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CLERK OF THE BOARD
OF COUNTY COMMISSIONERS
MIAMI-DADE COUNTY, FLORIDA

MEMORANDUM

Agenda Item No. 8(N)(1)

TO:	Honorable Chairman Jean Monestime and Members, Board of County Commissioners	**DATE:**	March 3, 2015
FROM:	R. A. Cuevas, Jr. County Attorney	**SUBJECT:**	Resolution approving a Third Amendment to the Dadeland North Joint Development Lease with Pellinore Dadeland, LP as it relates to Phase III; authorizing the County Mayor to execute same and exercise provisions contained therein; and directing the County Mayor to provide a copy of the lease amendment to the Property Appraiser Resolution No. R-224-15

The accompanying resolution was prepared by the Miami-Dade Transit Department and placed on the agenda at the request of Prime Sponsor Commissioner Xavier L. Suarez.

R. A. Cuevas, Jr.
County Attorney

RAC/cp

Memorandum

MIAMI-DADE COUNTY

Date: March 3, 2015

To: Honorable Chairman Jean Monestime
and Members, Board of County Commissioners

From: Carlos A. Gimenez
Mayor

Subject: Resolution Approving Third Amendment to the Dadeland North Joint Development Lease between Miami-Dade County and Pellinore Dadeland LP, as it relates to Phase III Extending the Current Lease by Twenty Years, Increasing the Participation Rent and Authorizing the County Mayor to Execute Same and Exercise all Provisions Contained Therein

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RECOMMENDATION

It is recommended that the Board of County Commissioners (Board) approve Third Amendment to the Dadeland North Joint Development Lease between Miami-Dade County (County) and Pellinore Dadeland LP (Pellinore), as it relates to Phase III extending the current lease by 20 years, increasing the participation rent and authorizing the County Mayor or designee to execute same and exercise all provisions contained therein.

SCOPE

The project is located within Commissioner Xavier L. Suarez's District 7; however, the impact of this lease is countywide.

FISCAL IMPACT/FUNDING SOURCE

There will be a positive fiscal impact to the County and to Miami-Dade Transit (MDT) as the project will be privately financed by the developer. Additionally, the County will realize an additional $11,936,740.00 in the form of participation rent.

TRACK RECORD/MONITOR

Miami-Dade County has entered into a lease agreement with Pellinore in the past. The terms of the attached amendment will be monitored by Froilan Baez, MDT, Chief of Right-of-Way, Utilities and Property Management.

BACKGROUND

In 1994, as a result of a Request for Proposals, the County awarded a 90 year ground lease to Dadeland Station LLC for a four-phase retail and residential development of County property at the Dadeland North Metrorail Station. Of the four (4) phases under the lease, three (3) phases consisting of commercial retail and market rate apartments were successfully delivered between 1996 and 2005. The lease was first amended in 2003 to permit residential condominiums for three (3) phases and again in 2004 to allow for rent reconciliation. The last phase pending development, Phase III, is the subject of this amendment.

In 2007, Dadeland Station LLC assigned its rights, title and interest in the Phase III real property to Towers of Dadeland II, LLC (Towers II). In 2014, Towers II assigned its rights, title and interest in the Phase III lease to Pellinore Dadeland, LP (Pellinore), a Delaware limited partnership, for $6.2 million and the County consented to the assignment. Pursuant to the original ground lease, the County has received half of its entitlement of 5 percent of the transfer price, or $310,000.00, and will receive the remaining half in April 2015. Under the assignment, in addition to an Estoppel Certificate and Release, the County will not release Towers II from its

obligations under the lease until: (a) Pellinore has submitted performance bond(s) as required under the lease and amendment and (b) Towers II has paid the entire 5 percent of the transfer fee to the County.

As it relates to the term, the 90 year term of the existing ground lease expires on December 31, 2084, 70 years hence. Because this expiration date applies to the Phase III lease, this amendment provides for the Phase III lease term to be extended automatically to a 90 year period, commencing on the date a Certificate of Occupancy is obtained by Pellinore on or before the fifth anniversary of the effective date of this amendment. Regarding rent, the annual Additional Rent for Phase III under the existing ground lease stipulates a rate of 4.75 percent of the gross income. This amendment increases the Phase III Additional Rent requirement to 5.75 percent for the first five (5) years and 5.35 percent for the remainder of the term, which represents a substantial increase in revenue to MDT in the form of participation rent. The present value benefit to MDT from this amendment is an extra $11,936,740.00. Although the County retains ownership of the land, it will receive impact fees ($2.5 million minimum estimate) and ad valorem taxes (estimated to exceed $1 million per year) on the privately-owned improvements to be constructed.

