

REAL ESTATE LEASE  
(Land, Inside ROW – Annual Term)

The Real Estate Lease (this “Lease”) is made effective as of this **15th day of October, 2018**, by and between **FEC ROW LLC**, a Florida limited liability company (“Lessor”) and **BH3 DJ Flagler, LLC**, a Delaware Limited Liability Company, whose business address is 21500 Biscayne Boulevard, Suite 302, Aventura, Florida 33180 (“Lessee”).

1.A Leased Premises: Lessor hereby leases to Lessee and Lessee hereby leases from Lessor under the terms and conditions set forth in this Lease, the following described property:

**SEE EXHIBIT A**  
**[Attached hereto and made a part hereof]**

All as shown on Lessor’s Drawing No **FDG421** dated **August 26, 2018**, attached hereto as Exhibit B, and made a part hereof, located within the Florida East Coast Railway, L.L.C. right of way (the “ROW”) (collectively with any buildings, facilities and improvements currently or in the future located on the described property, the “Leased Premises”).

1.B Railway and AAF are Third Party Beneficiaries

The parties hereto agree and acknowledge that (i) Lessor, formerly known as FDG Flagler Station II LLC, which, in turn, was formerly known as FDG ROW Holdings LLC, and Florida East Coast Railway, L.L.C., successor by merger to Florida East Coast Railway Company (the “Railway”) entered into that certain First Amended and Restated Grant of Easements (the “Easement”) as recorded in Book 27120 Page 2296 in current Public Records of Broward County, Florida, pursuant to which the Railway granted to Lessor certain rights with respect to the ROW, including the right to enter into this Lease, and (ii) the terms and conditions of the Easement require that the Railway and All Aboard Florida-Operations LLC “AAF” (including its successors and assignors) shall be third party beneficiaries of this Lease due to the Railway’s and AAF’s continuing use of the ROW. Accordingly, by executing this Lease (with initials set forth below), Lessee agrees to abide by the terms and conditions set forth herein (including, without limitation, those terms and conditions that are for the benefit of the Railway and AAF) and that, in addition to the rights and remedies granted Lessor herein, the terms and conditions set forth herein shall be enforceable against Lessee by the Railway and AAF as third party beneficiaries. Further, unless requested otherwise by Lessor and excluding payments hereunder, a copy of each notice, request (including requests for consent) and/or delivery made by the Lessee hereunder to Lessor shall be simultaneously delivered to the Railway at c/o General Counsel, Florida East Coast Railway, L.L.C., 7411 Fullerton Street, Suite 300, Jacksonville, Florida 32256.

2. Term

The term of this Lease shall be from **October 15, 2018** through **October 14, 2019** (the "Term"); provided, however, that Lessee shall have no right to possession of the Leased Premises until (a) the Security Deposit has been delivered to Lessor and, if the Security Deposit is in the form of a check, the Security Deposit shall not be deemed delivered to Lessor until that check has cleared the bank and funds have been credited to Lessor's account and (b) Lessee has provided Lessor with a certificate of insurance evidencing the insurance coverages Lessee is obligated to maintain pursuant to this Lease.

This Lease shall automatically renew after the expiration of the Term, for successive twelve (12) month renewal periods (the "Renewal Terms") unless terminated at least thirty (30) days before the expiration of the Term or Renewal Term, as the case may be, by furnishing written notice of termination to the other party. Unless Lessor indicates otherwise in writing, the covenants and conditions of this Lease in force during the Term, as the same may be modified from time to time, shall continue to be in effect during all Renewal Terms, except that the Base Rent (as hereinafter defined) for each Renewal Term shall be increased by five percent (5%) of the Base Rent for the term immediately preceding the Renewal Term or, upon 30 days notification to Lessee by Lessor prior to the termination of the Renewal Term, Lessor shall establish a new Base Rent in its sole discretion. Except as set forth in this paragraph 2, Lessee shall have no expectation of renewal and this Lease may be terminated in accordance with its terms regardless of the length of time Lessee has occupied the Leased Premises, or the construction by Lessee of any buildings, structures, works, paving, barricades or the placement of Lessee's personal property on the Leased Premises.

3. Rent

(a) Base Rent

During the Term of this Lease, the Lessee shall pay to Lessor an annual rent in advance on or before the beginning each lease term plus all sales or use taxes levied by any governmental body for the use or occupancy of the Leased Premises ("Sales and Use Tax"), as set forth below ("Base Rent"):

<u>Effective Date</u>	<u>Base Rent</u>
<b>October 15, 2018</b>	<b>\$19,000.00</b>

Base Rent and Additional Rent (as hereinafter defined) shall be paid to Lessor at FEC ROW LLC, P.O. Box 744305, Atlanta, Georgia 30374, or as otherwise indicated on the applicable invoices. The requirement to pay Base Rent, Additional Rent and other payments shall survive expiration or termination of this Lease until all Lessee's Property (as defined in paragraph 14 hereof) is removed from the Leased Premises in accordance with this Lease and the requirements of paragraph 14 of this Lease are met.

(b) Additional Charges

If Lessee's presence or activities on the Leased Premises causes Lessor to incur costs for cleaning, trash removal, inspections, or like expenses, Lessee agrees to pay such cost to Lessor on demand, the amount of such costs incurred by Lessor. Notwithstanding the foregoing, Lessee will pay on demand the greater of the actual inspection costs or \$350.00 for any inspection conducted by Lessor or its agents (including representatives of the Railway and AAF) on the Leased Premises the results of which show, in Lessor's sole determination, a violation of this Lease or any federal, state or municipal law or regulation. Lessee shall also pay on demand the greater of the actual inspection costs or \$350.00 for any follow-up inspections related to the violation.

