

MEMORANDUM

Agenda Item No. 11(A)(7)

TO: Honorable Chairman Oliver G. Gilbert, III
and Members, Board of County Commissioners

DATE: November 7, 2023

FROM: Geri Bonzon-Keenan
County Attorney

SUBJECT: Resolution authorizing the County Mayor to grant 11995 Cutler Bay LLC, a Florida limited liability company, an additional two-year extension to obtain a final certificate of occupancy for the affordable housing project to be constructed on the properties located in County Commission District 9 (Folio No. 30-6912-008-0450 and 30-6912-008-1650) in accordance with the County Deed and Resolution No. R-1200-19, to take all actions necessary to effectuate same, and to exercise any and all rights set forth in the County Deed and Resolution No. R-1200-19

Resolution No. R-1013-23

The accompanying resolution was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Kionne L. McGhee.


Geri Bonzon-Keenan
County Attorney

GBK/gh



MEMORANDUM

(Revised)

TO: Honorable Chairman Oliver G. Gilbert, III
and Members, Board of County Commissioners

DATE: November 7, 2023

FROM: 
Gen. Bonzon-Keenan
County Attorney

SUBJECT: Agenda Item No. 11(A)(7)

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
- ☐ Statement of social equity 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 present ____, 2/3 membership ____, 3/5's ____, unanimous ____, CDMP 7 vote requirement per 2-116.1(3)(h) or (4)(c) ____, CDMP 2/3 vote requirement per 2-116.1(3)(h) or (4)(c) ____, or CDMP 9 vote requirement per 2-116.1(4)(c)(2) ____ 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. 11(A)(7)
11-7-23

RESOLUTION NO. _____ R-1013-23

RESOLUTION AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO GRANT 11995 CUTLER BAY LLC, A FLORIDA LIMITED LIABILITY COMPANY, AN ADDITIONAL TWO-YEAR EXTENSION TO OBTAIN A FINAL CERTIFICATE OF OCCUPANCY FOR THE AFFORDABLE HOUSING PROJECT TO BE CONSTRUCTED ON THE PROPERTIES LOCATED IN COUNTY COMMISSION DISTRICT 9 (FOLIO NO. 30-6912-008-0450 AND 30-6912-008-1650) IN ACCORDANCE WITH THE COUNTY DEED AND RESOLUTION NO. R-1200-19, TO TAKE ALL ACTIONS NECESSARY TO EFFECTUATE SAME, AND TO EXERCISE ANY AND ALL RIGHTS SET FORTH IN THE COUNTY DEED AND RESOLUTION NO. R-1200-19

WHEREAS, in accordance with Resolution No. R-1200-19, this Board authorized the conveyance of two County-owned vacant properties (Folio No. 30-6912-008-0450 and 30-6912-008-1650) (collectively referred to as the "properties") located in Commission District 9, to 11995 Cutler Bay LLC, a Florida limited liability company ("Developer"), for the purpose of developing the properties into a multifamily affordable and workforce housing development known as Island Gate ("project"), in accordance with section 125.379, Florida Statutes, and the federal Community Development Block Grant program, which program requirements are set forth in 24 Code of Federal Regulations, Part 570; and

WHEREAS, on January 15, 2020, the Chairperson of the Board executed the County Deed, which such deed was recorded in the public records of Miami-Dade County, Florida, on January 16, 2020, and a copy of which is attached hereto as Attachment "A" and is incorporated herein by reference; and

WHEREAS, in accordance with the County Deed, the Developer is required to develop the properties within four years from the recording of the County Deed, as evidenced by the Developer obtaining a final certificate of occupancy for the project, unless such timeframe is extended by this Board upon a finding that such extension is necessary; and

WHEREAS, on September 1, 2022, the Developer sent a letter to the Commissioner of Commission District 9, a copy of which is attached hereto as Attachment “B” and is incorporated herein by reference; and

WHEREAS, the Developer has represented to the County that it has suffered delays in completing the construction of the project due to the coronavirus 2019 pandemic and other unforeseen complications, and has requested an extension of the date by which it must obtain the project’s final certificate of occupancy; and

WHEREAS, based on the foregoing representations, this Board finds that it is necessary to extend the timeframe to allow the Developer to complete the project and obtain the final certificate of occupancy on or before January 16, 2026; and

WHEREAS, accordingly, this Board wishes to grant a two-year extension, as aforementioned, to permit the Developer to obtain its final certificate of occupancy,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that:

Section 1. This Board adopts the foregoing recitals as if fully set forth herein.