Pellinore is proposing to construct a 25 story, 265,960 square foot, 272 unit, luxury, multi-family, market-rate, residential rental apartment building on the 0.87 acre Phase III land. The construction of Phase III is slated to begin within the next five (5) years. Therefore, it is in the best interest of the County to approve this amendment.

The Metrorail was acquired and constructed, in part, with Federal funds, therefore concurrence from the Federal Transit Administration was required and has been received.

Alina T. Hudak
Deputy Mayor

MEMORANDUM

(Revised)

TO: Honorable Chairman Jean Monestime
and Members, Board of County Commissioners

DATE: March 3, 2015

FROM: R. A. Cuevas, Jr.
County Attorney

SUBJECT: Agenda Item No. 8(N)(1)

Please note any items checked.

_____ **"3-Day Rule" for committees applicable if raised**

_____ **6 weeks required between first reading and public hearing**

_____ **4 weeks notification to municipal officials required prior to public hearing**

_____ **Decreases revenues or increases expenditures without balancing budget**

_____ **Budget required**

_____ **Statement of fiscal impact required**

_____ **Ordinance creating a new board requires detailed County Mayor's report for public hearing**

_____ **No committee review**

_____ **Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous _____) to approve**

_____ **Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required**

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 8(N)(1)
3-3-15

RESOLUTION NO. R-224-15

RESOLUTION APPROVING A THIRD AMENDMENT TO THE DADELAND NORTH JOINT DEVELOPMENT LEASE WITH PELLINORE DADELAND, LP AS IT RELATES TO PHASE III; AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE SAME AND EXERCISE PROVISIONS CONTAINED THEREIN; AND DIRECTING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO PROVIDE A COPY OF THE LEASE AMENDMENT TO THE PROPERTY APPRAISER

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board approves the terms of the Third Amendment to the Dadeland North Joint Development Lease with Pellinore Dadeland, LP, as it relates to Phase III in substantially the form attached hereto and made a part hereof; authorizes the County Mayor or the County Mayor's designee to execute same for and on behalf of Miami-Dade County and exercise provisions contained therein; and directs the County Mayor or County Mayor's designee to provide to the Property Appraiser's Office an executed copy of the lease amendment within thirty (30) days of its execution.

The foregoing resolution was offered by Commissioner **Rebeca Sosa**, who moved its adoption. The motion was seconded by Commissioner **Sally A. Heyman** and upon being put to a vote, the vote was as follows:

Jean Monestime, Chairman			**aye**
Esteban L. Bovo, Jr., Vice Chairman			**absent**
Bruno A. Barreiro	**absent**	Daniella Levine Cava	**aye**
Jose "Pepe" Diaz	**aye**	Audrey M. Edmonson	**aye**
Sally A. Heyman	**aye**	Barbara J. Jordan	**absent**
Dennis C. Moss	**aye**	Rebeca Sosa	**aye**
Sen. Javier D. Souto	**aye**	Xavier L. Suarez	**aye**
Juan C. Zapata	**absent**		

The Chairperson thereupon declared the resolution duly passed and adopted this 3rd day of March, 2015. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this Resolution and the filing of this approval with the Clerk of the Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: **Christopher Agrippa**
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

Bruce Libhaber

THIRD AMENDMENT TO THE DADELAND
NORTH JOINT DEVELOPMENT LEASE

THIS THIRD AMENDMENT is made and entered into as of the ___ day of _____, 2014, by and among MIAMI-DADE COUNTY, a political subdivision of the State of Florida, having an office and place of business at 701 NW Court, 17th Floor, Miami, Florida 33136, Attn: Director Miami Dade Transit ("the Landlord"), and PELLINORE DADELAND, LP, a Delaware Limited Partnership, having an office and place of business at 1400 NW 107th Avenue, 5th Floor, Miami FL 33172 ("Tenant").

RECITALS

A. On April 19, 1994, Landlord and GREEN DADELAND STATION, LTD. ("GDLS") entered into a Dadeland North Joint Development Lease agreement, which was recorded in Official Records Book 16454 at Page 2465 of the Public Records of Miami-Dade County, Florida (the "Original Lease").

B. GDLS assigned all of its right, title, and interest in the Original Lease as it relates to Phase I, as defined in the Original Lease, to Dadeland Station Associates, Ltd., a Florida limited partnership ("Dadeland Station"). The Assignment was executed on April 19, 1994, and was recorded in Official Records Book 16454, at Page 2477, of the Public Records of Miami-Dade County, Florida, creating a separate leasehold estate in Phase I in favor of Dadeland Station (the "Phase I Lease").