(c) Late Charge

If any Base Rent or other payment due under this Lease is not received by Lessor within ten (10) days of the due date of such payment, Lessee shall pay, in addition to such payment a late charge equal to the greater of five percent (5%) of the payment which is past due or Two Hundred Fifty and No/100 Dollars (\$250.00). If any payment due from Lessee shall remain overdue for more than ten (10) days, interest shall accrue daily on the past due amount from the date such amount was due until paid or judgment is entered at a rate equivalent to the lesser of eighteen percent (18%) per annum or the highest rate permitted by law. Interest on the past due amount shall be in addition to and not in lieu of the five percent (5%) late charge or any other remedy available to Lessor hereunder, at law and/or in equity.

(d) Additional Rent

All charges payable by Lessee under the terms of this Lease other than Base Rent, including, without limitation, Sales and Use Tax, and charges, expenses, costs or payments due pursuant to Paragraphs 3(b), 3(c), 4(a), 4(b), 4(c) and 4(d) of this Lease are called "Additional Rent." Unless this Lease provides otherwise, all Additional Rent shall be paid with the next monthly installment of Base Rent and shall include all applicable sales or use taxes. The term "Rent" shall mean Base Rent and Additional Rent.

4. Utility Charges, Taxes, Document Stamps

(a) Utility Charges

All charges on the Leased Premises for all utilities, including but not limited to water, electricity, telephone, gas, heat, storm water, and sewers and for taxes on Lessee's improvements shall be paid by the Lessee within ten (10) days after date of invoice.

(b) Ad Valorem Taxes

Lessee agrees to pay, within thirty (30) days after presentation unto Lessee by Lessor, bills for all special assessments, ad valorem taxes and any other taxes of whatsoever kind or nature levied by the United States of America, State of Florida, any county, municipality or

special taxing district organized and existing under the laws of the State of Florida, upon any of the Leased Premises on a pro-rated basis. All taxes and special assessments, payable on an annual basis, are to be pro-rated by the parties hereto for the year during which this Lease is made, as well as the year in which the same may be terminated.

(c) Document Stamps

Lessee shall pay any necessary documentary stamp taxes required to be affixed to this Lease under the laws of the United States of America, the State of Florida, or both.

(d) Sales and Use Tax, Personal Property Tax

Lessee will pay all Sales and Use Taxes and all personal property taxes that may be levied or assessed against the personal property of the Lessee.

5. As Is, Maintenance

LESSOR MAKES NO WARRANTY, REPRESENTATION OR UNDERTAKING, EXPRESSED OR IMPLIED AS TO THE CONDITION OF THE LEASED PREMISES and Lessee, at its sole cost and expense, hereby agrees to put the Leased Premises in such condition for its proposed use and to maintain them in their entirety. The Leased Premises is leased as it currently exists in an AS IS condition and the Lessee, who has inspected the Leased Premises prior to entering into this Lease, accepts the Leased Premises AS-IS and shall henceforth be responsible for any and all repairs and maintenance to the land and any buildings, facilities and improvements located thereon. Lessee shall, at its sole cost and expense, obtain any required permits and consents and perform all work required for the preparation of the Leased Premises for occupancy by Lessee, in the absence of any special provision herein contained to the contrary, and Lessee does hereby accept the Leased Premises as now being in fit and leasable condition for all purposes of Lessee.

Lessee will keep the Leased Premises free and clear of any and all trash, brush and debris of any kind, so as to prevent the trash, brush and debris from becoming dangerous, inflammable or objectionable. Lessor shall have no duty to inspect or maintain any of the Leased Premises during the term of this Lease.

Lessee shall have no claim of any kind or description for damages to goods, wares, personal property or merchandise on the Leased Premises from any cause whatsoever, INCLUDING FIRE, STORM, CASUALTY OR ACT OF GOD, OR NEGLIGENCE OF LESSOR, THE RAILWAY, OR AAF UNLESS CAUSED BY THE WILLFUL OR INTENTIONAL ACTS OF LESSOR, THE RAILWAY, OR AAF.

6. Lessee's Compliance With Law

(a) Zoning and Use Regulation

Lessee will release Lessor from any loss, claim or damage which Lessee may sustain arising directly or indirectly by reason of either existing or future zoning or other

regulations promulgated by any governmental agency which may adversely affect use by Lessee of the Leased Premises. Lessee shall assume all responsibility for procuring or complying with any ordinance, resolution, order, permit, consent or other such regulation, promulgated by any governmental agency whatsoever, for building or otherwise, required for the use of the Leased Premises or for the construction of any facilities upon the Leased Premises. Lessee shall indemnify, defend and hold harmless Lessor, AAF and the Railway from any loss, claim or damage suffered by Lessor, AAF or the Railway for Lessee's failure to properly and completely perform this responsibility,

(b) Other Regulation

Lessee shall comply with all federal, state and municipal regulations as to health, safety, zoning, police, nuisance, fire, water, liquid, solid waste and hazardous waste, highways, sidewalks and other matters, and with the regulations of all persons or corporations supplying water, gas, heat, electricity, telephone, or steam on the premises, and shall indemnify Lessor, AAF and the Railway against all fines, penalties, expense, damages and costs for violation thereof. Lessee is solely responsible for obtaining any and all federal, state and local licenses, permits, or other authority for its use of the premises and shall indemnify and hold harmless Lessor, AAF and the Railway against all fines, penalties, expenses, damage and costs for violation of or failure to comply with any federal, state or local laws or regulations. The provisions of this Paragraph 6 shall survive the expiration or any termination of this Lease.

