable NFPA code sections.
 - a. Once all plans have been approved by PP, PP will issue an affidavit certifying compliance with all applicable codes.
 - b. Train Station: Once VTUSA has the affidavits, construction can commence for the above trades.
 - c. Parking Garage: VTUSA will agree to submit the Affidavit related to the Parking Garage to the City so that the City can do a quality control plan review of the construction drawings. City should have 15 business days to complete their review. Upon satisfaction of review, City will issue Approval Letter to commence construction on the garage.
3. Submit construction set of plans to City of Boca Raton (City) for review by zoning, planning, landscaping, fire department, public works and water and sewer for compliance with all local codes.
 - a. Once all plans have been approved the City will stamp plans and issue Approval Letter.
4. Submit construction set of plans to Palm Beach County (County) Department of Environmental Resource Management for review and compliance with all environmental codes.
 - a. Once all plans have been approved the City will stamp plans and issue Approval Letter.

Inspections

1. PP will perform inspections for structural, mechanical, electrical, plumbing, ADA and life safety.
 - a. Without limiting the City's rights under this Agreement, City has the ability to visit job site and check inspector log for progress of construction on both garage and station.
2. City will perform inspections for code compliance with zoning, landscaping, life safety, drainage, and other utilities.

Completion

1. Once VTUSA completes the construction of the project and all inspections are approved, PP will issue certification of construction with inspection logs attached which permit occupancy of train station and garage subject to City approval. No occupancy should be allowed for either the Parking Garage or Train Station without the City's approval.

2. City performs final zoning inspection and final life safety inspections for the occupancy of the train station and garage.
3. Once PP and City issue approvals (above), City shall issue a Certificate of Completion for train station and garage. The Certificate of Completion is comparable to a Certificate of Occupancy.