C. GDLS assigned all of its right, title, and interest in the Original Lease with respect to Phase B, as defined in the Original Lease, to Dadeland Vista Ltd., a Florida limited partnership ("Dadeland Vista"). The Assignment was executed on December 4, 1997, and recorded on January 23, 1998, in Official Records Book 17951 at Page 4591 of the Public Records of Miami-Dade County, Florida, and re-recorded March 9, 1998 in Official Records Book 18009, at Page 341, of the Public Records of Miami-Dade County, Florida, creating a separate leasehold estate in Phase B in favor of Dadeland Vista (the "Phase B Lease").

D. GDLS assigned all of its right, title, and interest in Phase A, as defined in the Original Lease, to Dadeland Centre, Ltd., a Florida limited partnership ("Dadeland Centre") by Assignment dated November 30, 1999 and recorded December 15, 1999, in Official Records Book 18905, at Page 3105, of the Public Records of Miami-Dade County, Florida, creating a separate leasehold estate in Phase A in favor of Dadeland Centre ("Phase A Lease").

E. Landlord and Dadeland Centre entered into a certain Termination of Lease dated December 16, 1999, recorded January 21, 2000, in Official Records Book 18955, at Page 173, of the Public Records of Miami-Dade County, Florida, terminating the Phase A Lease.

F. Landlord, GDLS, and Dadeland Vista entered into an amendment to the Original Lease dated as of March 24, 2003, recorded August 25, 2003 in Official Records Book 21575, at Page 824 of the Public Records of Miami-Dade County, Florida (the "First Amendment").

G. GDLS assigned all of its right, title and interest in Phase II, as defined in the Original Lease, as amended, to Towers of Dadeland I, LLC ("Towers I") by virtue of the Assignment dated as of December 1st, 2003, recorded January 2, 2004, in Official Records Book 21946 at Page 4604 of the Public Records of Miami-Dade County, Florida, creating a separate leasehold estate in Phase II in favor of Towers I (the "Phase II Lease").

H. Landlord, GDLS, and Towers I, LLC entered into a second amendment to the Original Lease dated as of May 3, 2004, recorded on March, 5, 2004, in the Official Records Book 22270, at Page 2233 (the "Second Amendment").

I. GDLS assigned all of its right, title, and interest in Phase III, as defined in the Original Lease, as amended, to Towers of Dadeland II, LLC ("Towers II") by virtue of the Assignment dated as of June 1, 2007, recorded July 12, 2007, in Official Records Book 25773 at Page 3325 of the Public Records of Miami-Dade County, Florida, creating a separate leasehold estate in Phase III in favor of Towers II (the "Phase III Lease").

J. Towers II assigned all of its right, title, and interest in Phase III to Pellinore Dadeland, LP (Phase III Tenant) by virtue of the Assignment dated as of April 15, 2014, recorded April 18, 2014, in Official Records Book 29116 at Page 2771 of the Public Records of Miami-Dade County, Florida.

K. The original term of the Original Lease was ninety (90) years and was set to expire on December 31, 2084.

L. Phase III Tenant and Landlord desire to modify and amend certain terms and provisions of the Original Lease as it relates to Phase III, to extend the term of the lease, to modify the rent payment structure set forth in Section 3.03, titled "Additional Rent," and to provide for Optional Monthly Extension Payments as described in Section 6 of this Third Amendment.

M. Phase III Tenant and Landlord agree that extending the term of the lease and modifying the rent payment structure for Phase III as outlined in this Amendment will allow Phase III Tenant to increase its capital commitment to the development of the land, thereby delivering a superior product, increasing transit ridership and generating additional impact fees, *ad valorem* revenue, and percentage rent for Landlord.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties to this Third Amendment hereby agree as follows:

1. Recitals. The Recitals to this Third Amendment are true and correct and are hereby incorporated by reference and made a part hereof.

2. Applicability of Amendment. This Third Amendment shall apply only to Phase III of the Dadeland North Joint Development Lease, as previously amended. Except as specifically modified and amended herein, all of the terms, provisions, requirements, and specifications contained in the Original Lease, as previously amended, shall remain in full force and effect.

3. Defined Terms.

(a) Any defined terms utilized in this Third Amendment but not defined herein shall have the meanings ascribed to said terms in the Original Lease.

(b) "Phase III Lease" means the separate leasehold estate created by the assignment of Phase III, as defined in the Original Lease, as amended, by GDLS to Towers II dated as of June 1, 2007, recorded on July 12, 2007, in Official Records Book 25773 at Page 3325 of the Public Records of Miami-Dade County, Florida; and which was later assigned by Towers II to Tenant on April 15, 2014, recorded on April 18, 2014, in Official Records Book 29116 at Page 2771 of the Public Records of Miami-Dade County, Florida.

