

ESCROW AGREEMENT

THIS ESCROW AGREEMENT (this “Escrow Agreement”) is made as of the Effective Date (as defined herein), among 251 S Dixie LLC, a Florida limited liability company (“Developer”), whose address is 1340 South Dixie Highway, Suite 612, Coral Gables, FL 33146, the City of Coral Gables, Florida, a municipal corporation (the “City”), and Greenberg Traurig, P.A., a professional association (“Escrow Agent”), whose address is 333 S.E. 2nd Avenue, 44th Floor, Miami, Florida 33131. Developer, the City and Escrow Agent are each referred to herein as a “Party” and collectively as the “Parties.”

R E C I T A L S

This Escrow Agreement is based upon the following Recitals:

A. Developer is the record developer of the project commonly known as Gables Station (the “Project”), generally located at 215-235 South Dixie Highway in Coral Gables, Florida.

B. The Project was originally approved pursuant to Ordinance 2016-43, as subsequently modified by Resolution No. 2021-56, subject to certain conditions, including the provision of a pedestrian crosswalk across Ponce De Leon Boulevard and installation of the on-site public art approved pursuant to Section 3-2103-2105 of the City’s Zoning Code.

C. As part of the permitting process for the Project and in accordance with Resolution 2020-193, Developer made an initial contribution to the City’s Art in Public Places via the commissioning of two (2) art works that were approved by the City Commission pursuant to Resolutions 18-177 and 2020-193 (the “**Original AIPP Approvals**”). Developer has expended \$857,938.00 toward the artwork and installation.

D. Since the time of the Original AIPP Approvals, it has been determined that the total construction cost of the Project is One Hundred Fifty Million and 00/100 Dollars (\$150,000,000.00); as such, Developer has agreed to make the remaining required contribution to the City’s Art in Public Places fund in the amount of Six Hundred Forty-Two Thousand Sixty-Two and 00/100 Dollars (\$642,062.00) (the “**AIPP Remaining Payment**”), as provided herein, in satisfaction of Article 9 of the City’s Zoning Code.

E. Developer has submitted for a building permit from the City, under permit number PW19-10-4933 (the “Cross Walk Permit”), for the construction of a proposed pedestrian cross-walk along Ponce De Leon Boulevard and signalization along Ponce De Leon Boulevard, as more particularly reflected in the plans submitted for the Cross Walk Permit (the “Cross Walk Improvements”).

F. Developer has calculated the costs for completing the Cross Walk Improvements to be approximately Three Hundred Fifty Thousand and 00/100 Dollars (\$350,000.00) (the “Cross Walk Sum”).

G. Developer has obtained a building permit from the City, under permit number RV-20-05-6619 (the “Ceiling Panel Permit”), for the installation of ceiling panels within the Project’s paseo,

as more particularly reflected in the plans approved for the Ceiling Panel Permit (the “Ceiling Panel Improvements”).

H. Developer’s contractor has calculated the costs remaining to complete installation of the Ceiling Panel Improvements to be approximately Ninety-Five Thousand Six Hundred Thirty-Four and 00/100 Dollars (\$95,634.00) (the “Ceiling Panel Sum”, and together with the Cross Walk Sum, hereinafter referred to collectively as the “Escrow Funds”).

I. Developer has applied to the City for a certificate of occupancy for the Project (“CO”).

J. Developer has agreed to deposit the Escrow Funds with Escrow Agent, who shall hold them in escrow and release them as set forth herein.

K. The City has agreed to issue the CO, subject to the City Commission’s approval of an amendment to Resolution Nos. 2021-56 and 2021-57 authorizing the issuance of the CO pursuant to the terms of this Escrow Agreement, provided that (i) Developer enter into this Escrow Agreement for the Escrow Funds to ensure completion of the Cross Walk Improvements and Ceiling Panel Improvements, (ii) Developer pays the City the AIPP Remaining Payment as provided herein..

NOW THEREFORE, in consideration of the above recitals and the mutual premises set forth herein, the Parties agree as follows:

1. Recitals. The foregoing recitals are true and correct and incorporated into this Escrow Agreement by reference.

2. Effective Date, Execution Date and Terminology. The term “Effective Date” shall mean the date that this Escrow Agreement becomes effective and binding on the Parties, which is the date that this Escrow Agreement is signed by the last Party to sign it (as indicated by the date below such Party’s signature).

