MEMORANDUM

Not On
Agenda Item No. 7(F)(1)(F)

TO: Honorable Chairperson Barbara Carey-Shuler, Ed. D. and Members, Board of County Commissioners

DATE: March 16, 2004

FROM: George M. Burgess
County Manager

SUBJECT: Amendment to the Installment Sales Agreement with BAC Funding Corporation

RECOMMENDATION

It is recommended that the Board of County Commissioners approve the attached Resolution amending the Installment Sales Agreement (Agreement) between Miami Dade County and the Business Assistance Center Funding Corporation (BAC) with respect to the construction and purchase of the Martin L. King (MLK) Office Building and related parking garage renovations at the MLK Metrorail Station to provide for earlier installment payments than currently specified in the Agreement.

BACKGROUND

The Board of County Commissioners, at its meeting of December 15, 1998, accepted an outline of fundamental business terms negotiated between the County and BAC for the development and installment sale of an office facility and reconfiguration of the existing parking garage at the MLK Metrorail Station site. Subsequent to that meeting, the Board approved the form and business terms contained within three agreements between the County and the BAC including: 1) a Ground Lease Agreement (Resolution R-828-99); 2) a Development Contract for Renovation of the Existing Parking Garage and Construction of Office Building at Dr. Martin Luther King Jr. Metrorail Station Site (Resolution R-829-99) and, 3) the Agreement (Resolution R-830-99), all of which in substantial form were approved on July 13, 1999.

Approval of the project was obtained from the Federal Transit Administration on March 6, 2000. The County's Development Impact Committee review, which culminated in a request for special exception site plan approval and non-use variance of parking regulations was, approved at the June 8, 2000 Board of county Commissioners zoning agenda (00-6-cc-1/99-433).

The BAC has substantially completed the project construction. After final completion, the building will house the Solid Waste Management, Corrections and Rehabilitation, and Human Services Departments, and satellite offices for Team Metro and Procurement Departments.

The current Agreement provides that the County commence making an installment payment toward the purchase and use of the Building (Differential) and paying the actual, operating costs (Operating Payment) once BAC obtains a Certificate of Occupancy (CO). It also provides that the build-out on

each floor would be the responsibility of the County. The County's Building Department has determined, however, that BAC cannot obtain a CO until the build-out is complete. To complete the build-out, the County needs to have access to the building but currently has no responsibility under the Agreement to make the Differential payment and Operating Payment i.e., electricity, security, etc. during the build-out because a CO has not been issued. This conflict was not considered or anticipated when the parties entered into the Lease. The Lease, therefore, needs to be amended to allow for the Differential payment and the Operating Payment to be made by the County to BAC once it takes possession and prior to the issuance of a CO.

BAC is obtaining a Certificate of Completion (CC) that is evidence that the "shell building space" has been completed in accordance with the governing building codes. Once the CC is issued and delivered to the County, the County needs to take possession of the building as soon as possible to meet its schedule for completing the build-out. Staff has projected that it will take up to four months (120 days) to complete the build-out phase.

Under the terms of the Agreement, the Debt Service, Differential and Operating Payment are estimated to be $243,667 per month.

Assistant County Manager

MEMORANDUM

(Revised)

TO: Hon. Chairperson Barbara Carey-Shuler, Ed.D. and Members, Board of County Commissioners

DATE: March 16, 2004

FROM: Robert A. Ginsburg
County Attorney

SUBJECT: Not On Agenda Item No. 7(F)(1)(F)

Please note any items checked.

✓ "4-Day Rule" ("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

____ Bid waiver requiring County Manager's written recommendation

____ Ordinance creating a new board requires detailed County Manager's report for public hearing

____ Housekeeping item (no policy decision required)

____ No committee review

Approved _____ Mayor
Veto _____
Override _____

Not On
Agenda Item No. 7(F)(1)(F)
3-16-04

RESOLUTION NO. _____

RESOLUTION AMENDING INSTALLMENT SALES AGREEMENT BETWEEN COUNTY AND BAC FUNDING CORPORATION WITH RESPECT TO CONSTRUCTION AND PURCHASE OF NEW OFFICE BUILDING AND RELATED PARKING GARAGE RENOVATIONS AT MLK METRORAIL STATION TO PROVIDE FOR EARLIER PAYMENT BY THE COUNTY AND OTHER TECHNICAL REVISIONS; AND COUNTY MANAGER IS AUTHORIZED TO EXECUTE AND DELIVER AMENDMENT

WHERERAS, this Board wishes to approve an amendment that provides for earlier payment by County and other technical revisions to the Installment Sales Agreement between the County and BAC Funding Corporation ("Amendment") with respect to the construction and purchase of a new office building, including related parking garage renovations, at the MLK Metrorail station; and

WHEREAS, the Board wishes to approve the Amendment in accordance with the County Manager's memorandum, which is incorporated in this Resolution in its entirety by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that the Amendment, in the form attached as Exhibit A to this Resolution, is approved in accordance with the County Manager's memorandum and the County Manager is authorized to execute and deliver the Amendment on behalf of the County after consultation with the County Attorney's office.

