

MEMORANDUM

Agenda Item No. 11(A)(6)

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

DATE: April 2, 2024

FROM: Geri Bonzon-Keenan
County Attorney

SUBJECT: Resolution approving, subject to satisfaction of condition precedent, the Mutual Termination of the Development Agreement between Miami-Dade County and 251 S. Dixie, LLC and HGIT Coral Gables, LLC (the "Developers") terminating all obligations of Developers in exchange for \$750,000.00 (the "Payment") from Developers; approving Escrow Agreement with Developers and authorizing the acceptance of the Payment to be held in escrow by the County pending satisfaction of condition precedent; authorizing the County Mayor to execute the Mutual Termination of the Development Agreement, following condition precedent, and the Escrow Agreement, and to exercise all provisions contained therein; following disbursement of escrowed Payment, directing the County Mayor to deposit the Payment in The Underline Operation & Maintenance Trust Fund and to budget and include the use of the Payment in the County Mayor's Proposed Budget for fiscal year 2025-2026 and/or subsequent fiscal years, all of which are subject to satisfaction of condition precedent

Resolution No. R-283-24

The accompanying resolution was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Raquel A. Regalado.


Geri Bonzon-Keenan
County Attorney

GBK/uw

MDC001



MEMORANDUM

(Revised)

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

DATE: April 2, 2024

FROM: 
Gen Bonzon-Keenan
County Attorney

SUBJECT: Agenda Item No. 11(A)(6)

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)(6)
4-2-24

RESOLUTION NO. R-283-24

RESOLUTION APPROVING, SUBJECT TO SATISFACTION OF CONDITION PRECEDENT, THE MUTUAL TERMINATION OF THE DEVELOPMENT AGREEMENT BETWEEN MIAMI-DADE COUNTY AND 251 S. DIXIE, LLC AND HGIT CORAL GABLES, LLC (THE “DEVELOPERS”) TERMINATING ALL OBLIGATIONS OF DEVELOPERS IN EXCHANGE FOR \$750,000.00 (THE “PAYMENT”) FROM DEVELOPERS; APPROVING ESCROW AGREEMENT WITH DEVELOPERS AND AUTHORIZING THE ACCEPTANCE OF THE PAYMENT TO BE HELD IN ESCROW BY THE COUNTY PENDING SATISFACTION OF CONDITION PRECEDENT; AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR’S DESIGNEE TO EXECUTE THE MUTUAL TERMINATION OF THE DEVELOPMENT AGREEMENT, FOLLOWING CONDITION PRECEDENT, AND THE ESCROW AGREEMENT, AND TO EXERCISE ALL PROVISIONS CONTAINED THEREIN; FOLLOWING DISBURSEMENT OF ESCROWED PAYMENT, DIRECTING THE COUNTY MAYOR OR COUNTY MAYOR’S DESIGNEE TO DEPOSIT THE PAYMENT IN THE UNDERLINE OPERATION & MAINTENANCE TRUST FUND AND TO BUDGET AND INCLUDE THE USE OF THE PAYMENT IN THE COUNTY MAYOR’S PROPOSED BUDGET FOR FISCAL YEAR 2025-2026 AND/OR SUBSEQUENT FISCAL YEARS, ALL OF WHICH ARE SUBJECT TO SATISFACTION OF CONDITION PRECEDENT

WHEREAS, in 2018, 251 S Dixie, LLC (“Initial Developer”), the developer of a mixed-use project on privately owned land located adjacent to a portion of the Metrorail corridor, proposed to the County a Development Agreement and Access and Utility Easement Agreement requesting the County provide Initial Developer with an easement across certain portions of the Metrorail corridor for the purpose of pedestrian and vehicular access, ingress, and egress and for the installation of utilities to service the Initial Developer’s project; and

WHEREAS, at that time, the total appraised value of the access and utility easement area was \$660,000.00; and

WHEREAS, in lieu of a one-time payment, Initial Developer proposed that Initial Developer design and construct certain improvements to the Underline in an amount of \$2,544,187.50 and to maintain such improvements until the responsibility for the maintenance of such improvements is transferred to the agency responsible for maintaining the Underline project; and