3. AIPP Remaining Payment. No later than ten (10) days after the City’s issuance of the CO for the Project, Developer shall pay the City, in current funds, the AIPP Remaining Payment.

4. Progress Payment for Cross Walk Sum. Upon completion of fifty (50) percent and/or seventy-five (75) percent of the Cross Walk Improvements, Developer may submit a request to the City for a release from escrow of that portion of the Cross Walk Sum attributable to such completed Cross Walk Improvements. Such request shall be supported by a progress report from Developer’s contractor detailing the percentage of completion of the Cross Walk Improvements. Upon the City’s review and confirmation that the work detailed in the progress report has been completed, Developer and the City shall provide a Joint Written Instruction (as defined herein) to Escrow Agent for release of that portion of the Cross Walk Sum mutually agreed upon by Developer and the City.

5. Escrow Funds. No later than five (5) days after the Effective Date, Developer shall deposit the Escrow Funds with Escrow Agent. This Escrow Agreement is subject to approval by the City Commission of a resolution(s) approving an amendment to Resolution Nos. 2021-56 and 2021-57. The proposed resolution(s) is anticipated to be scheduled for consideration by the City Commission

on May 10, 2021. Should the City Commission not approve such proposed resolution(s) this Escrow Agreement shall be deemed null and void.

6. Final Completion.

(a) Developer and the City covenant and agree that upon achieving Final Completion of the Cross Walk Improvements (as defined herein), Developer and the City shall provide a Joint Written Instruction (as defined herein) to Escrow Agent for release of the Cross Walk Sum, less any portion thereof already released from Escrow pursuant to Section 4 herein, to Developer. The phrase “Final Completion of the Cross Walk Improvements” shall mean the issuance of a certificate of completion for the Cross Walk Improvements or other similar documentation evidencing the closure of the Cross Walk Improvements.

(b) Developer and the City covenant and agree that upon achieving “Final Completion of the Ceiling Panel Improvements” (as defined below), Developer and the City shall provide a Joint Written Instruction to Escrow Agent for release of the Ceiling Panel Sum, less any portion thereof already released from escrow, to Developer. The phrase “Final Completion of the Ceiling Panel Improvements” shall mean the issuance of a certificate of completion for the Ceiling Panel Improvements or other similar documentation evidencing the closure of the Ceiling Panel Permit.

7. Final Completion Deadline. Developer shall achieve Final Completion of the Cross Walk Improvements and Final Completion of the Ceiling Panel Improvements by the date that is One Hundred Eighty (180) days after the Effective Date (the “Final Completion Deadline”), subject to the approval of a six (6) month extension of time by the City for good cause. Should Developer be prevented from performing any obligations herein due to or resulting from a “force majeure” or “inevitable accident or occurrence” as defined in this Section 6 (the “**Unavoidable Delay**”), the Developer shall be excused from performance for a period equal to the period of the delay occasioned by any Unavoidable Delay. As used herein, force majeure shall mean an act of God which includes but is not limited to sudden, unexpected or extraordinary forces of nature such as floods, washouts, storms, hurricanes, fires, earthquakes, landslides, epidemics, explosions or other forces of nature. Inevitable accidents or occurrences shall mean those which are unpreventable by the Owner and shall include but not be limited to strikes, lockouts, other industrial disturbances, wars, acts of public enemies, riots, military action, civil manufacturing and delivery delays and other causes reasonably beyond the control of the Owner, whether or not specifically enumerated herein. Owner shall notify the City in writing within ten (10) days of the commencement of the Unavoidable Delay, and describing the nature of such Unavoidable Delay and estimated period of time within which to cure said Unavoidable Delay.

(a) In the event Developer does not achieve Final Completion of the Cross Walk Improvements by the Final Completion Deadline, then the Cross Walk Sum, less any portion thereof already released from escrow, shall be due to the City and the Developer and the City shall provide a Joint Written Instruction to Escrow Agent for release of the Cross Walk Sum, less any portions thereof already released from escrow, to the City.

(b) In the event Developer does not achieve Final Completion of the Ceiling Panel Improvements by the Final Completion Deadline, then the Ceiling Panel Improvements Sum, less any portion thereof already released from escrow, shall be due to the City and the Developer and the City

shall provide a Joint Written Instruction to Escrow Agent for release of the of the Ceiling Panel Improvements Sum, less any portions thereof already released from escrow, to the City.