(c) "Gross Income" shall mean the definition of that term as contained in Section 3.07 of the Original Lease and as modified in Section 7 of this Amendment.

(d) "Effective Date" shall mean the effective date of this Amendment, which shall be the earlier of: (i) ten (10) days after the date of adoption unless vetoed by the County Mayor, and if vetoed, only upon override by this Board; or (ii) approval by the County Mayor of the Board resolution and the filing of the approval with the Clerk of the Board."

(e) "Commencement of Extension Date" shall mean the date of receipt by Phase III Tenant of a Certificate of Occupancy for the building within Phase III in substantial accordance with the Project Description included in Exhibit A attached and incorporated hereto (the "Building").

(f) "Lease Year" shall mean each separate and consecutive period of twelve (12) full calendar months beginning upon the date of commencement of extension term.

4. Effect of Amendment. This Amendment shall be deemed effective as of the Effective Date. If, however, Phase III Tenant (i) fails to obtain a Certificate of Occupancy on or before the fifth (5th) anniversary of the Effective Date and (ii) ceases or fails to make Optional Monthly Extension Payments in accordance with Section 6 of this Amendment prior to receipt of a Certificate of Occupancy for the Building, this Amendment shall become null and void and be of no further force and effect, and the rights and obligations of the Parties shall be governed by the terms set forth in the Original Lease, as previously amended.

5. Lease Extension Terms. The term of the Phase III lease shall remain as defined in the Original Lease, ending December 31, 2084. Notwithstanding the foregoing, if Phase III Tenant obtains a Certificate of Occupancy for the Building within Phase III on or before the fifth (5th) anniversary of the Effective Date, the lease term shall be extended automatically to a period of ninety (90) years beginning on the Commencement of Extension Date. If Phase III Tenant fails to obtain a Certificate of Occupancy on or before the fifth (5th) anniversary of the Effective Date, Phase III Tenant may elect, at its sole discretion, to make Optional Monthly Extension Payments in accordance with Section 6 of this Amendment. In the event that Phase III Tenant elects to make Optional Monthly Extension Payments and obtains a Certificate of Occupancy after the fifth (5th)

anniversary of the Effective Date, the lease term shall be extended automatically to a period of ninety (90) years beginning on the fifth (5th) anniversary of the Effective Date. If, however, Phase III Tenant ceases or fails to make Optional Monthly Extension Payments prior to obtaining the Certificate of Occupancy, this Third Amendment shall terminate in accordance with Section 4 of this Amendment.

In no event shall the Lease be extended beyond the date of December 31, 2109, without prior Commission approval granted in accordance with applicable state law.

No further action from Miami-Dade County or the Miami-Dade Board of County Commissioners shall be necessary to effectuate a lease extension under this section.

Example:
If the Miami-Dade Board of County Commissioners approves this Amendment on December 16, 2014, and a Certificate of Occupancy is obtained on December 16, 2017, the term of the Phase III Lease shall be extended to a period of ninety (90) years beginning on the Commencement of Extension Date of December 16, 2017, with a new expiration date of December 16, 2107.

Example:
If the Miami-Dade Board of County Commissioners approves this Amendment on December 16, 2014, and Phase III Tenant has not obtained a Certificate of Occupancy on or before December 26, 2019 – the fifth (5th) anniversary of the Effective Date of this Amendment – Phase III Tenant may elect, at its sole discretion, to make Optional Monthly Extension Payments in accordance with Section 6 of this Amendment. If Phase III Tenant makes Optional Monthly Extension Payments in accordance with Section 6 of this Amendment and obtains a Certificate of Occupancy on December 16, 2020, the term of the Phase III Lease shall be extended automatically to a period of ninety (90) years beginning on the fifth (5th) anniversary of the Effective Date, December 26, 2019, with a new expiration date of December 26, 2109.

6. Optional Monthly Extension Payments. If Phase III Tenant fails to obtain a Certificate of Occupancy on or before the fifth (5th) anniversary of the Effective Date, Phase III Tenant may elect, at its sole discretion, to make Optional Monthly Extension Payments in the amount of $20,000 per month in order to preserve the rights and obligations set forth in this Third Amendment. Phase III Tenant shall deliver the first Optional Monthly Extension Payment to Landlord no later than 5:00 PM on the fifth (5th) anniversary of the Effective Date of this Amendment and on the first calendar day of each succeeding month. The amount of the first Optional Monthly Extension Payment will be calculated on a pro rata basis. In the event that any Optional Monthly Extension Payment remains overdue for a period of twenty (20) days, a late charge will be assessed in accordance with Section 3.08, Late Payments, of the Original Lease. In the event that any Optional Monthly Extension Payment remains overdue for a period longer than thirty (30) days, this Third Amendment shall become null and void and be of no further force and effect and the rights and obligations of the Parties shall be governed by the terms set forth in the Original Lease.

