

**MEMORANDUM**

Agenda Item No. 14(A)(1)

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**TO:** Honorable Chairman Joe A. Martinez  
and Members, Board of County Commissioners


**DATE:** March 20, 2012

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

**SUBJECT:** Resolution authorizing the Mayor to expend funds, and take any other actions as authorized by the loan documents, to protect the County's interest as leasehold mortgagee in the Peninsula Edison Plaza Project

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The accompanying resolution was prepared by the Public Housing and Community Department and placed on the agenda at the request of Prime Sponsor Vice Chairwoman Audrey M. Edmonson.

  
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R. A. Cuevas, Jr.  
County Attorney


RAC/jls

# Memorandum



**Date:** March 20, 2012

**To:** Honorable Chairman Joe A. Martinez  
and Members, Board of County Commissioners

**From:** Carlos A. Gimenez  
Mayor 

**Subject:** Peninsula Edison Plaza Section 108 Loan

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## Recommendation

It is recommended that the Board of County Commissioners (BCC) approve the attached resolution authorizing the County Mayor or the County Mayor's designee to expend up to \$400,000 in Empowerment Zone (EZ) program income to cover delinquent property taxes for 2008 and 2009 for the Peninsula Edison Plaza facility.

Additionally, this item will authorize the County Mayor or the County Mayor's designee to take any other actions as authorized by the loan documents, to protect the County's interest as leasehold mortgagee in the Peninsula Edison Plaza.

## Scope

The Peninsula Edison Plaza is located at 6261 N.W. 7th Avenue, Miami, Florida, 33150 in Commission District 3.

## Fiscal Impact/Funding Source

It is recommended that EZ program income of up to \$400,000 be utilized to cover 2008 and 2009 delinquent taxes for the Peninsula Edison Plaza facility. Although the EZ Program expired on September 30, 2010, program income funding is being generated from existing EZ loans.

Based on information received from the Tax Collector's Office, the 2008 and 2009 taxes totaling \$366,356.07 must be paid by March 31, 2012 to avoid the eventual sale of the property through the tax deed process. If payment of the 2008 and 2009 delinquent taxes is not received by March 31, 2012, the tax certificate holder may apply for tax deed and consolidate all of the outstanding taxes due.

Once a tax deed application is processed, the Clerk of Courts will schedule and conduct the tax deed sale. The total amount due will be accruing 1.5 percent interest per month until the date of the sale. If the property is sold through the Tax Collector's process, and the lease is terminated, the County stands to lose its \$10.397 million in Section 108 and other funding sources including Community Development Block and Venture Capital Funds. It is important to note that an estimated total of \$665,233.81 (inclusive of 2010 and 2011 delinquent taxes) is currently outstanding, but \$366,356.07 must be paid by March 31, 2012 to avoid the loss of the property.

## Track Record/Monitor

Peninsula Edison Plaza (the Borrower) is in default of the Florida Leasehold Mortgage, Assignment of Leases and Rents and Security Agreement (the "Mortgage") executed on January 31, 2006 with the County (the Lender). As of March 6, 2012, the Borrower has failed to pay lender principal, interest (not including default interest) and late charges in the amount of \$1,716,326.98 and has defaulted under the Mortgage securing the Note.

The Department of Public Housing and Community Development will be responsible for monitoring this activity.

**Background**

The BCC adopted Ordinance 99-94 which authorized the submission of an application to the United States Department of Housing and Urban Development (US HUD) for a Section 108 Loan in the amount of \$40 million for the sole purpose of creating a Revolving Loan Fund (RLF) program for designated Target Urban Areas (TUA). It was anticipated that the a RLF program could result in assisting TUA business participation in the County's economic growth and in the creation of at least 1,200 jobs of which 51 percent would be made available to low- and moderate-income persons. Pursuant to US HUD requirements, the County pledged its future Community Development Block Grant (CDBG) entitlement grant awards as collateral for the repayment of the Section 108 loan.

Based on the pledge of the County's CDBG allocation, the eligibility requirements for projects to be funded through the TUA RLF program were designed to limit the County's participation under the program to the most appropriate and viable projects in need of "gap" financing. The County and US HUD executed a contract on August 9, 2001, which governed the administration and underwriting requirements of all loans through the RLF program. For each \$35,000 of financial assistance, it was anticipated that at least one new permanent job would be created.