7. Hazardous Materials

Lessee will prevent the presence, use, generation, release, discharge, storage, disposal, or transportation of any Hazardous Materials (as hereinafter defined) on, under, in, above, to, or from the Leased Premises except that Hazardous Materials may be used in the Leased Premises as necessary for the customary maintenance of the Leased Premises provided that same are used, stored and disposed of in the ordinary course of business in strict compliance with applicable laws. For purposes of this provision, the term "Hazardous Materials" will mean and refer to any wastes, materials, or other substances of any kind or character that are or become regulated as hazardous or toxic waste or substances, or which require special handling or treatment, under any federal, state or local laws.

If Lessee's activities at the Leased Premises or Lessee's use of the Leased Premises (a) results in a release of Hazardous Materials that is not in compliance with applicable laws or permits issued thereunder; (b) gives rise to any claim or requires a response under common law or applicable laws or permits issued thereunder; (c) causes a significant public health effect; or (d) creates a nuisance, then Lessee shall, at its sole cost and expense: (i) immediately provide verbal notice thereof to Lessor (with a follow-up of written notice to Lessor in the manner required by this Lease), which notice shall identify the Hazardous Materials involved and the emergency procedures taken or to be taken; and (i) promptly take all action in response to such situation required by applicable laws, provided that Lessee shall first obtain Lessor's approval of the non-emergency remediation plan to be undertaken. The provisions of this Paragraph 7 shall survive the expiration or any termination of this Lease.

8. Inspection and Access by Railway and AAF

Lessor shall have the right, at reasonable times and upon reasonable prior notice to Lessee, to enter the Leased Premises for the purpose of examining and inspecting the condition of the Leased Premises and to evaluate Lessee's compliance with the terms and conditions of this Lease. The Lessee agrees and acknowledges that Lessor intends to consult with the Railway and AAF to confirm whether or not Lessee's use of the Leased Premises is in compliance with the terms of this Lease, and upon the written request of Lessor, Lessee shall work directly with the Railway and/or AAF to resolve any non-compliance issues identified by the Railway and/or AAF. In accordance with the foregoing, each of Lessor, AAF and the Railway shall have the right at all times to enter the Leased Premises without prior notice to Lessee and take action in the event of any emergency affecting the Leased Premises, including but not limited to leakage of Hazardous Materials or other materials from or onto the Leased Premises, the detection of odors that appear to be coming from the Leased Premises, suspected illegal activity on or use of the Leased Premises for like activities or events. Lessee hereby releases and holds Lessor, AAF and the Railway harmless from any action taken by Lessor, AAF and/or the Railway to access the Leased Premises under the conditions set forth herein and/or to control or respond to any emergency affecting the Leased Premises.

9. Signs

Lessee shall not place any signs on the Leased Premises except with the prior written consent of the Lessor, including consent as to location and design, which may be withheld in Lessor's sole discretion. Any and all such approved signs shall be installed and shall be maintained by Lessee, at its sole cost and expense and shall be in compliance with all applicable laws. Lessee shall be responsible to Lessor for the installation, use, or maintenance of said signs and any damage caused thereby. Any signs on the Leased Premises shall be considered part of Lessee's Property for purposes of Paragraph 14 hereof and Lessee shall remove said signs in accordance with same prior to termination or expiration of the Lease.

10. INDEMNIFICATION

A. Indemnification

Lessee hereby agrees to indemnify, defend and hold harmless Lessor, AAF and the Railway from and against any and all liability for any loss, injury or damage, including, without limitation, damage to the Leased Premises or to Lessee's property, consequential damage, all costs, expenses, court costs and reasonable attorneys' fees, imposed on Lessor, AAF and/or the Railway, as applicable, by any person whomsoever that occurs on or in (i) the Leased Premises, or (ii) any lands, buildings, structures, access areas or the like adjacent to the Leased Premises, as a result of or arising from or related in any way to the acts or failure to act of Lessee, its employees, agents or contractors, including any failure to comply with the terms and conditions of this Lease, or the presence of Lessee, its employees, agents or contractors, or the property of any of the same, on the Leased Premises or adjacent areas, and REGARDLESS OF THE CAUSE AND REGARDLESS OF WHETHER ATTRIBUTABLE TO THE FAULT, FAILURE OR

NEGLIGENCE OF LESSOR, AAF AND/OR THE RAILWAY. The commercial liability insurance that Lessee is required to carry pursuant this Lease shall include coverage of the foregoing contractual indemnity. The provisions of this paragraph 10.A. shall survive the expiration or any termination of this Lease.

B. Lessee's Insurance

Lessee will throughout the Term and any Renewal Terms (and any other period when Lessee is in possession of the Leased Premises or has failed to comply with the requirements of paragraph 14 of this Lease) carry and maintain, at its sole cost and expense, the following types of insurance, which shall provide coverage on an occurrence basis, with respect to the Leased Premises, in the amounts specified with deductible amounts reasonably satisfactory to Lessor:

(1) Commercial General Liability Insurance. Commercial general liability ("CGL") insurance covering claims arising from personal injury, death and property damage with minimum limits of \$1,000,000.00 per occurrence and \$2,000,000.00 general aggregate and insuring against legal liability of the insured with respect to the Leased Premises or arising out of the maintenance, use or occupancy thereof. The CGL policy shall include contractual liability coverage of all such liabilities arising pursuant to this Lease.

(2) Comprehensive Automobile Liability Insurance. Comprehensive automobile liability insurance with a limit of not less than \$1,000,000.00 per occurrence for bodily injury, \$500,000.00 per person and \$100,000.00 property damage or a combined single limit of \$1,000,000 for both owned and non-owned vehicles.

(3) Excess Liability Insurance. Lessee shall also carry and maintain umbrella liability insurance with a limit of not less than \$4,000,000.00 per occurrence.

(4) Property Insurance. None.