WHEREAS, on March 13, 2018, the Federal Transit Administration approved the County's Facility Incidental Use Request describing the proposed use of the federally assisted Metrorail corridor for the requested access and utility easements and resulting intended improvements to the Underline which runs over the federally assisted Metrorail corridor; and

WHEREAS, on April 10, 2018, this Board adopted Resolution No. R-293-18, which approved the Development Agreement and Access and Utility Easement Agreement, between the County and Initial Developer; and

WHEREAS, the Access and Utility Easement Agreement provides for a term of 49 years with automatic renewals for up to two additional renewal terms, the first for 30 years and the second for 11 years; and

WHEREAS, on June 5, 2018, this Board adopted Resolution No. R-607-18, which approved a Memorandum of Understanding between the County and the City of Coral Gables for the City to provide up to \$15,000,000.00 from the City's park and mobility impact fees to be used for eligible expenses for the Underline project; and

WHEREAS, on June 12, 2018, the City of Coral Gables Commission adopted Ordinance No. 2018-171 which waived the City's park and mobility impact fees for the Gables Station project as a result of the improvements to be performed by Initial Developer pursuant to the terms of its Development Agreement with the County; and

WHEREAS, subsurface conditions in the way of environmental contamination were identified within the area that Initial Developer was required to improve pursuant to the Development Agreement; and

WHEREAS, due to certain delays, the improvements to the Underline were not performed by Initial Developer prior to the completion of the Gables Station development project; and

WHEREAS, in 2021, the City of Coral Gables adopted Ordinance No. 2021-19 which obligated the Initial Developer to contribute \$2,179,090.72 towards the Underline via impact fees; and

WHEREAS, Initial Developer has sold its Gables Station project to HGIT Coral Gables LLC, a Delaware limited liability company ("Successor Developer"), and in conjunction with such sale, Initial Developer assigned to Successor Developer all of Initial Developer's rights, title, interest, liabilities and obligations in and to the Development Agreement; and

WHEREAS, the subject termination of the Development Agreement between the County and Initial Developer and Successor Developer requires the payment of \$750,000.00 to the County and terminates all of the rights and obligations under the Development Agreement and allows Developers to retain all of the rights under the Access and Utility Easement Agreement; and

WHEREAS, the prior consent of the Federal Transit Administration (“FTA”) and the Florida Department of Transportation (“FDOT”) is required for this transaction and therefore the Mutual Termination of Development Agreement (the “Termination Agreement”) shall not be effective until the consent of each of those entities is obtained; and

WHEREAS, as a result of the proposed Termination Agreement, the County will need to submit a modified Incidental Use Request to the FTA for its concurrence and/or approval which will require the County to demonstrate that it has received fair market value for the incidental use of the federally assisted Metrorail corridor, the Access and Utility Easement Agreement (“the modified Incidental Use Request”); and

WHEREAS, subject to the County first receiving any required concurrences and/or approvals from the FTA and/or FDOT, including the approval and/or concurrence of the modified Incidental Use Request, and so long as no funds are required to be paid or reimbursed to the FTA, this Board desires to accept and deposit the \$750,000.00 payment into The Underline Operation & Maintenance Trust Fund (“Trust Fund”), which Trust can only be used for purposes relating to the operation and maintenance of The Underline pursuant to Resolution No. R-972-20 which established the Trust Fund; and

WHEREAS, Initial Developer desires to deposit the \$750,000.00 in escrow with the County pending the receipt of the required concurrences and/or approvals from the FTA and/or FDOT, including the approval and/or concurrence of the modified Incidental Use Request, pursuant to an Escrow Agreement with the County; and

WHEREAS, pursuant to the terms of the Escrow Agreement, the County is to hold the \$750,000.00 in a non-interest bearing account and, upon receipt of the required concurrences and/or approvals from the FTA and/or FDOT, the County can disburse the funds to itself;

provided, that if the approvals and/or concurrences are not received within 120 days and that so long as no funds are required to be paid or reimbursed to the FTA, then either party can terminate the Escrow Agreement and the funds will be returned to Initial Developer and the Successor Developer and the County will proceed under the original terms and conditions of the Development Agreement,

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

Section 1. Approves the foregoing recitals, which are incorporated herein by reference.