In July 2005, the County was notified by US HUD that the Section 108 Program Commitment would expire on September 30, 2005. As a result of the \$40 million Section 108 Loan Commitment from US HUD, a total of 15 businesses were assisted including Peninsula Edison Plaza. A total of \$7.2 million was awarded by the County to Peninsula Edison Plaza, LLC for the construction of the Plaza. The Edison Marketplace is a shopping center located on NW 62<sup>nd</sup> Street and 7<sup>th</sup> Avenue. The gross square footage of Edison Marketplace is 81,400 with 75,197 square feet as leasable (92 percent of the gross square footage.). Edison Marketplace is anchored by Presidente Supermarket and supported by Family Dollar and Rainbow Fashions. Additional franchise tenants include GameStop, Wingstop and Footlocker stores. The 2011 assessed value for the property is \$6.6 million; however, the property has not been appraised for several years. The County plans to obtain an updated appraisal as soon as possible.

The developer, property manager and owner of Edison Marketplace is Peninsula Edison Plaza, LLC. Peninsula Edison Plaza, LLC (lessee) entered into a ground lease executed on November 22, 2004 with Edison Marketplace Group, LLC (lessor) for the property.

To date, the borrower has (i) failed to pay all sums due under the Mortgage at the time and in the manner provided in the Promissory Note made by Borrower to Lender on January 31, 2006; (ii) failed to pay all taxes due for the premises (as defined in the Mortgage), specifically property taxes for 2008, and 2009 in the total amount of approximately \$366,356.07 as set forth in Section 2 of the Mortgage; (iii) failed to maintain property, general comprehensive liability, and rent insurance as set forth in Section (3)(a) of the Mortgage; and (iv) received a Notice of Event of Default of the Ground Lease Agreement between Edison Marketplace Group, LLC and Borrower, which Notice of Default was dated February 17, 2012.

As of March 6, 2012, the Borrower has failed to pay the Lender principal, interest (not including default interest) and late charges in the amount \$1.716 million and has defaulted under the Mortgage securing the Note as set forth above. The Borrower is also in default of the Construction Loan Agreement executed between the Borrower and the Lender dated January


31, 2006. The Borrower has failed to submit semi-annual financial statements for 2008 through 2011, as required by Article IV, Section 13; and has failed to demonstrate the creation of 206 jobs with at least 51 percent being held by persons of low- to moderate-income, as required by Article VII, Section (1)(k).

In addition, pursuant to Article VII, Section 1(l) of Construction Loan Agreement, if by February 1, 2012 at least 51 percent of the 206 jobs created by Borrower are not held by persons of low- to moderate-income, the entire outstanding balance of the Loan, together with any prepayment penalty, shall become due and payable within sixty (60) days of written notice. In a letter dated March 7, 2012 (copy attached), the Borrower was notified that in the event the Borrower fails to cure the Events of Defaults, within the thirty (30) day cure period, the Lender shall foreclose upon the leasehold mortgage, otherwise enforce and protect its security for the Note, and seek any and all remedies available to Lender at law or equity.

Additionally, the County entered into a Forbearance Agreement with the Borrower on March 23, 2009, whereby the County agreed to accept a reduced monthly payment for nine months. Following the expiration of the Forbearance Agreement, the Borrower failed to commence its regular monthly payment in the amount of \$52,891.55, which was due to begin on January 1, 2010. As of February 29, 2012, approximately \$10.397 million is owed by the Borrower to the County.

The approval of the Item will allow the County to pay delinquent taxes with the Empowerment Zone program income and will also allow the County to take the necessary action as authorized by the loan documents to protect the County's interest as leasehold mortgagee in the Peninsula Edison Plaza facility. In addition to the 2008 and 2009 taxes, the Borrower also owes taxes for 2010 (\$161,469) and rent to the Edison Market Group, LLC (\$146,000). The Borrower has failed to pay the Lender principal, interest (not including default interest) and late charges in the amount of \$1.716 million. In addition, the City of Miami also provided a Loan to the Borrower.

If the Borrower fails to cure the Events of Default, the County will foreclose on the loan and operate the shopping center. The revenues generated from the shopping center will be used to cover operating expenditures including rent payments, property taxes, insurance, and the Section 108 debt service payments. To the extent additional funds in excess of operating revenues are needed to address outstanding issues for the property, future item(s) will be presented to the BCC for approval.