(5) Workers' Compensation and Employers' Liability Insurance. Workers' Compensation Insurance covering all employees of Lessee, as required by the laws of the State of Florida and Employers' Liability coverage subject to a limit of no less than \$500,000 each employee, \$500,000 each accident, and \$1,000,000 policy limit.

(6) Policy Form. All policies referred to above shall: (i) be taken out with insurers licensed to do business in Florida having an A.M Best's rating of A-, Class IX, or otherwise approved in advance by Lessor; (ii) name Lessor, AAF and the Railway as additional insured; (iii) be non-contributing with, and shall apply only as primary and not as excess to any other insurance available to Lessor, AAF and the Railway or any mortgagee; (iv) have all railroad exclusions removed, and (v) contain an obligation of the insurers to notify Lessor, AAF and the Railway by certified mail not less than thirty (30) days prior to any material change, cancellation, or termination of any such policy. Certificates of insurance on Lessor's standard form or, if required by a mortgagee, copies of such insurance policies certified by an authorized officer of Lessee's insurer as being complete and current, shall be delivered to Lessor prior to Lessee's use of the Leased Premises hereunder and promptly upon request. If Lessee fails to deliver the required

certificates or certified policies, fails to take out or to keep in force any insurance required hereunder, or should any such insurance not be approved by Lessor or any mortgagee, then Lessor has the right, without assuming any obligation in connection therewith, to procure such insurance at the sole cost of the Lessee, and all outlays by Lessor shall be paid by the Lessee to Lessor without prejudice to any other rights or remedies of Lessor under this Lease. Lessee shall not keep or use in the Leased Premises any article that may be prohibited by any fire, casualty or other insurance policy in force from time to time covering the Leased Premises.

Lessee agrees and acknowledges that Lessor intends to consult with the Railway and AAF to confirm whether or not the insurance maintained by Lessee is in compliance with the terms of this Lease, and upon the written request of Lessor, Lessee shall work directly with the Railway and/or AAF to resolve any non-compliance issues identified by the Railway and/or AAF.

### C. Claims Handling

If a claim or action is made or brought against either party and for which the other party may be responsible hereunder in whole or in part, such other party shall be notified and permitted to participate in the handling or defense of such matter.

#### 11. Purpose of Lease

The premises shall be used only for the purpose of **Vehicular Parking**.

#### 12. No Interference with Railway and/or AAF Operations, Reservation of Rights

The Lessee's use and/or maintenance of the Leased Premises shall not in any way, or at any time, interfere with or obstruct the use of the Leased Premises or of the ROW by Lessor, AAF or the Railway or their respective agents, employees, patrons or assigns. The Lessee will not discharge surface water upon any portion of the ROW or any of the Railway's or AAF's property and/or railroad tracks and Lessee hereby expressly releases Lessor, AAF and the Railway from liability for any surface water flowing across the ROW. Lessee further agrees not to alter the Leased Premises so as to cause water to drain or flow onto the ROW or any of the Railway's or AAF's property nor so as to cause an undermining of the ROW or any adjacent property.

Lessee shall notify Lessor before performing any work on the Leased Premises. Notification shall be made to FEC ROW LLC, Attn: Manager, 7411 Fullerton Street, Suite 301, Jacksonville, Florida 32256. Lessee agrees and acknowledges that Lessor intends to consult with the Railway and AAF to confirm whether or not the Railway and/or AAF objects to any such work, and upon the written request of Lessor, Lessee shall work directly with the Railway and/or AAF to resolve any issues identified by the Railway and/or AAF with respect to such work.

If Railway or AAF requires a railway watchman or flagman be present while work is performed on the Leased Premises, the Railway or AAF will provide such watchman or flagman at Lessee's sole cost and expense.

Lessee shall not have or assert any claim or demand whatsoever for compensation or damages to the Leased Premises or to any improvements now or hereafter erected or property



located thereon which may be caused by the operation, maintenance, repair, relocation, or removal of the Railway's or AAF's railroad, their respective operations or which may be caused by vibration resulting from the operation of said railroad and Lessee releases Lessor, AAF and the Railway from any liability for any such damage.

Unless specifically set forth in this Lease, no right of way, expressed or implied, over the ROW is granted by this Lease.

It is understood between the parties hereto that Lessor reserves unto itself, its successors, permittees, licensees, or other persons, the right to construct and maintain other facilities, including but not limited to pipelines and/or communication cables, over, under and across the Leased Premises, and further, that Lessee shall take no measures to interfere with the construction or maintenance of said facilities and shall at all times allow ingress and egress to the Leased Premises by Lessor, AAF, the Railway and their respective successors, permittees, licensees or other persons provided that such shall not unreasonably interfere with Lessee's use of the Leased Premises in accordance with the terms hereof.

Lessee acknowledges that the Leased Premises may contain fiber optic communication systems, railway signal and train control cables and other utilities. Prior to any digging or subgrade work on the leased premises, Lessee must notify Lessor and call SUNSHINE for utility locations at 1-800-432-4770 and the Railway Signal Department at 1-800-342-1131 ext. 2377 for signal and train control cable locations. Proper notification is required for cable locations and field inspections to protect against damages.

13. Termination

Either party may, in its discretion, for any reason whatsoever, terminate this Lease at any time by the giving of 30 days prior written notice to the other party. Notwithstanding the foregoing, until the requirements of Paragraph 14 of this Lease are met by Lessee, such termination shall not in any way release Lessee from any of its obligations under this Lease, including but not limited to Lessee's obligations to pay Rent and other charges and fees and maintain insurance, each in accordance with the terms and conditions of this Lease.

14. Condition of Premises on Termination

The Lessee shall not mutilate, damage, misuse, or alter, the Leased Premises, but shall keep the same in good condition and repair. Any and all repairs, alterations or improvements made on the Leased Premises by Lessor at Lessee's request shall be at Lessee's sole cost and expense unless otherwise expressly agreed in writing.