8. Disbursement of the Escrow Funds. Escrow Agent shall hold the Escrow Funds in escrow and shall disburse the Escrow Funds in accordance with the terms of this Escrow Agreement. Escrow Agent shall disburse the Escrow Funds as follows:

(a) to Developer, in accordance with a written instruction to Escrow Agent signed by both Developer and the City (a "Joint Written Instruction"). Escrow Agent shall disburse the Escrow Funds to Developer no earlier than five (5) business days, but no later than ten (10) business days, after Escrow Agent's receipt of A Joint Written Instruction;

(b) to the City, in accordance with a Joint Written Instruction. Escrow Agent shall disburse the Escrow Funds to the City no earlier than five (5) business days, but no later than ten (10) business days, after Escrow Agent's receipt of a Joint Written Instruction; or

(c) as directed by a court of competent jurisdiction. Escrow Agent shall disburse the Escrow Funds no earlier than five (5) business days, but no later than ten (10) business days, after Escrow Agent's receipt of an order or other written directive from a court of competent jurisdiction.

All written notices required by this Section shall be made in accordance with Section 10 of this Escrow Agreement.

9. Rights and Duties of Escrow Agent. To induce Escrow Agent to act hereunder, Developer and the City agree as follows.

(a) Escrow Agent has agreed to act as escrow agent for Developer and the City. Escrow Agent may rely upon a Joint Written Instruction in accordance with Sections 8(a) and 8(b) and any order or other written directive from a court of competent jurisdiction in accordance with 7(c) of this Escrow Agreement;

(b) Escrow Agent does not have, and will not have, any interest in the Escrow Funds but is serving only as an escrow holder and has only possession of the Escrow Funds;

(c) Escrow Agent may act, or refrain from acting, in reliance upon any instrument or signature furnished to it hereunder and reasonably believed by it to be genuine and may assume that any person purporting to give any writing, notice, advice or instruction in connection with the provisions hereof has been duly authorized to do so;

(d) Escrow Agent may resign and be discharged from its duties and obligations hereunder by giving notice of such resignation to the Parties, specifying the date upon which such resignation shall take effect; *provided, however,* that such date shall be not less than thirty (30) days from the date of such notice. Developer and the City shall also have the right, by mutual agreement, to terminate the appointment of Escrow Agent hereunder by giving to it notice of such termination, specifying the date upon which such termination shall take effect and designating a successor Escrow Agent. In any such event, Developer and the City shall, by mutual agreement, reasonably approve and designate a successor Escrow Agent to such resigning or terminated Escrow Agent. Upon written

demand of a successor Escrow Agent, the Escrow Funds shall be turned over and delivered to such successor Escrow Agent who shall, thereupon, be bound by all of the provisions hereof;

(e) Escrow Agent shall not be liable to either Developer or the City, or their respective officers, directors, shareholders, managers, affiliates, members, representatives, partners, agents, employees, parent companies, related companies, subsidiaries, successors, heir and assigns, for any action taken or for any mistake of fact or error of judgment, or for any acts or omissions of any kind unless caused by Escrow Agent's willful misconduct or gross negligence;

(f) this Escrow Agreement sets forth exclusively the duties of Escrow Agent with respect to any and all matters pertinent hereto and no implied duties or obligations shall be read into this Escrow Agreement against Escrow Agent;

(g) in the event of any *bona fide* disagreement between or among any of the Parties to this Escrow Agreement resulting in adverse claims or demands being made in connection with the subject matter of this Escrow Agreement, or in the event that Escrow Agent should, in good faith, be in doubt as to what action it should take hereunder, Escrow Agent may, at its option, refuse to comply with any claims or demands on it, or refuse to take any other action hereunder, so long as such disagreement continues or such doubt exists, and in any such event, Escrow Agent shall not be or become liable for damages, interest, or in any other way or to any person for its failure or refusal to act, and Escrow Agent shall be entitled to continue so to refrain from acting until (i) the rights of all Parties shall have been fully and finally adjudicated and there exists a final non-appealable order of a court of competent jurisdiction, or by the mutual agreement of the Parties, and (ii) Escrow Agent shall have received appropriate evidence of the foregoing, including, at its election, an opinion of counsel that any such adjudication is final and unappealable or that any such agreement is binding upon all of the interested persons. In the alternative, Escrow Agent may, but shall not be obligated to, file a suit in interpleader (the Parties hereto consenting to the filing of such action in the appropriate state court in Miami-Dade County, Florida) for a declaratory judgment for the purpose of having the respective rights of the claimants adjudicated, and may deposit with such court the Escrow Funds, in which event Developer and the City jointly and severally agree to pay all costs, expenses and attorneys' fees incurred by Escrow Agent in connection therewith, the amount thereof to be fixed and such judgment therefor to be rendered by the court in such suit;