Section 2. This Board authorizes the County Mayor or County Mayor’s designee to grant to 11995 Cutler Bay LLC, a Florida limited liability company (“Developer”) a two-year extension of the date by which Developer must obtain the project’s final certificate of occupancy, which shall be on or before January 16, 2026. This Board further authorizes the County Mayor or County Mayor’s designee to exercise all rights set forth in the County Deed and Resolution No.

1200-19, other than those reserved to this Board therein, including, but not limited to, exercising the County's option to enforce its reversionary interest after conducting all due diligence, including title searches and environmental reviews. In the event, the County Mayor or County Mayor's designee should exercise the County's reversionary interest, then the County Mayor or County Mayor's designee shall execute and record an instrument approved by the County Attorney's Office in the Public Records of Miami-Dade County and provide a copy of such instrument to the County Property Appraiser. This Board further authorizes the County Mayor or County Mayor's designee to receive on behalf of the County from Developer, after conducting all due diligence, including, but not limited to, title searches, and environmental reviews, a deed(s) which conveys the properties back to the County in the event Developer is unable or fails to comply with the deed restrictions set forth in the amended deed. Upon the receipt of a deed(s) from Developer, the County Mayor or County Mayor's designee shall record such deed(s) in the Public Records of Miami-Dade County. Notwithstanding the foregoing, any extensions other than the extension granted by this resolution shall be subject to this Board's approval.

Section 3. This Board directs the County Mayor or County Mayor's designee, pursuant to Resolution No. R-974-09, to record in the public record the instrument(s) described in section 2 of this resolution, covenants, and any instrument creating or reserving a real property interest in favor of the County and to provide a copy of such recorded instruments to the Clerk of the Board within 30 days of execution and final acceptance. This Board directs the Clerk of the Board, pursuant to Resolution No. R-974-09, to attach and permanently store a recorded copy of any instrument provided in accordance herewith together with this resolution.

The Prime Sponsor of the foregoing resolution is Commissioner Kionne L. McGhee. It was offered by Commissioner **Danielle Cohen Higgins**, who moved its adoption. The motion was seconded by Commissioner **Raquel A. Regalado** and upon being put to a vote, the vote was as follows:

Oliver G. Gilbert, III, Chairman	absent		
Anthony Rodríguez, Vice Chairman	aye		
Marleine Bastien	aye	Juan Carlos Bermudez	aye
Kevin Marino Cabrera	aye	Sen. René García	aye
Roberto J. Gonzalez	absent	Keon Hardemon	absent
Danielle Cohen Higgins	aye	Eileen Higgins	absent
Kionne L. McGhee	aye	Raquel A. Regalado	aye
Micky Steinberg	aye		

The Chairperson thereupon declared this resolution duly passed and adopted this 7th day of November, 2023. 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

JUAN FERNANDEZ-BARQUIN, CLERK

By: **Basia Pruna**
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

RFA

Richard Appleton



Instrument prepared by and returned to:
Terrence A. Smith
Assistant County Attorney
111 N.W. 1st Street, Suite 2810
Miami, Florida 33128

CFN 2020R0046465
OR BK 31783 Pgs 1521-1527 (7Pgs)
RECORDED 01/16/2020 13:53:28
DEED DOC TAX \$0.60
HARVEY RUVIN, CLERK OF COURT
MIAMI-DADE COUNTY, FLORIDA

Folio No: See Exhibit "A" attached.