Except as otherwise set forth herein, upon the termination or expiration of the Lease, Lessee shall surrender the Leased Premises to Lessor in condition acceptable to Lessor. Prior to termination or expiration of this Lease, Lessee shall properly remove all trash, debris, and other waste materials from the Leased Premises. If Lessee is not then in default and if the personal property of Lessee on the Leased Premises (the "Lessee's Property") is not then subject to any other rights, liens or interests of Lessor or if removal is not prohibited by law, Lessee shall also

properly remove Lessee's Property prior to termination or expiration of this Lease. If Lessee is in default or Lessee's Property is subject to any other rights, liens or interest of Lessor, then Lessee shall remove only such of Lessee's Property as Lessor shall direct. In addition, if Lessor so directs Lessee shall remove any other property on the Leased Premises, whether such property was placed on the Leased Premises by Railway, AAF, Lessor or others and whether it was placed on the Leased Premises prior to or during the Lease term (the "Additional Property"). In no event, however, shall Lessee remove any of the following materials or equipment unless Lessor directs otherwise in writing: any power wiring or power panels; lighting or lighting fixtures; millwork and cabinetry; wall coverings; drapes, blinds or other window coverings; carpets or other floor coverings; heaters, air conditioners, or any other heating or air conditioning equipment; fencing or security gates; plumbing fixtures, water fountains; or other similar building operating equipment and decorations, structures, foundations, concrete, asphalt or fencing (collectively, "Fixtures"). Should Lessor direct Lessee to remove any or all of the Fixtures, whether such Fixtures were placed on the Leased Premises by Lessee, Railway, AAF, Lessor or others prior to or during the Lease term, Lessee shall properly remove such Fixtures prior to termination or expiration of this Lease. The removal of Lessee's Property, the Additional Property and the Fixtures shall be at Lessee's sole cost and expense. Lessee shall repair, at Lessee's expense, any damage to the Leased Premises caused by the removal of any of Lessee's Property, the Additional Property or the Fixtures. If Lessee fails to remove Lessee's Property, the Additional Property or the Fixtures, in addition to the payment requirements set forth in paragraph 3 hereof, at Lessor's option all or part of Lessee's Property, the Additional Property and/or the Fixtures will become the property of Lessor and/or at Lessor's option, Railway or AAF may cause removal of all or part of Lessee's Property, the Additional Property and/or the Fixtures from the Leased Premises and/or storage thereof. The reasonable cost or expense of removal and/or storage of any of Lessee's Property, Additional Property or Fixtures shall be paid by Lessee to Lessor forthwith upon demand for same.

#### 15. Lessee Improvements

Lessee will not erect or cause to be erected any building or other structure, and will not make or allow to be made any alterations in or to the Leased Premises, including, without limitation, the planting or installation of any trees, plants, shrubbery or other vegetation (collectively, the "Alterations") without first obtaining the written consent of Lessor, which consent may be granted or withheld in Lessor's sole discretion. Lessor may require Lessee to provide demolition and/or lien and completion bonds in form and amount satisfactory to Lessor. All Alterations shall be accomplished in a good and workmanlike manner at Lessee's sole expense, in conformity with all applicable laws by a licensed and bonded contractor approved in advance by Lessor, such approval of contractor not to be unreasonably withheld. All contractors working on Alterations shall carry workers' compensation insurance, commercial general liability insurance, automobile insurance and excess liability insurance in amounts reasonably acceptable to Lessor and shall deliver a certificate of insurance evidencing such coverages to Lessor prior to commencing work on the Leased Premises. Upon completion of any such work, Lessee shall provide Lessor with "as built" plans, copies of all construction contracts and/or landscape contracts, and proof of payment for all labor and materials. All legal and consulting' fees and expenses incurred by Lessor in connection with Lessee's improvement plans and/or landscape plans, pursuant to this paragraph, together with any legal and consulting' fees and disbursements incurred in the review of any improvement plans, landscape plans, "as-built"

plans, construction contracts, landscape contracts or any other documentation, will be paid by Lessee within thirty (30) days of invoice for payment thereof, as Additional Rent. Any Alterations to the Leased Premises made by or installed by either party hereto will remain upon and be surrendered with the Leased Premises and become the property of Lessor upon the expiration or earlier termination of this Lease without credit to Lessee; provided, however, Lessor, at its option, may require Lessee to remove or repair any Alterations to restore the Leased Premises to the condition existing at the time Lessee took possession, with all costs of removal, repair, restoration, or alterations, including, without limitation, removal of any trees, plants, shrubbery and vegetation to be borne by Lessee. This clause will not apply to moveable equipment, furniture moveable trade fixtures, or other personal property owned by Lessee, which shall be considered Lessee's Property for purposes of paragraph 14 and shall be removed by Lessee in accordance with Paragraph 14. Lessee will have no authority or power, express or implied, to create or cause any construction lien or mechanics' or materialmen's lien or claim of any kind against the Leased Premises or any portion thereof or any portion of the ROW. Lessee will promptly cause any such liens or claims to be released by payment, bonding or otherwise, but in any event not more than thirty (30) days after request by Lessor, and will indemnify Lessor, AAF and the Railway against losses arising out of any such claim including, without limitation, legal fees and court costs. NOTICE IS HEREBY GIVEN THAT LESSOR, AAF AND THE RAILWAY WILL NOT BE LIABLE FOR ANY LABOR, SERVICES OR MATERIAL FURNISHED OR TO BE FURNISHED TO LESSEE, OR TO ANYONE HOLDING THE PREMISES THROUGH OR UNDER LESSEE, AND THAT NO MECHANICS' OR OTHER LIENS FOR ANY SUCH LABOR, SERVICES OR MATERIALS WILL ATTACH TO OR AFFECT THE INTEREST OF LESSOR AAF AND/OR THE RAILWAY IN THE PREMISES. LESSEE WILL DISCLOSE THE FOREGOING PROVISIONS TO ANY CONTRACTOR ENGAGED BY LESSEE PROVIDING LABOR, SERVICES OR MATERIAL TO THE LEASED PREMISES.