Section 2. Subject to the County first receiving any required concurrences and/or approvals from the FTA and/or FDOT, including the approval and/or concurrence of the modified Incidental Use Request, and so long as no funds are required to be paid or reimbursed to the FTA (the “condition precedent”), approves the Termination Agreement between Miami-Dade County, Initial Developer and Successor Developer, in substantially the form attached hereto as Exhibit A and made a part hereof. Further authorizes the County Mayor or County Mayor’s designee to, subject to the satisfaction of the condition precedent, execute the Termination Agreement and to exercise all provisions therein.

Section 3. Approves the Escrow Agreement between Miami-Dade County and the Initial Developer in substantially the form attached hereto as Exhibit B and made a part hereof, and authorizes the acceptance of \$750,000.00 from the Initial Developer to be held in escrow pending the satisfaction of the condition precedent or, if the condition precedent is not timely satisfied, to be refunded to Initial Developer. Further authorizes the County Mayor or County Mayor’s designee to execute said Escrow Agreement and to exercise all provisions therein.

Section 4. Subject to the satisfaction of the condition precedent, directs the County Mayor or County Mayor's designee to: (a) deposit the \$750,000.00 in the Underline Operation & Maintenance Trust Fund; and (b) budget and include the use of said \$750,000.00 in the County Mayor's Proposed Budgets for fiscal year 2025-2026 and/or subsequent fiscal years solely for the operation and maintenance of The Underline.

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

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

The Chairperson thereupon declared this resolution duly passed and adopted this 2nd day of April, 2024. 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

JOSE FERNANDEZ-BARQUIN, CLERK

By: Basia Pruna
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

A handwritten signature in black ink, appearing to be "AP", written over a horizontal line.

Annery Pulgar Alfonso
Monica Rizo Perez

Exhibit A

This instrument prepared by, or under the supervision of (and after recording, return to):

Nancy B. Lash, Esq.
Greenberg Traurig, P.A.
333 Avenue of the Americas
Miami, Florida 33131

(Reserved for Clerk of Court)

MUTUAL TERMINATION OF DEVELOPMENT AGREEMENT

THIS MUTUAL TERMINATION OF DEVELOPMENT AGREEMENT (this "**Termination**") is made by MIAMI-DADE COUNTY, a political subdivision of the State of Florida ("**County**"), through the Department of Transportation and Public Works ("**DTWP**," and together with the County, collectively, the "**Owner**"), 251 S Dixie LLC, a Delaware limited liability company (the "**Initial Developer**") and HGIT CORAL GABLES LLC, a Delaware limited liability company ("**Successor Developer**," and together with the County, DTWP and Initial Developer, the "**Parties**"), as of _____ (the "**Effective Date**").

RECITALS:

WHEREAS, Initial Developer, the County and DTWP entered into that certain Development Agreement dated May 25, 2018 and recorded in Book 30990, Page 4359 of the Public Records of Miami-Dade County, Florida (the "**Development Agreement**"); and

WHEREAS, when the Development Agreement was executed, Initial Developer owned the Project (as described in the Development Agreement) located at 251 South Dixie Highway in Miami-Dade County; and

WHEREAS, the Development Agreement contemplated that Initial Developer would fund and install certain Improvements (as described in the Development Agreement) for the development of a portion of the Underline on Land (as described in the Development Agreement) near or adjacent to the Project, which Improvements were to be completed by December 31, 2020 (subject to Unavoidable Delays); and

WHEREAS, Owner and Initial Developer acknowledge and agree that (a) Initial Developer's discovery of concealed subsurface soil contamination in and under the Land constituted an Unavoidable Delay, which impeded Initial Developer's ability to construct the Improvements; and (b) Initial Developer, on behalf of itself, Successor Developer and their respective successors and assigns, desire to fully satisfy each and every obligation of the

“Developer” under the Development Agreement by a cash payment to the County in the amount herein specified; and

WHEREAS, Initial Developer has sold the Project to Successor Developer, and in conjunction with such sale, Initial Developer assigned to Successor Developer and Successor Developer assumed from Initial Developer all of Initial Developer’s rights, title, interest, liabilities and obligations in and to the Development Agreement, pursuant to Section 11.1 of the Development Agreement, as memorialized by that certain Assignment and Assumption of Development Agreement dated August 26, 2022 and recorded in Book 33359, Page 4225 of the Public Records of Miami-Dade County, Florida (the “Assignment Agreement”); and

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor and Assignee hereby agree as follows:

1. Defined Terms. All capitalized terms in this Termination are not otherwise defined herein and shall have meanings ascribed to such terms in the Development Agreement.