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Deputy Mayor



# MEMORANDUM

(Revised)

**TO:** Honorable Chairman Joe A. Martinez  
and Members, Board of County Commissioners

**DATE:** March 20, 2012

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

**SUBJECT:** Agenda Item No. 14(A)(1)

Please note any items checked.

- "3-Day Rule" for committees applicable if raised
- 6 weeks required between first reading and public hearing
- 4 weeks notification to municipal officials required prior to public hearing
- Decreases revenues or increases expenditures without balancing budget
- Budget required
- Statement of fiscal impact required
- Ordinance creating a new board requires detailed County Manager's report for public hearing
- No committee review
- Applicable legislation requires more than a majority vote (i.e., 2/3's \_\_\_\_, 3/5's \_\_\_\_, unanimous\_\_\_\_) to approve
- Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved \_\_\_\_\_ Mayor

Agenda Item No. 14(A)(1)

Veto \_\_\_\_\_

3-20-12

Override \_\_\_\_\_

RESOLUTION NO. \_\_\_\_\_

RESOLUTION AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXPEND FUNDS, AND TAKE ANY OTHER ACTIONS AS AUTHORIZED BY THE LOAN DOCUMENTS, TO PROTECT THE COUNTY'S INTEREST AS LEASEHOLD MORTGAGEE IN THE PENINSULA EDISON PLAZA PROJECT

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

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that the County Mayor or the County Mayor's designee is authorized to expend funds, as set forth in the accompanying memorandum, and take any other actions as authorized by the loan documents, to protect the County's interest as leasehold mortgagee in the Peninsula Edison Plaza Project.

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:

- |                      |                                     |
|----------------------|-------------------------------------|
|                      | Joe A. Martinez, Chairman           |
|                      | Audrey M. Edmonson, Vice Chairwoman |
| Bruno A. Barreiro    | Lynda Bell                          |
| Esteban L. Bovo, Jr. | Jose "Pepe" Diaz                    |
| Sally A. Heyman      | Barbara J. Jordan                   |
| Jean Monestime       | Dennis C. Moss                      |
| Rebeca Sosa          | Sen. Javier D. Souto                |
| Xavier L. Suarez     |                                     |

The Chairperson thereupon declared the resolution duly passed and adopted this 20th day of March, 2012. 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

By: \_\_\_\_\_  
Deputy Clerk

Approved by County Attorney as  
to form and legal sufficiency.



Shannon D. Summerset



OFFICE OF THE MAYOR  
MIAMI-DADE COUNTY, FLORIDA

CARLOS A. GIMENEZ  
MAYOR

Transmitted via Facsimile & Certified Mail  
Returned Receipt Requested

March 7, 2012

Peninsula Edison Plaza, LLC  
6269 N.W. 7<sup>th</sup> Avenue, Suite 203  
Miami, FL 33150  
Otis Pitts, Jr., President and Registered Agent

Peninsula Edison Plaza, LLC  
6261 N.W. 7<sup>th</sup> Avenue  
Miami, FL 33150  
Otis Pitts, Jr., President and Registered Agent

Otis Pitts, Jr. Guarantor  
2021 N.W. 194<sup>th</sup> Terrace  
Miami Gardens, FL 33056

**RE: Notice of Default of Promissory Note, Leasehold Mortgage and Construction Loan Agreement between Peninsula Edison Plaza, LLC ("Borrower") and Miami-Dade County ("Lender") - County Loan Number: CDE025**

Dear Mr. Pitts:

Please be advised that Peninsula Edison Plaza, LLC ("Borrower") is in default of the Florida Leasehold Mortgage, Assignment of Leases and Rents and Security Agreement (the "Mortgage") executed on January 31, 2006 and recorded at O.R. Book 24266 Page 1399. Borrower has (i) failed to pay all sums due under the Mortgage at the time and in the manner provided in the Promissory Note made by Borrower to Lender January 31, 2006 in the amount of \$7,200,000 (the "Note"), as described below; (ii) failed to pay all taxes due for the Premises (as defined in the Mortgage), specifically property taxes for 2008, 2009 and 2010 in the total amount of approximately \$627,824.91, as set forth in Section 2 of the Mortgage; (iii) failed to maintain property, general comprehensive liability, and rent insurance as set forth in Section (3)(a) of the Mortgage; and (iv) received a Notice of Event of Default of the Ground Lease Agreement between Edison Marketplace Group, LLC and Borrower, which Notice of Default was dated February 17, 2012.