(h) unless Escrow Agent discharges any of its duties under this Escrow Agreement in violation of specific terms of this Escrow Agreement in a grossly negligent manner or is guilty of willful misconduct with regard to its duties under this Escrow Agreement, Escrow Agent shall not be liable to Developer, the City or any other person or entity for any action taken or loss suffered by Developer, the City or such other person or entity, nor for any mistake of fact, error of judgment, or for any actions or omissions of any kind. Except with respect to the foregoing limited liability exceptions, Developer and the City, jointly and severally, shall indemnify Escrow Agent and hold it harmless from any and all claims, liabilities, losses, actions, suits or proceedings, or other expenses, fees, or charges of any character or nature, public or private, which it may incur or with which it may be threatened by reason of its acting as Escrow Agent under this Escrow Agreement, and shall indemnify Escrow Agent against any and all expenses, including reasonable attorneys' fees and the cost of defending any action, suit or proceeding or resisting any claim in such capacity, both at the trial and appellate levels. The provisions of this paragraph shall survive the termination of this Escrow Agreement; and

(i) this Escrow Agreement sets forth exclusively the duties of Escrow Agent with respect to any and all matters pertinent hereto. Escrow Agent shall not refer to, and shall not be bound by, the provisions of any other agreement with respect to the subject matter hereof.

10. Notice. Any notice, report, demand, instruction, Architect's Certification or Joint Written Instruction required or permitted under this Escrow Agreement shall be made in writing and shall be deemed to have been sufficiently transmitted, delivered, given or served for all purposes to the Party to whom such notice, report, demand, instruction, Architect's Certification or Joint Written Instruction is addressed, if delivered by nationally recognized overnight courier service, which provides a receipt, to such Party at its address indicated below or at such other address as a Party may subsequently designate by written notice as provided in this Section 10. The effective date of delivery or transmittal of a notice, report, demand, instruction, Architect's Certification or Joint Written Instruction shall be the actual date that delivery is effected.

To Developer: 251 S Dixie LLC
Attention: Brent Reynolds
1340 South Dixie Highway, Suite 612
Coral Gables, FL 33146

To City: City of Coral Gables
Attention: Miriam Ramos, Esq., City Attorney
405 Biltmore Way, 2nd Floor
Coral Gables, FL 33134

To Escrow Agent: Greenberg Traurig, P.A.
Attn: Jorge L. Navarro, Esq.
333 S.E. 2nd Avenue
Suite 4400
Miami, Florida 33131

11. Miscellaneous.

(a) Authority. Each Party warrants and represents to the other Party that it has full right and authority to enter this Escrow Agreement, and that the person signing this Escrow Agreement on behalf of such Party is duly authorized by all necessary company documents or operating agreements (as applicable) to do so.

(b) Successors and Assigns. This Escrow Agreement shall be binding upon the Parties and their respective heirs, legal representatives, successors and assigns.

(c) Dispute Resolution; Venue, Jurisdiction and Waiver Right to Trial by Jury. Any and all claims and disputes arising out of, relating to, or in any way connected with this Escrow Agreement shall be resolved by litigation in a court of competent jurisdiction. The Parties expressly consent to, and agree that, the exclusive jurisdiction and venue for any lawsuit arising out of, relating to, or in any way connected with this Escrow Agreement shall be in the State and Federal courts in and for Miami-Dade County, Florida, and the Parties waive any objection to such jurisdiction and venue. **THE PARTIES HEREBY KNOWINGLY, IRREVOCABLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT EITHER MAY HAVE TO A TRIAL BY JURY IN**

RESPECT OF ANY ACTION, PROCEEDING, LAWSUIT, CLAIM OR COUNTERCLAIM ARISING OUT OF, OR RELATING TO, THIS ESCROW AGREEMENT. In no event shall Developer be liable to the City for consequential, special, indirect or punitive damages.

(d) Governing Law. This Escrow Agreement shall be governed by, and construed in accordance with, the laws of the State of Florida without regard to principles of conflicts of laws.