Lessee agrees and acknowledges that Lessor intends to consult with the Railway and AAF to confirm whether or not the Railway and/or AAF objects to any proposed Alterations, and upon the written request of Lessor, Lessee shall work directly with the Railway and/or AAF to resolve any issues identified by the Railway and/or AAF with respect to any such proposed Alterations.

16. Assignment

Lessee will not assign this Lease, in whole or in part, or sublease the Leased Premises, in whole or in part, without the prior written consent of Lessor, which consent may be granted or withheld in Lessor's sole discretion, and in no event will Lessee be released from any obligation or liability under this Lease following any such assignment or sublease. Along with Lessee's request to Lessor to assign this Lease or sublease the Leased Premises, Lessee shall provide, along with any other information and documentation that Lessor may request, a copy of the proposed assignment or sublease. No assignee or sub-lessee of the Leased Premises or any portion thereof, may further assign or sublease its interest in the Leased Premises or any portion thereof. All legal fees and expenses incurred by Lessor in connection with the review by Lessor of Lessee's requested assignment or sublease pursuant to this paragraph, together with any legal fees and disbursements incurred in the preparation and/or review of any documentation, will be paid by Lessee within thirty (30) days of invoice for payment thereof, as Additional Rent, but in

no event, prior to execution by Lessor of the Assignment. If the rent due and payable by any assignee or sub-lessee under any permitted assignment or sublease exceeds the Base Rent payable under this Lease for such space, Lessee will pay to Lessor all such excess rent and other excess consideration within ten (10) days following receipt thereof by Lessee.

17. Fencing

Before use of the property by Lessee, Lessee shall erect a barricade or fence of a type specified and installed in accordance with specifications provided by Lessor, along all boundaries of the Leased Premises, and thereafter shall maintain, repair and/or replace said barricade or fence at Lessee's sole cost and expense. When the barricade or fence is in place, and to expedite the inspection of it, Lessee shall notify Lessor pursuant to the notice provisions hereof. In the event Lessee does not notify Lessor that the barricade or fence is in place within thirty (30) days after execution of this Lease, Lessor, in its sole discretion, may terminate this Lease upon notice to Lessee and Lessee shall immediately vacate and surrender the Leased Premises in accordance with the requirements of this Lease.

18. Care Around Tracks

Lessee shall adopt, monitor and enforce reasonable rules and regulations for the conduct of Lessee's employees, patrons, agents and contractors (including employees thereof) or any other persons using the Leased Premises to protect them from injury while on, about or near any track on or adjoining the Leased Premises and/or the ROW.

19. Destruction or Damage to Leased Premises

If the Leased Premises (which shall not include Lessee's Property or property of a third party) are at any time materially damaged or destroyed by fire or other Acts of God preventing all use of the Leased Premises by Lessee for the purposes set forth in this Lease and the extent of such damage or destruction does not in any way result or arise from the acts or failure to act of Lessee, its employees, agents, invitees, visitors, customers, assignees, sub-lessees, contractors or subcontractors, Lessor shall have sixty (60) days from such damage or destruction to determine in its sole discretion and inform Lessee whether Lessor will restore the Leased Premises (excluding any Alterations and/or other improvements constructed by Lessee) to substantially the condition that existed immediately prior to the occurrence of the casualty. If Lessor determines not to restore the Leased Premises, it will notify Lessee and Lessee's sole remedy shall be to terminate the Lease upon 30 days prior written notice to Lessor. If Lessor elects to restore the Leased Premises (excluding any Alterations and/or other improvements constructed by Lessee), it will give Lessee its reasonable estimation of the time it will take to restore the Leased Premises. If in Lessor's reasonable estimation, the Leased Premises cannot be restored within two hundred forty (240) days of such damage or destruction, then either party may terminate this Lease by written notice to the other party. Subsequent to Lessor's determination to restore the Leased Premises as set forth herein, and until such restoration of the Leased Premises is complete, there shall be an abatement of the Base Rent. If all or part of the Leased Premises may be used by Lessee for the purposes set forth in this Lease during the period of such restoration, there will be no abatement of Base Rent. In addition, if the damage or destruction was caused by or increased

in any way by the acts or failure to act of Lessee, its employees, agents, invitees, visitors, customers, assignees, sub-lessees, contractors or subcontractors, then Lessee shall be solely responsible for promptly returning the Leased Premises to their former condition and there will be no abatement of Base Rent.

20. Default

(a) DEFAULT. The following will be events of default by Lessee under this Lease:

(1) Failure to pay when due any installment of Rent or any other payment required pursuant to this Lease;

(2) Failure to deliver, maintain and/or timely restore the Security Deposit required under this Lease;

(3) Failure to obtain and maintain the insurance required under this Lease;

(4) The filing of a petition for bankruptcy or insolvency under any applicable federal or state bankruptcy or insolvency law; an adjudication of bankruptcy or insolvency or an admission by Lessee that it cannot meet its financial obligations as they become due, or the appointment of a receiver or trustee for all or substantially all of the assets of Lessee; the foregoing shall also apply to any guarantor of this Lease (a "Guarantor"), if any;

(5) A transfer in fraud of creditors or an assignment for the benefit of creditors, by Lessee or any Guarantor;

(6) Any act which results in a lien being filed against all or a portion of the Leased Premises or the ROW;

(7) The liquidation, termination or dissolution of Lessee or any Guarantor of this Lease, or, if Lessee or any Guarantor is a natural person, the death of Lessee or such Guarantor; and

(8) Failure to cure any breach or default of any provision of this Lease (excluding any provision dealing with payment of Rents or any other payments hereunder and/or any other provisions dealing with the matters contemplated by subsections (1)-(7) above) within 20 days after written notice thereof to Lessee.