Borrower is in default of the Note. As of March 6, 2012, Borrower has failed to pay Lender principal, interest (not including default interest) and late charges in the amount of \$1,716,326.98 and has defaulted under the Mortgage securing the Note as set forth above.



Mr. Otis Pitts  
Peninsula Edison Plaza - County Loan Number: CDE025  
March 7, 2012  
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Borrower is in default of the Construction Loan Agreement executed between Borrower and Lender dated January 31, 2008. Borrower has failed to submit semi-annual financial statements for 2008, 2009, 2010 and 2011, as required by Article IV, Section 13; and has failed to create 206 jobs with at least 51% being held by persons of low or moderate income, as required by Article VII, Sect. (1)(k).

In addition, pursuant to Article VII, Section 1(l) of the Construction Loan Agreement, if by February 1, 2012 at least 51% of the 206 jobs created by Borrower are not held by persons of low or moderate income, the entire outstanding balance of the Loan, together with any prepayment penalty, shall become due and payable within **sixty (60) days** of written notice. In accordance with the Construction Loan Agreement, therefore, the entire outstanding balance of the Note, together with accrued interest and penalties, is due and payable no later than **May 6, 2012**.

Lender previously entered into a Forbearance Agreement with Borrower on March 23, 2009, whereby Lender agreed to accept a reduced monthly payment for nine (9) months. Following the expiration of the Forbearance Agreement, Borrower failed to commence its regular monthly payments in the amount of \$52,891.55, which were due to begin January 1, 2010.

As of February 29, 2012, the amount of debt owed by Borrower to Lender is **\$10,396,985.21**, which has been computed as follows:

**Note:**

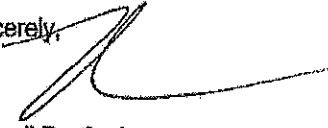
Principal Balance	\$7,200,000.00
Interest Due @ Note Rate (3/1/07 through 1/31/09)	\$1,288,889.75
Default Interest (1/1/10 though 2/21/12)	\$1,884,230.14
Late Charges	\$ 125,865.32
Amount Paid Since 3/1/07	(\$ 102,000.00)

**Total Amount Due** **\$10,396,985.21**

The above amount is valid through March 6, 2012. Subsequent to March 6, 2012, the principal balance will continue to accrue interest at the Default Rate, and the amount of the Debt will continue to increase.

**Borrower has thirty (30) days to cure the Events of Default listed above. If Borrower fails to cure these Events of Defaults within the thirty (30) day cure period, Lender shall foreclose upon the leasehold mortgage, otherwise enforce and protect its security for the Note, and seek any and all remedies available to Lender at law or equity.**

Sincerely,



Russell Benford  
Deputy Mayor

Mr. Otis Pitts  
Peninsula Edison Plaza - County Loan Number: CDE025  
March 7, 2012  
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Copy to: Albert E. Dotson, Counsel for Peninsula Edison Plaza, LLC  
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1450 Brickell Avenue, Suite 2300  
Miami, FL 33131

Carol Gardner  
Edison Marketplace Group, LLC  
645 NW 62 Street, Miami FL 33150

Kirk De Leon, Counsel for Edison Marketplace Group, LLC  
De Leon & De Leon  
The Concord Building  
66 West Flagler Street, Suite 800  
Miami, FL 33130

George Mensah, Director, Department of Community Development  
City of Miami  
444 SW 2<sup>nd</sup> Ave  
Miami, FL 33130

Julie O. Bru, City Attorney  
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Ninoshka Reyes, Assistant City Attorney  
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Gregg Fortner, Director, Public Housing and Community Development  
Miami Dade County  
701 NW 1<sup>st</sup> Court 14<sup>th</sup> Floor  
Miami, FL 33136

Leyani Sosa, Public Housing and Community Development  
Miami Dade County  
701 NW 1<sup>st</sup> Court 14<sup>th</sup> Floor  
Miami, FL 33136