COUNTY DEED

THIS DEED, made this 15 day of January, 2020 by **MIAMI-DADE COUNTY**, a political subdivision of the State of Florida (hereinafter "County"), whose address is: Stephen P. Clark Center, 111 N.W. 1st Street, Miami, Florida 33128-1963, and **11995 CUTLER BAY LLC**, a Florida limited liability company (the "Agency"), whose address is 11995 S.W. 219th Street, Miami, Florida 33170, or its successors and assigns.

WITNESSETH that the County, for and in consideration of the sum of Ten Dollars and No/100 (\$10.00) to it in hand paid by Cutler Bay, receipt whereof is hereby acknowledged, has granted, bargained, and sold to Cutler Bay, their successors and assigns forever, the following described land lying and being in Miami-Dade County, Florida (hereinafter the "Properties"):

As legally described in Exhibit "A" attached hereto and made a part hereof

THIS CONVEYANCE IS SUBJECT TO all zoning, rules, regulations and ordinances and other prohibitions imposed by any governmental authority with jurisdiction over the Properties; existing public purpose utility and government easements and rights of way and other matters of record; taxes for the year of closing and subsequent years and the following restrictions:

1. That the Properties shall be developed by Cutler Bay as affordable and workforce housing with a minimum of 48 to 90 rental units in accordance with section 125.379, Florida Statutes and the federal Community Development Block Grant ("CDBG") program, which program requirements are set forth in 24 Code of Federal Regulations, Part 570. Cutler Bay shall set aside no less than 51% of the units for qualified renters whose income range is established up to 80% of the most recent area median income ("AMI") for the County as reported by the United States Department of Housing and Urban Development ("HUD") in accordance with the CDBG program. Further, Cutler Bay shall record in the Public Records of Miami-Dade County a restrictive covenant approved by the County, in its sole discretion, governing the rental of such housing.
2. That the Properties shall be developed within four (4) years of the recording of this Deed, as evidenced by the issuance of a final Certificate of Occupancy. Notwithstanding the foregoing restriction contained in this Paragraph 2, the County may, in its sole discretion, waive this requirement upon the Miami-Dade Board of County Commissioners finding it necessary to extend the timeframe in which Cutler Bay must complete the housing. In order for such waiver by the County to be effective, it shall:

- a. Be given by the County Mayor or the County Mayor's designee prior to the event of the reverter; and
 - b. Be evidenced by the preparation of a letter executed by the County Mayor or the County Mayor's designee giving such waiver and specifying the new time frame in which Cutler Bay must complete the housing. The letter by the County shall be conclusive evidence upon which any party may rely that the condition of the reverter has been extended to such date as specified in said waiver. If no waiver is recorded and a certificate of occupancy is not issued within four (4) years from the date of this Deed, any party may rely upon the fact that the reverter has occurred and that title has reverted to the County.
3. That the housing developed in accordance with paragraph 1 shall be rented to qualified households and under no circumstances shall the rental price of such housing exceed the maximum monthly rent limits as determined by HUD for the CDBG program for Miami-Dade County. In the event Cutler Bay fails to rent the housing within the rent limits described herein, and Cutler Bay, upon written notification from the County or Cutler Bay, fails to cure such default, then title to the subject Properties shall revert to the County, at the option of the County, as set forth in paragraph 9, and by such reverter to the County, Cutler Bay and the Developer shall forfeit all monetary investments and improvements without any compensation or right to compensation whatsoever.
4. That within thirty (30) days of renting the units described in paragraph 1 to qualified households, Cutler Bay shall submit a report in the form attached as Exhibit B to Miami-Dade County's Public Housing and Community Development Department, Community Development Division, or successor department, indicating the size of the household, AMI of the household, ethnicity of the household, and supporting income verification documentation.
5. That if the Properties are located within the HOPE VI Target Area (hereinafter "Target Area"), Cutler Bay shall comply with the requirements set forth in Resolution No. R-1416-08, including but not limited to providing former Scott/Carver residents the right of first refusal on all units to be sold or rented within the Target Area. The County will provide a list of former Scott/Carver residents in order for Cutler Bay to notify these residents of the availability of homeownership and/or rental opportunities.
6. That Cutler Bay shall not assign or transfer its interest in the Properties or in this Deed absent consent of the Miami-Dade County Board of County Commissioners, with the exception of any conveyance to qualified homebuyers.