If Phase III Tenant makes Optional Monthly Extension Payments in accordance with this Section and obtains a Certificate of Occupancy after the fifth (5th) anniversary of the Effective Date, the lease term shall be extended automatically in accordance with Section 5 of this Amendment. Phase III Tenant shall not be required to make any additional Optional Monthly Extension Payments after obtaining a Certificate of Occupancy for the Building within Phase III.

If Phase III Tenant fails to obtain a Certificate of Occupancy on or before the fifth (5th) anniversary of the Effective Date and ceases or fails to make Optional Monthly Extension Payments in accordance with this Section, this Third Amendment shall terminate in accordance with Section 4 of this Amendment.

If Phase III Tenant fails to obtain a Certificate of Occupancy on or before the seventh (7th) anniversary of the Effective Date, this Third Amendment shall terminate in accordance with Section 4 of this Amendment unless the parties have previously agreed in writing to extend the Optional Monthly Extension Payment period beyond the seventh (7th) anniversary of the Effective Date.

7. Additional Rent. Landlord and Tenant agree to modify Section 3.03(c) of the Original Lease as follows:

   (a) Beginning on the Commencement of Extension Date and every year for a total of five (5) years, Tenant shall pay the Landlord five and three-quarters percent (5.75%) of Gross Income.

   (b) Beginning on the fifth (5th) anniversary of the Commencement of Extension Date and every year thereafter until the expiration of the extension of the lease term, Tenant will pay Landlord five and thirty-five hundredths percent (5.35%) of Gross Income.

8. Gross Income. Gross Income shall be calculated in accordance with Section 3.07, Gross Income, of the Original Lease, except that Gross Income shall specifically include all monies paid to reimburse Phase III Tenant for actual or anticipated costs related to marketing and advertising the Phase III Project. In addition, Gross Income shall include all monies paid to reimburse Phase III Tenant for actual or anticipated costs exceeding a cumulative cap of seventeen and three-tenths percent (17.3%) of all monies received by Phase III Tenant from tenants of the Phase III Project per Calendar Lease Year in the following six (6) categories:

   (a) Administration;
   (b) Turnover;
   (c) Payroll;
   (d) Management;
   (e) Contract services; and
   (f) Maintenance and repairs.

9. Independent Review of Financial Statements. Section 3.04 of the Original Lease, titled "Payment of Additional Rent", shall be amended to require Phase III Tenant to contract with an independent accounting firm to conduct an annual review of all deductions, exclusions and adjustments made

In the calculation of Gross Income as described in Section 8 above and the total of the expenses included in each category. Individual expenses may not be included in more than one of the above categories or any individual expense, or portion of any individual expense, included in an adjustment, exclusion or deduction from Gross Income more than once.

IN WITNESS WHEREOF, Landlord and Phase III Tenant have caused this Lease Amendment to be executed by their duly authorized representatives on the day and year hereinabove written.

LANDLORD

MIAMI-DADE COUNTY, a political subdivision of the State of Florida

Attest:

HARVEY RUVIN CLERK

BY ITS BOARD OF COUNTY COMMISSIONERS

By:_____
Deputy Clerk

By:_____

Approved as to form and legal sufficiency

by:_____
County Attorney's Office

Signed in the Presence of:

Print Name TIM SANDERS

Print Name STEPHANIE HOGUE

TENANT, PELLINORE DADELAND, LP, a Delaware Limited Liability Partnership

By:_____
[Name] Arnaud Karsenti
[Title] Manager

STATE OF FLORIDA
COUNTY OF MIAMI-DADE

The foregoing instrument was acknowledged before me this 3 day of DECEMBER, by ARNAUD KARSENTI as MANAGER for PELLINORE DADELAND, LP, a Delaware Limited Liability Partnership. He is personally known to me or has produced _____ as identification and who did/did not take an oath.

NOTARY PUBLIC STATE OF FLORIDA
FLORA B. FOX
MY COMMISSION # FF 166369
EXPIRES: April 22, 2017
Bonded Thru Budget Notary Services

Notary Public, State of Florida
FLORA FOX

My Commission Expires: 4/22/17

Exhibit "A"

Project Description

The project developed by Phase III Tenant on the demised premises will be a multi-family residential structure consisting of at least 100,000 rentable square feet and including limited ground level retail.