(b) REMEDIES. In the event of any default hereunder by Lessee, then without prejudice to any other rights which it has pursuant to this Lease or at law or in equity, Lessor shall have the following rights and remedies, which are cumulative and not alternative:

(1) Lessor may terminate this Lease by notice to Lessee and retake possession of the Leased Premises for Lessor's account. Lessee shall then quit and surrender the Leased Premises to Lessor in accordance with the requirements of this Lease. Lessee's liability under all of the provisions of this Lease shall continue notwithstanding any expiration and surrender, or any

re-entry, repossession, or disposition hereunder, including to the extent legally permissible, payment of all Rent and other charges until the date this Lease would have expired had such termination not occurred and the surrender of the Leased Premises in accordance with the requirements of this Lease. If Lessor so elects, Rent may be accelerated and Lessee shall pay Lessor damages in the amount of any and all sums that would have been due for the remainder of the Initial Term and/or any Renewal Term.

(2) Lessor may enter the Leased Premises as agent of the Lessee to take possession of any property of the Lessee on the Leased Premises, to store such property at the expense and risk of Lessee or to sell or otherwise dispose of such property in such manner as Lessor may see fit without notice to Lessee. Lessor shall not be liable in any way in connection with its actions pursuant to this section, to the extent that its actions are in accordance with applicable law.

(3) Lessor may relet all or any part of the Leased Premises for all or any part of the unexpired portion of the term of this Lease or for any longer period, and may accept any Rent then attainable; grant any concessions of Rent, and agree, at Lessee's expense, to paint or make any special repairs, alterations, and decorations for any new lessee as it may deem advisable in its sole and absolute discretion. Lessor shall be under no obligation to relet or to attempt to relet the Leased Premises greater than that imposed by applicable law.

(4) Lessor may remedy or attempt to remedy any default of the Lessee under this Lease for the account of the Lessee and Lessor (and its agents and/or representatives) may enter upon the Leased Premises for such purposes. No notice of Lessor's intention to perform such covenants need be given. Lessor shall not be liable to Lessee for any loss or damage caused by acts of Lessor in remedying or attempting to remedy such default and Lessee shall pay to Lessor all expenses incurred by Lessor in connection with remedying or attempting to remedy such default. Any expenses incurred by Lessor shall accrue interest from the date of payment by Lessor until repaid by Lessee at the highest rate permitted by applicable law.

(c) COSTS.

Lessee shall pay to Lessor on demand all costs incurred by Lessor, including reasonable attorneys' fees and costs, (whether incurred in preparation for or at trial, on appeal, or in bankruptcy), incurred by Lessor in enforcing any of the obligations of Lessee under this Lease. In addition, upon any default by Lessee, Lessee shall also be liable to Lessor for the expenses incurred by Lessor in connection with re-entering the Leased Premises, reletting the Leased Premises and putting the Leased Premises into the condition necessary for such reletting (including attorneys' fees and disbursements, marshal's fees, and brokerage fees, in so doing), and any other expenses reasonably incurred by Lessor.

(d) WAIVER.

No delay or omission by Lessor in exercising a right or remedy shall exhaust or impair the same or constitute a waiver of, or acquiescence to, a default.

(e) DEFAULT BY LESSOR.

In the event of any default by Lessor of any material term of this Lease, Lessee will give Lessor written notice specifying such default with particularity, and Lessor shall have a period of thirty (30) days following the date of such notice in which to commence the appropriate cure of such default. If Lessor fails to commence and diligently pursue the appropriate cure of such default after such notice or complete same within a reasonable period of time, Lessee may terminate this Lease upon written notice to Lessor. Notwithstanding any provision of this Lease, Lessor shall not at any time have any personal liability under this Lease, and Lessee's sole remedy with respect thereto shall be termination of the Lease.

21. Hold Over

If Lessee remains in possession of the Premises after expiration of the Term without Lessor's written consent and without any express written agreement between the parties on an extension of the Term, Lessee shall be a tenant at sufferance as provided in § 83.04, Florida Statutes, and such tenancy shall be subject to the provisions thereof, except that Base Rent during the holdover period shall be one hundred fifty percent (150%) of the final payment of Base Rent in effect during the final month of the Term. Nothing in this paragraph shall be construed as the consent of Lessor to Lessee's possession of the Premises after the expiration of the Term. In addition to and not limiting any other rights or remedies which Lessor may have on account of Lessee holding over without written consent of Lessor, Lessee shall be liable for any and all direct and consequential damages incurred by Lessor on account of such unapproved holding over including claims by tenants entitled to future possession.

22. Condemnation

If all or a portion of the Leased Premises shall be taken by public or quasi-public authority under any power of eminent domain or condemnation, this Lease, at the option of Lessor, shall forthwith terminate and the Lessee shall have no claim or interest in or to any award of damages for such taking.

23. Quiet Enjoyment

If Lessee pays the Rent and all other charges and fully performs all of its obligations under this Lease, Lessee shall be entitled to peaceful and quiet enjoyment of the Leased Premises for the full term without interruption or interference by Lessor or any person claiming through Lessor.

24. No Waiver or Modification

None of the provisions hereof shall be waived or modified, except by mutual agreement, in writing, and no alleged verbal or written inducement prior to execution nor subsequent verbal waiver, or modification, shall be binding under any circumstances. This Lease

constitutes the entire understanding of the parties and neither the failure of Lessor to enforce each and every provision, nor any course of conduct by Lessor shall be considered as a waiver of these provisions.