7. That Cutler Bay shall pay real estate taxes and assessments on the Properties or any part thereof when due. Cutler Bay shall not suffer any levy or attachment to be made, or any material or mechanic's lien, or any unauthorized encumbrance or lien to attach, provided, however, that Cutler Bay may encumber the Properties with:
- a) Any mortgage(s) in favor of any institutional lender for the purpose of financing any hard costs or soft costs relating to the construction of the Project in an amount(s) not to exceed the value of the Improvements as determined by an appraiser; and
 - b) Any mortgage(s) in favor of any institutional lender refinancing any mortgage of the character described in clause a) hereof, in an amount(s) not to exceed the value of the Improvements as determined by an appraiser.
 - c) Any mortgage(s) in favor of any lender that may go into default, lis pendens, foreclosure, deed in lieu of foreclosure, certificate of title or tax deed issued by the government or through court order, the affordable deed restrictions are enforceable and can only be extinguished by the County. The deed restrictions shall run with the land notwithstanding the mortgage or change in ownership for the control period. The affordable deed restrictions apply to the "successors heirs and assigns" of the burdened land owner.
8. The recordation, together with any mortgage purporting to meet the requirements of paragraph 7(a) or 7(b) above, of a statement of value by a Member of the American Institute of Real Estate Appraisers (MAI), (or member of any similar or successor organization), stating the value of the Project is equal to or greater than the amount of such mortgages(s), shall constitute conclusive evidence that such mortgage meets such requirements, and that the right of any reverter hereunder shall be subject to and limited by, and shall not defeat, render invalid, or limit in any way, the lien of such mortgage. For purposes of this paragraph an "institutional lender" shall mean any bank, savings and loan association, insurance company, foundation or other charitable entity, real estate or mortgage investment trust, pension funds, the Federal National Mortgage Association, agency of the United States Government or other governmental agency. In any event, the term "Institutional lender" shall be deemed to include Miami-Dade County and its respective successors and assigns.
9. If in the sole discretion of the County, the Properties cease to be used solely for the purpose set forth in paragraph 1 herein by Cutler Bay, or if Cutler Bay fails to construct the housing described herein in the manner and within the timeframe set forth in paragraph 2 herein, or if Cutler Bay ceases to exist prior to conveyance or rental to the qualified homebuyers, or if any term of this County Deed is not complied with, Cutler Bay shall correct or cure the

default/violation within thirty (30) days of notification of the default by the County as determined in the sole discretion of the County. If Cutler Bay fails to remedy the default within thirty (30) days, title to the subject Properties shall revert to the County, at the option of the County upon written notice of such failure to remedy the default. In the event of such reverter, Cutler Bay shall immediately deed such Properties back to the County, and the County shall have the right to immediate possession of such Properties, with any and all improvements thereon, at no cost to the County. The effectiveness of the reverter shall take place immediately upon notice being provided by the County, regardless of the deed back to the County by Cutler Bay. The County retains a reversionary interest in the Properties, which right may be exercised by the County, at the option of the County, in accordance with this Deed. Upon such reversion, the County may file a Notice of Reversion evidencing same in the public records of Miami-Dade County.

10. All conditions and restrictions set forth herein shall run with the land, and shall be binding on any subsequent successors, assigns, transferees, and lessees, of any interest, in whole or in part, in the Properties.

Upon receiving proof of compliance with all of the Deed restrictions listed above, to be determined in the County's sole discretion, the County shall furnish Cutler Bay with an appropriate instrument acknowledging satisfaction with all Deed restrictions listed above. Such satisfaction of Deed restrictions shall be in a form recordable in the Office of the Clerk of the Circuit Court of Miami-Dade County, Florida.

This grant conveys only the interest of the Miami-Dade County and its Board of County Commissioners in the Properties herein described and shall not be deemed to warrant the title or to represent any state of facts concerning the same.