2. Consideration. In consideration of the terms of this Termination, Initial Developer and Successor Developer shall cause a cash payment of Seven Hundred and Fifty-Thousand Dollars (\$750,000.00) (the “Payment”) to be made to the County by virtue of a separate escrow agreement between the County and Developer dated _____, 2024 (“Escrow Agreement”). Subject to and in accordance with the terms and conditions of the Escrow Agreement, upon the execution and effectiveness of this Termination, the County shall have the right to retain all funds in escrow as the Payment.

For the avoidance of doubt, the Payment is an independent obligation of the Initial Developer and Successor Developer to the County as consideration for this Termination and for the rights granted by the County under that certain Access and Utility Easement Agreement dated May 25, 2018 and recorded in OR Book 30990, Page 4400 of the Public Records of Miami-Dade County, Florida, and is distinct from any other obligations of or payments made by Initial Developer and/or Successor Developer to the County, to any other governmental entities or to any other parties for any purpose whatsoever.

3. Termination of Development Agreement. Without the need for any further action by the Parties, and provided that the County has first received the Payment, the Development Agreement is hereby terminated, null and void and of no further force and effect. For the avoidance of doubt, all obligations of: (a) the “Developer” (including all obligations of Initial Developer, Successor Developer and their respective successors and assigns) under the Development Agreement with respect to the design, development, funding, construction (including Commencement of Construction and Completion of Construction), insurance, maintenance, replacement or restoration of and/or liability for the Improvements, and any indemnification provisions with respect thereto, are hereby waived by Owner (on behalf of itself and its successors and assigns), terminated and of no further force and effect, including but not limited to the provisions related to the design, development, funding, construction (including Commencement of Construction and Completion of Construction), insurance, maintenance, replacement or restoration of and/or liability for the Improvements, and any indemnification provisions with respect thereto, set forth in Section 1.2(c), Article 3, Article 5, Article 7, Article

10 and Section 11.1 of the Development Agreement; and (b) the "Owner" are terminated and of no further force and effect.

3. No Default; Authority. Upon full execution and delivery of this Termination, (a) Initial Developer represents to the other Parties that it has full power and authority to enter into this Termination and that the person(s) signing this Termination on behalf of Initial Developer has the authority to bind Initial Developer to this Termination; (b) Successor Developer represents to the other Parties that it has full power and authority to enter into this Termination, and that the person(s) signing this Termination on behalf of Successor Developer has the authority to bind Successor Developer to this Termination; and (c) Owner represents to the other Parties that that it has full power and authority to enter into this Termination, and that the person(s) signing this Termination on behalf of the County has the authority to bind Owner to this Termination.

4. General Provisions.

a. Successors. This Termination shall inure to the benefit of, and be binding upon, the Parties hereto and their respective successors and assigns.

b. Counterparts. This Termination may be executed in any number of counterparts, provided each of the parties hereto executes at least one counterpart; each such counterpart hereof shall be deemed to be an original instrument, but all such counterparts together shall constitute but one termination.

c. Governing Law. This Termination and the legal relations between the parties hereto shall be governed by and construed and enforced in accordance with the laws of the State of Florida, without reference to the conflict of law provisions thereof.

d. Attorney's Fees. If any action or proceeding is commenced by any Party to enforce its rights under this Termination, the prevailing party in such action or proceeding shall be awarded all reasonable costs and expenses incurred in such action or proceeding, including reasonable attorneys' fees and costs (including the cost of in-house counsel and appeals), in addition to any other relief awarded by the court.

e. Recording. Initial Developer shall cause this Termination to be recorded in the Public Records of Miami-Dade County, Florida.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, Initial Developer has executed this Termination as of the day and year first written above.

Signed in the presence of:

INITIAL DEVELOPER:

251 S DIXIE LLC, a Delaware limited liability company

By:

Name: BRENT REYNOLDS

Title: Authorized Member

Name: Ana Stadthagen

Address: 1340 S. Dixie Hwy.