25. Successors and Assigns

The provisions hereof shall be binding upon and inure to the benefit of the successor, executors, administrators and permitted assigns of the respective parties.

26. Special Notice Regarding Radon Gas

Lessee is hereby notified that radon gas is a naturally occurring radioactive gas that, when accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over a period of time. Levels of radon that exceed federal and state guidelines have been found in buildings in the State of Florida. Lessee is further notified that additional information regarding radon gas, and the testing for radon gas, may be obtained from the Public Health Units of the various counties.

27. Restrictions

Lessee agrees that no plants, shrubbery, trees or other vegetation that would obstruct the view of motor vehicles or train crews using a crossing at grade, or interfere with the operation of trains, will be placed on the Leased Premises. In addition to the above restriction, no plants, shrubbery, trees or other vegetation having a height of more than two (2) feet will be placed within two hundred and fifty (250) feet of any at grade street crossing, and if such vegetation exceeds two (2) feet in height, Lessor, AAF or the Railway may trim such vegetation to a two (2) foot height at Lessee's expense. Plants, shrubbery, trees or other vegetation shall be trimmed by Lessee so as to maintain a distance from the centerline of the nearest track of twenty-five (25) feet and if such vegetation is closer than twenty-five (25) feet from the centerline of the nearest track, Lessor, AAF or the Railway may trim or remove such vegetation so that no vegetation is within twenty-five (25) feet of the centerline of the nearest track at Lessee's expense. This restriction in no way limits the indemnification requirements set forth in this Lease. Also, no plants, shrubbery, trees or other vegetation of a hazardous or noxious nature that might produce injury to any person coming in contact with said plants, shrubbery, trees or other vegetation will be placed upon the Leased Premises, the ROW or any adjacent property by Lessee. The placement of any wells by Lessee on the Leased Property, the ROW or any adjacent property is strictly prohibited.

28. Notices

Any notice, request or communication (a "Notice") to be given or to be served upon any party hereunder, in connection with this Lease, must be in writing and must be given by certified or registered mail and shall be deemed to have been given and received when a certified or registered letter, containing such Notice, properly addressed, with postage prepaid, is deposited in the U.S. Mail; or, if given otherwise than by certified or registered mail, it shall be deemed to have been given when delivered to and received by the party to whom it is addressed. Such Notices shall be addressed to the parties herein at the following addresses:



TO LESSOR: Real Estate Manager  
7411 Fullerton Street, Suite 301  
Jacksonville, Florida 32256

WITH A COPY  
TO RAILWAY: General Counsel  
Florida East Coast Railway, L.L.C.  
7411 Fullerton Street, Suite 300  
Jacksonville, Florida 32256

TO LESSEE: Gino Tentori  
BH3 DJ Flagler, LLC  
21500 Biscayne Boulevard  
Aventura, Florida 33180

Any Notice hereunder shall also be made or given to the extent required by Section 1B hereof.

29. Governing Law

This Lease shall be governed by the laws of the State of Florida. In the event any suit, action or proceeding is brought by either party with respect to this Lease, such action, suit or proceeding shall be brought in any federal or state court located in Duval County, Florida.

30. Cancel and Supersede

As of the date of this Lease, this Lease supersedes that certain Lease Agreement by and between the parties hereto dated [N/A].

31. Illegality

If any provision of this Lease shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

32. Security Deposit

Upon the execution of this Lease by Lessee, and prior to the execution of this Lease by Lessor, Lessee shall remit to Lessor a security deposit in the amount of **\$4,000.00** in cash or certified check or cashier's check (the "Security Deposit"). The Security Deposit represents security for the faithful performance and observance by Lessee of each and every term of this Lease. Lessor may apply all or part of the Security Deposit to any unpaid Rent as set forth in paragraph 3 of this Lease or any other charges due from Lessee under this Lease, or to cure any other default of Lessee. The Security Deposit shall not constitute liquidated damages. If Lessor uses any part of the Security Deposit, Lessee shall restore the Security Deposit to its full amount



Signed, sealed and delivered

in the presence of:

*[Signature]*  
Witness as to Lessor

Witness as to Lessor

**FEC ROW LLC**

A Florida Limited Liability Company

By: *[Signature]* (SEAL)

Title: SVP

Date of Execution: 10/8/18

**BH3 DJ Flagler, LLC**

A Delaware Limited Liability Company

By: BH3 Management LLC

A Delaware Limited Liability Company

Its Manager

By: *[Signature]* (SEAL)

Title: President  
(Print Name) Greg Freeman

Date of Execution: 10-3-18

*[Signature]*  
Witness as to Lessee

(Print Name) Angel Garcia

*[Signature]*  
Witness to Lessee

(Print Name) Gino Terriori

## EXHIBIT A

### LEGAL DESCRIPTION OF LEASED PREMISES

A parcel of land lying within Section 3, Township 50 South, Range 42 East, Broward County, Florida said parcel being more particularly described as follows:

Begin at a point on Florida East Coast Railway's (hereafter "Railway") Western Right of Way Boundary at Milepost 340+810 feet+/-; thence proceed Southwesterly along the western boundary, staying perpendicular with the track centerline for a distance of 855 feet+/- to a point that is 36 feet+/- away from the Centerline of the Railway's southbound (western) Track; thence east for a distance of 11 feet to a point that is 25 feet from the said Track Centerline; thence northeasterly, staying perpendicular with the track and remaining 25 feet from the Track Centerline for a distance of 855 feet+/-; thence westerly for a distance of 11 feet+/- to the Point of Beginning. The described area containing 9,405SF more or less.