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

Dr. Barbara Carey-Shuler, Chairperson
Katy Sorenson, Vice-Chairperson

Bruno A. Barreiro
Betty T. Ferguson
Joe A. Martinez
Dennis C. Moss
Natacha Seijas
Sen. Javier D. Souto
Jose "Pepe" Diaz
Sally A. Heyman
Jimmy L. Morales
Dorrin D. Rolle
Rebeca Sosa

The Chairperson thereupon declared the resolution duly passed and adopted this 16th day of March, 2004. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

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

HARVEY RUVIN, CLERK

Approved by County Attorney as
to form and legal sufficiency.

By:_____
Deputy Clerk

Gerald T. Heffernan

FIRST AMENDMENT TO INSTALLMENT SALE AGREEMENT

THIS FIRST AMENDMENT TO INSTALLMENT SALE AGREEMENT ("Amendment") is entered into as of this day of 2004, by **BAC FUNDING CORPORATION**, a Florida not-for-profit corporation ("Seller") and **MIAMI-DADE COUNTY, FLORIDA**, a political subdivision of the State of Florida ("Buyer").

WHEREAS, the Seller and the Buyer previously entered into an Installment Sale Agreement, dated as of October 1, 2000 (the "Installment Sale Agreement"), pursuant to which the Buyer agreed to purchase a newly constructed office building and related facilities from the Seller pursuant to certain terms and conditions; and

WHEREAS, the Seller and the Buyer desire to amend the Installment Sale Agreement to provide certain amendments and to acknowledge the continued application of the all of the terms and provisions of the Installment Sale Agreement, as amend,

NOW, THEREFORE, in consideration of the covenants and conditions set for in this Amendment, the Seller and Buyer agree as follows:

SECTION 1. DEFINITIONS Words and terms that are defined in the Installment Sale Agreement shall have the same meanings ascribed to them when used in this Amendment unless the context or use clearly indicates a different meaning or intent.

SECTION 2. AMENDMENTS New language is underlined and deleted language is crossed out.

2.1 Article 1 of the Installment Sale Agreement is amended as follows:

2.1.1 "Build-out" shall mean the build-out by the Purchaser of the office space in the Building including actual construction and installation of office system furniture and fixtures.

2.1.2 "Certificate of Completion" shall mean an affidavit, set forth by Seller, as developer, or its architect, sealed and notarized by a duly authorized notary of the State of Florida, stating that the Improvements other than the Build-out have been completed in accordance with the Plans.

2.1.3 "Certificate of Occupancy" shall mean the certificate issued by the applicable governmental authority evidencing that the Improvements and Build-out have been completed in accordance with Laws and Ordinances.

2.1.4 "Commencement Date" shall mean the actual date the Purchaser takes possession of ~~opens for official business within~~ the Premises in order to commence the

Build-out but in no event later than thirty (30) days after a Certificate of Completion ~~Occupancy~~ for the Building is issued.

2.2 Section 16.01 (a) (ii) is amended to read as follows:

2.2.1...and (ii) a Certificate of Completion ~~Occupancy~~ .

2.3 The second sentence in Article 22 is amended to read as follows:

2.3.1 Notwithstanding anything herein to the contrary, the parties hereto acknowledge that the Developer has entered ~~intends~~ into an ~~a development~~ agreement with the MLK Joint Venture ("MLKJV") pursuant to which the MLKJV will act as development consultant and construction manager for ~~develop and construct~~ the Improvements for and on behalf of BAC.

SECTION 3. INSTALLMENT SALE AGREEMENT TO REMAIN IN FORCE AND EFFECT Except as otherwise amended and supplemented by this Amendment, the provisions of the Installment Sale Agreement shall remain in full force and effect.

SECTION 4. EXECUTION IN COUNTERPARTS This Amendment may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

SECTION 5. BINDING EFFECT This Amendment shall inure to the benefit of, and shall be binding upon, the Seller and the Purchaser and their respective successors, administrators, executors and assigns.

SECTION 6. SEVERABILITY In the event any provision of this Amendment shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any of its other provisions.

SECTION 7. GOVERNING LAW This Amendment shall be governed by the laws of the State of Florida.

(The balance of this page is intentionally left blank)

IN WITNESS WHEREOF, the Seller and Buyer have each caused this Amendment to be executed by their duly authorized officers, effective as of the date set forth in the first paragraph.

SELLER

(Corporate Seal)

BAC FUNDING CORPORATION

By: _____
Chairman

Attest:

By: _____
Secretary-Treasurer

BUYER

(Seal)

MIAMI-DADE, COUNTY

By:_____
County Manager

Attest:

By:_____
(Deputy) Clerk