Coral Gables, 33146

Name: Cristina Larragan

Address: 1340 S Dixie Hwy

Coral Gables, 33146

STATE OF FLORIDA)

) SS:

COUNTY OF MIAMI DADE)

The foregoing instrument was acknowledged before me by means of ☒ physical presence or [] online notarization, this 8 day of February, 2024, by BRENT REYNOLDS, as Authorized Member of 251 S DIXIE LLC, a Delaware limited liability company, on behalf of said company. He/she is personally known to me or produced Drivers License as identification.

Name: ANA STADTHAGEN

Notary Public, State of FLORIDA

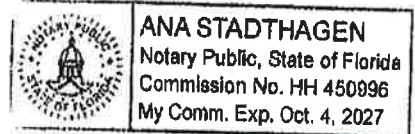
Commission No.: H450996

My Commission Expires:

10/4/2027

(Notarial Seal)

[Signatures continue on the following page]



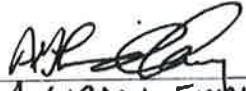
IN WITNESS WHEREOF, Successor Developer has executed this Termination as of the day and year first written above.

Signed in the presence of:

SUCCESSOR DEVELOPER:

HGIT CORAL GABLES LLC.
a Delaware limited liability company


Name: Daniel Mueney
Address: 845 Texas Ave
Houston, TX 77002
Name: Jack Howard
Address: 845 Texas Ave
Houston, TX 77002

By: 
Name: A. GORDON FINDLAY
Title: CHIEF ACCOUNTING OFFICER,
TREASURER AND SECRETARY

STATE OF TEXAS)
) SS:
COUNTY OF HARRIS)

The foregoing instrument was acknowledged before me by means of ☒ physical presence or [] online notarization, this 2ND day of FEBRUARY, 2024, by A. GORDON FINDLAY, as CHIEF ACCOUNTING OFFICER of HGIT Coral Gables LLC, a Delaware limited liability company, on behalf of said entity. He is personally known to me or produced _____ as identification.


Name: Daniel Gonzales
Notary Public, State of TEXAS
Commission No.: 13290062

My Commission Expires:

02-09-2025

(Notarial Seal)



[Signatures continue on the following page]

IN WITNESS WHEREOF, Owner has caused this Termination to be executed in its name by the County Mayor, as authorized by the Board of County Commissioner as of the day and year first written above.

ATTEST:

JUAN FERNANDEZ-BARQUIN,
CLERK

OWNER:

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

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

Approved as to form and legal sufficiency
by County Attorney's Office

Print Name: _____

STATE OF FLORIDA)
) SS:
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me by means of [] physical presence or [] online notarization, this _____ day of _____, by _____, as _____ of Miami-Dade County. He/she is personally known to me or produced _____ as identification.

Name: _____

Notary Public, State of _____

My Commission Expires:

Commission No.: _____

(Notarial Seal)

Exhibit B

ESCROW AGREEMENT

THIS ESCROW AGREEMENT (the "Agreement") is made and entered into as of _____, 20__ (the "Effective Date"), by and between 251 S DIXIE LLC, a Delaware limited liability company (the "Developer") and MIAMI-DADE COUNTY, a political subdivision of the State of Florida ("County"), through the Department of Transportation and Public Works ("DTPW"). Developer and County are referred to herein from time-to-time individually, as a "Party" and collectively, as the "Parties".

WITNESSETH:

WHEREAS, Developer desires to and has agreed to deposit funds in the amount of \$750,000.00 (the "Escrowed Funds") in escrow with the County pending the written approval of the Federal Transit Administration ("FTA") to the termination of that certain Development Agreement dated May 25, 2018 and recorded in OR Book 30990, Page 4359 of the Public Records of Miami-Dade County, Florida ("Development Agreement"); and

WHEREAS, the Developer and its successor, and the County have negotiated a termination agreement to effectuate the termination of the Development Agreement in exchange for payment of the Escrowed Funds to the County ("Termination Agreement"), which Termination Agreement will not be valid, effective and enforceable unless and until the FTA approves of same; and

WHEREAS, the Developer and the County acknowledge and agree that if the FTA does not approve the Termination Agreement, conditions its approval of the Termination Agreement, and/or requests changes to the Termination Agreement, then this Agreement may be terminated by either party on the terms set forth herein; and

WHEREAS, the Parties hereto desire to enter into this Agreement evidencing their agreement with respect to the holding and disbursement of the Escrowed Funds.