(e) Attorneys' Fees. The prevailing party in any lawsuit or other proceeding arising out of, relating to, or connected with, this Escrow Agreement shall be entitled to recover its reasonable attorneys' fees and costs, whether incurred before suit, during suit, during mediation, at trial, or at the appellate level. The prevailing party shall also be entitled to recover all attorneys' fees and costs incurred in litigating entitlement to attorneys' fees and costs, as well as in determining or quantifying the amount of recoverable attorneys' fees and costs. The reasonable costs to which the prevailing party is entitled shall include costs that are taxable under any applicable statute, rule or guideline, as well as nontaxable costs, including, but not limited to, costs of investigation, copying costs, electronic discovery costs, telephone charges, mailing and delivery charges, information technology support charges, consultant and expert witness fees, travel expenses, electronic research costs, court reporter fees and mediator fees, regardless of whether such costs are otherwise taxable.

(f) Consideration. The Parties acknowledge and agree that this Escrow Agreement is fully and adequately supported by consideration and is fair and reasonable.

(g) Construction of the Agreement. The Parties acknowledge and agree that: (i) each Party has participated fully in the negotiation and preparation of this Escrow Agreement, and (ii) each Party has carefully reviewed this Escrow Agreement and is entering into same freely. Accordingly, this Escrow Agreement shall not be more strictly construed against either Party. In construing this Escrow Agreement, the singular shall be held to include the plural, the plural shall be held to include the singular, the use of any gender shall be held to include every other and all genders, and captions and paragraph headings shall be disregarded.

(h) Invalid or Inconsistent Provisions. Invalidation of any one of these provisions by judgment of court shall not affect any of the other provisions of this Escrow Agreement, which shall remain in full force and effect.

(i) Headings. Descriptive headings are for convenience only and shall not control or affect the meaning or construction of any provision of this Escrow Agreement.

(j) Exhibits. All of the exhibits attached to this Escrow Agreement are incorporated in, and made a part of, this Escrow Agreement.

(k) Counterparts. This Escrow Agreement may be executed in several counterparts, and/or by the execution of counterpart signature pages which may be attached to one or more counterparts of this Escrow Agreement, and all so executed shall constitute one Escrow Agreement binding on all of the Parties hereto, notwithstanding that all of the Parties are not signatories to the original or the same counterpart. In addition, any counterpart signature page may be executed by any Party wherever such Party is located, and may be delivered by telephone facsimile transmission or electronic mail, and any such facsimile or electronic mail transmitted signature pages may be attached to one or more counterparts of this Escrow Agreement, and such faxed or e-mailed

signature(s) shall have the same force and effect, and be as binding, as if original signatures executed and delivered in person.

(l) Waiver. A Party hereto may, at any time or times, at its election, waive any of the conditions to its obligations hereunder, but any such waiver shall be effective only if contained in writing signed by such Party. No waiver shall reduce the rights and remedies of such Party by reason of any breach of any other Party. No waiver by any Party of any breach hereunder shall be deemed a waiver of any other or subsequent breach.

(m) Modification; Termination. Subject to the other provisions hereof, this Escrow Agreement may not be amended, modified or terminated except by written agreement of the Parties.

12. Waiver of Conflict. The City acknowledges that Escrow Agent represents Developer in the negotiation and execution of this Escrow Agreement and other matters. The City acknowledges and agrees that nothing in this Escrow Agreement, or in the consummation of this Escrow Agreement, shall create any basis for the City to assert a conflict of interest or objection such as to prevent Escrow Agent from representing Developer in any capacity, even in the event of a dispute between Developer and the City arising out of the Construction Contract or this Escrow Agreement.

13. Entire Agreement. This Escrow Agreement constitutes the full and entire agreement and understanding between the Parties with respect to the subject matter hereof and there are no agreements, representations or warranties, except as specifically set forth herein. All prior discussions, negotiations, letters, demands and writings of any kind are fully merged into this Escrow Agreement and are to be construed to be of no further force or effect, it being the intention of the Parties that this Escrow Agreement shall serve as the sole and entire expression of their agreement and understanding.

SIGNATURES ON NEXT PAGE

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EXECUTED AS OF THE DAY AND YEAR WRITTEN BELOW.

ESCROW AGENT:

Greenberg Traurig, P.A., a professional corporation,

By: _____

Name: _____

Title: _____

Date: _____

DEVELOPER:

251 S Dixie LLC, a Delaware limited liability company

By: _____

Name: _____

Title: _____

Date: _____

CITY:

City of Coral Gables, a municipal corporation of the State of Florida

By: _____

Name: _____

Title: _____

Date: _____

DRAFT