IN WITNESS WHEREOF Miami-Dade County has caused these presents to be executed in its name by its Board of County Commissioners acting by the Chairperson of the Board, the day and year aforesaid.

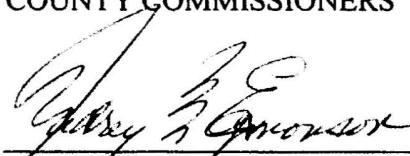
(OFFICIAL SEAL)

ATTEST:

HARVEY RUVIN, CLERK

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

By: 
Deputy Clerk

By: 
Audrey M. Edmonson, Chairwoman

Approved for legal sufficiency:

By: 
Terrence A. Smith
Assistant County Attorney



The foregoing was authorized by Resolution No. 1200-19 approved by the Board of County Commissioners of Miami-Dade County, Florida, on the 19 day of November, 2019.

IN WITNESS WHEREOF, 11995 CUTLER BAY LLC, a Florida limited liability company, has caused this document to be executed by their respective and duly authorized representative on this 15 day of JANUARY, 2019²⁰, and it is hereby approved and accepted.

[Signature]
Witness/Attest
Print Name: Maureen Cazas

[Signature]
Witness/Attest

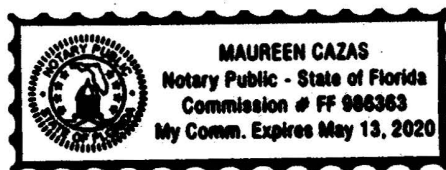
Print Name: Alan Esau

By: [Signature]
Name: Marcello Duran Cominato
Title: Officer

STATE OF FLORIDA

COUNTY OF MIAMI-DADE

The foregoing instrument was acknowledged before me this 15th day of January, 2019²⁰, by Marcello Duran Cominato, as Officer of 11995 CUTLER BAY LLC, a Florida limited liability company, and s/he () has produced _____ as identification or (X) is personally known to me.



(SEAL) [Signature]
MAUREEN CAZAS

Notary of- State of Florida

Commission Number: FF 986363

EXHIBIT A

FOLIO NUMBERS

LEGAL DESCRIPTIONS

30-6912-008-0450	DIXIE PINES 2ND REV PB 31-51 N46.85FT OF W125FT & E50FT OF W175FT OF N140FT OF TRACT 6
30-6912-008-1650	DIXIE PINES PB 31-51 TRACT A

ATTACHMENT "B"

September 1, 2022

Honorable Commissioner Kionne L. McGhee
10710 SW 211 Street, Suite 206
Miami, Florida 33189

Ref: Extension of deed restrictions

Dear Commissioner McGhee:

On behalf of **11995 Cutler Bay LLC**, we need your approval for our project "Island Gate" that we started with Commissioner Moss, and we are ready to continue forward.

We are requesting your approval in extending our current deed requirements for the following parcels of land:

Folio # 30-6912-008-0450

Folio # 30-6912-008-1650

The above-mentioned parcel of lands was transferred to us and approved by the BCC on November 19, 2019 (Resolution R-1200-19 copy attached). These two parcels of land are adjacent to our properties. After our initial meeting with Commissioner Moss, he suggested that the project could benefit from having more housing units or more green spaces. We informed the Commissioner that we would buy any property that was adjacent to our properties. We found a vacant parcel that was being sold. Due to COVID and that the fact that the property was from an estate sale it took us 2 ½ years to close on the property. However, we now can build 78 housing units versus 60 housing units.

The Island Gate project is 100% affordable to families with the following income:

- 51% of the units for families earning up to 80% of medium income
- 49% of the units for workforce families earning up to 120% of medium income.

We need paragraph your approval in amending paragraph #2 of the County Deed to read "The properties shall be developed by November 19, 2025, as evidence by the issuance of a final Certificate of Occupancy (CO).

If you have any questions, please do not hesitate to contact us at our office 305-698-6431 or my cell 305-490-7371.

Sincerely,

Barbara Gomez
Chief Financial Officer (CFO)

MDC014