NOW, THEREFORE, for good and valuable consideration from Developer to the County, the receipt and sufficiency of which is hereby acknowledged by the Parties, the Parties, each desiring to be legally bound, hereby agree as follows:

1. Incorporation of Recitals. Developer and the County agree that the Recitals above are true and correct and a part of this Agreement.
2. Establishment of Escrow. The Escrowed Funds are hereby deposited on the Effective Date with the County, which Escrowed Funds shall be held and disbursed by the County strictly in accordance with the terms of this Agreement. The County acknowledges receipt of the Escrowed Funds and agrees to hold the same in trust strictly in accordance with the terms of this Agreement. The Escrowed Funds shall be placed in a non-interest bearing account by the County with an FDIC regulated financial institution selected by the County in its sole and absolute discretion.

3. **Disbursement of Escrowed Funds.**

(a) The County shall be permitted to disburse the Escrowed Funds to itself upon the County's receipt of the written approval of the FTA of the Termination Agreement and acceptance of the payment to the County of the Escrowed Funds in exchange for the termination of the Development Agreement pursuant to the Termination Agreement and for the rights granted by the County under that certain Access and Utility Easement Agreement dated May 25, 2018 and recorded in OR Book 30990, Page 4400 of the Public Records of Miami-Dade County, Florida (the "**Trigger Event**"), subject to the provisions of this Section 3. Within ten (10) business days of the occurrence of the Trigger Event, the County shall send a written notice (a "**Trigger Event Notice**") to Developer notifying Developer that the Trigger Event has occurred. The Trigger Event Notice shall be accompanied by evidence in writing that the Trigger Event has occurred and shall include an original counterpart of the Termination Agreement executed by the County, including all required County signatories. No later than five (5) business days following Developer's receipt of the Trigger Event Notice, Developer shall provide the County with a written acknowledgment of receipt of the Trigger Event Notice and the County shall be permitted to disburse the Escrowed Funds to itself.

(b) If the Trigger Event does not take place on or before the date that is one-hundred twenty (120) days from the Effective Date of this Agreement, then this Agreement may be terminated by either the County or the Developer, in each instance by sending written notice of such termination to the other party. In the event of a termination of this Agreement in accordance with this subsection 3(a), the County shall disburse the Escrowed Funds back to Chicago Title Insurance Company in accordance with the wire instructions attached hereto as **Exhibit "A"** within thirty (30) days of its receipt of the termination notice from the Developer or of the date of its termination notice to the Developer. For avoidance of doubt, the Trigger Event shall not be deemed to have occurred if the FTA conditions its approval of the Termination Agreement, and/or requests changes to the Termination Agreement.

4. **Notice.** All notices, demands, requests and other communications required or permitted hereunder shall be in writing, and shall be (a) personally delivered with a written receipt of delivery; (b) sent by a nationally-recognized overnight delivery service requiring a written acknowledgement of receipt or providing a certification of delivery or attempted delivery; (c) sent by certified or registered mail, return receipt requested; or (d) sent by electronic delivery. All notices shall be deemed effective when actually delivered; provided, however, that if the notice was sent by overnight courier or mail as aforesaid and is affirmatively refused or cannot be delivered during customary business hours by reason of the absence of a signatory to acknowledge receipt, or by reason of a change of address with respect to which the addressor did not have either knowledge or written notice delivered in accordance with this paragraph, then the first attempted delivery shall be deemed to constitute delivery. Each Party shall be entitled to change its address for notices from time to time by delivering to the other Party notice thereof in the manner herein provided for the delivery of notices. All notices shall be sent to the addressee at its address set forth following its name below:

County: MIAMI-DADE COUNTY
Department of Transportation and Public Works
Overtown Transit Village
701 NW 1st Court, 17th Floor,
Miami, FL 33136
Attention: Director

Developer: 251 S Dixie LLC
c/o Nolan Reynolds International, LLC
1340 South Dixie Highway, Suite 612
Coral Gables, Florida 33146
Attention: Brent M. Reynolds and Charles D. Nolan
E-mail: breynolds@nrinternational.com and
cnolan@nrinternational.com

With copies to: Greenberg Traurig, P.A.
333 S.E. 2nd Avenue, Suite 4400
Miami, Florida 33131
Attention: Nancy B. Lash
Email: lashn@gtlaw.com

Malkerson Gunn Martin LLP
5353 Gamble Drive, Suite 225
Minneapolis, Minnesota 55416
Attention: Kathleen M. Martin
Email: kmm@mgmllp.com

5. **Miscellaneous.**

(a) **Time of Essence.** It is expressly agreed by the Parties that time is of the essence of this Agreement and in the performance of all conditions, covenants, requirements, obligations, and warranties to be performed or satisfied by the Parties hereunder.

(b) **Entire Agreement and Modification.** This Agreement constitutes the entire agreement between the parties hereto with respect to the matters contemplated herein and supersedes all prior agreements and understandings with respect thereto. Any amendment, modification, or waiver of this Agreement shall not be effective unless in writing. Neither the failure nor any delay on the part of any party to exercise any right, remedy, power, or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege preclude any other or further exercise of the same or of any other right, remedy, power, or privilege.

(c) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. Venue for any legal action arising under this Agreement shall be in Miami-Dade County, Florida.

(d) Binding Effect; Severability. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns, heirs, executors, and administrators. If any provision of this Agreement shall be or become illegal or unenforceable in whole or in part for any reason whatsoever, the remaining provisions shall nevertheless be deemed valid, binding and subsisting.

(e) Counterparts; Electronic Signatures. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original and all of which, when taken together, shall be deemed to constitute one agreement. A PDF or similar digital version of this signature sent electronically shall be the functional equivalent of an original signature on this Agreement for all purposes.

(f) Attorneys' Fees. In the event either Party hereto commences litigation or arbitration against the other to enforce its rights hereunder, each party shall be responsible for its own attorneys' fees and expenses incidental to such litigation and arbitration, including the cost of in-house counsel and any appeals.

(g) Waiver of Trial by Jury. THE PARTIES HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ALL RIGHTS TO A TRIAL BY JURY IN CONNECTION WITH ANY LITIGATION ARISING OUT OF THIS AGREEMENT.

[SIGNATURES TO FOLLOW]

IN WITNESS WHEREOF, this Agreement has been executed as of the date first-above written.

ATTEST:

JUAN FERNANDEZ-BARQUIN,
CLERK

COUNTY:

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

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

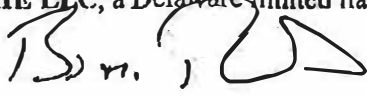
Approved as to form and legal sufficiency
by County Attorney's Office

Print Name: _____

[Signatures continue on following page]

DEVELOPER:

251 S DIXIE LLC, a Delaware limited liability company

By: 

Name: BRENT REYNOLDS

Title: AUTHORIZED MEMBER

Exhibit A
Wire Instructions



MIAMI-DADE DEPARTMENT OF TRANSPORTATION AND PUBLIC WORKS
Financial Services Division
701 N.W. 1st Court • 13th Floor
Miami, Florida 33136
Tel: (786) 469-5526 Fax: (786) 469-5495

For Miami-Dade County General Operating Account

INCOMING WIRE INSTRUCTIONS:

Bank Name: **WELLS FARGO BANK, N.A.**
Street: **10401 Deerwood Park Blvd., Building # 1**
City: **Jacksonville, FL 32256**
ABA#: **121000248**
Account#: **2696206696688**
Tax ID#: **59-6000573**
DUNS#: **135722747**

RE: **DTPW –NAME OF YOUR COMPANY, DESCRIPTION OF PAYMENT**
TYPE, Attn to:

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Note: International transfers need **SWIFT CODE (BIC)**
Swift code is **WFBIUS6S**.

Gables Station Specific ACH/ Write Instructions

Please add the following to the ACH/Wire Instructions:

- A. 251 S Dixie LLC or Gables Station
- B. TP14020400 444 300 0006
- C. Miami-Dade Transit