

MEMORANDUM

Supplement to:
Agenda Item No. 11(A)(1)

TO: Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners

DATE: October 22, 2013

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

SUBJECT: Supplemental information to
resolution amending Resolution
No. R-754-11 related to Biscayne
River Village I and Biscayne
River Village II

This supplement is being submitted to delete Exhibits D and E (proposed Amendments to Ground Leases) from the above-referenced item and replace same with the attached new Exhibits D and E, which are the Assignments of Leases to Biscayne River Village I, LLC (the owner of Biscayne River Village I) and Biscayne River Village II, LLC (the owner of Biscayne River Village II), respectively. Additionally, Exhibits F and G are added to include the certificates of status issued by the State of Florida Department of State for Biscayne River Village I, LLC and Biscayne River Village II, LLC, respectively. Finally, Exhibits H and I are being added as the correct Amendments to Ground Leases to be executed by the County. The latter documents reflect the correct names of the owners of the projects.



R. A. Cuevas, Jr.
County Attorney

RAC/cp

EXHIBIT D

ASSIGNMENT OF LEASE (Biscayne River Village I)

THIS ASSIGNMENT (this "Assignment") is dated as of the 26th day of July, 2013, and is given by BISCAYNE RIVER VILLAGE PHASE I, LTD., a Florida limited partnership (the "Assignor") to BISCAYNE RIVER VILLAGE I, LLC, a Florida limited liability company ("Assignee").

WITNESSETH:

WHEREAS, Miami-Dade County, a Political Subdivision of the State of Florida, herein sometimes designated or referred to as the "COUNTY" or the "LANDLORD" or the "LESSOR" and Biscayne River Village I, LLC, a Florida limited liability company entered into that certain Ground Lease with an effective date of the 28th day of February, 2012 (the "LEASE"); and

WHEREAS, Biscayne River Village I, LLC, a Florida limited liability company assigned its interest under the LEASE to Biscayne River Village I, Ltd., a Florida limited partnership on the 28th day of February, 2012; and

NOW, THEREFORE, in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Assignor, as tenant, does hereby assign, grant, bargain, transfer, sell and convey onto Assignee its interest as the tenant under the Lease.

Assignee, by its acceptance hereof, does hereby assume and agree to perform any and all obligations and duties of Assignor, as the tenant under the Lease, first arising on or after the date hereof.

This Assignment shall be governed by, and construed under, the laws of the State of Florida.

This Assignment shall inure to the benefit of, and be binding upon the respective legal representatives, successors and assigns of the parties hereto.

IN WITNESS WHEREOF, Assignor has duly executed this Assignment as of the date first written above.

BISCAYNE RIVER VILLAGE PHASE I, LTD.,
a Florida limited partnership

MM BISCAYNE RIVER VILLAGE I, LLC, its
General Partner

By: REEF MIAMI, LLC

By: 

Michael C. Cox

The undersigned does hereby accepted and agree to the foregoing Assignment of Lease.

Biscayne River Village I, LLC,
a Florida limited liability company

By: Workforce Housing Foundation, Inc.,
a Florida not-for-profit corporation, its sole member

By: 
Name: Thomas V Eagan
Title: Director

EXHIBIT E

ASSIGNMENT OF LEASE (Biscayne River Village II)

THIS ASSIGNMENT (this "Assignment") is dated as of the 26th day of July, 2013, and is given by BISCAYNE RIVER VILLAGE PHASE II, LTD., a Florida limited partnership (the "Assignor") to BISCAYNE RIVER VILLAGE II, LLC, a Florida limited liability company ("Assignee").

WITNESSETH:

WHEREAS, Miami-Dade County, a Political Subdivision of the State of Florida, herein sometimes designated or referred to as the "COUNTY" or the "LANDLORD" or the "LESSOR" and Biscayne River Village II, LLC, a Florida limited liability company entered into that certain Ground Lease with an effective date of the 28th day of February, 2012 (the "LEASE"); and

WHEREAS, Biscayne River Village II, LLC, a Florida limited liability company assigned its interest under the LEASE to Biscayne River Village II, Ltd., a Florida limited partnership on the 28th day of February, 2012; and

NOW, THEREFORE, in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Assignor, as tenant, does hereby assign, grant, bargain, transfer, sell and convey onto Assignee its interest as the tenant under the Lease.

Assignee, by its acceptance hereof, does hereby assume and agree to perform any and all obligations and duties of Assignor, as the tenant under the Lease, first arising on or after the date hereof.

This Assignment shall be governed by, and construed under, the laws of the State of Florida.

This Assignment shall inure to the benefit of, and be binding upon the respective legal representatives, successors and assigns of the parties hereto.

IN WITNESS WHEREOF, Assignor has duly executed this Assignment as of the date first written above.

BISCAYNE RIVER VILLAGE PHASE II, LTD.,
a Florida limited partnership

MM BISCAYNE RIVER VILLAGE II, LLC, its
General Partner

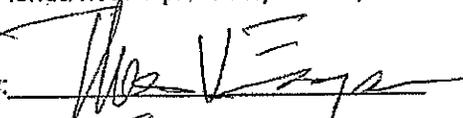
By: REEF MIAMI, LLC

By: 
Michael C. Cox

The undersigned does hereby accepted and agree to the foregoing Assignment of Lease.

Biscayne River Village II, LLC,
a Florida limited liability company

By: Workforce Housing Foundation, Inc.,
a Florida not-for-profit corporation, its sole member

By: 

Name: Thomas V Egan

Title: Director

EXHIBIT F

State of Florida
Department of State

I certify from the records of this office that BISCAYNE RIVER VILLAGE I, LLC, is a limited liability company organized under the laws of the State of Florida, filed on July 8, 2011, effective July 8, 2011.

The document number of this company is L11000078862.

I further certify that said company has paid all fees due this office through December 31, 2013, that its most recent annual report was filed on September 13, 2013, and its status is active.

*Given under my hand and the
Great Seal of the State of Florida
at Tallahassee, the Capital, this
the Sixteenth day of September,
2013*



Ken Deitzner
Secretary of State

Authentication ID: CU6341082531

To authenticate this certificate, visit the following site, enter this ID, and then follow the instructions displayed.

<https://efile.sunbiz.org/certauthver.html>

State of Florida

Department of State

I certify from the records of this office that BISCAYNE RIVER VILLAGE II, LLC is a limited liability company organized under the laws of the State of Florida, filed on July 8, 2011, effective July 8, 2011.

The document number of this limited liability company is L11000078873.

I further certify that said limited liability company has paid all fees due this office through December 31, 2013, that its most recent annual report was filed on September 16, 2013, and its status is active.

I further certify that said limited liability company has not filed Articles of Dissolution.

Given under my hand and the Great Seal of Florida, at Tallahassee, the Capital, this the Sixteenth day of September, 2013

Ken Rejzner

Secretary of State



Authentication ID: 800251768378-091613-L11000078873

To authenticate this certificate, visit the following site, enter this ID, and then follow the instructions displayed.

<https://efile.sunbiz.org/certauthver.html>

EXHIBIT H

AMENDMENT TO GROUND LEASE

This AMENDMENT TO GROUND LEASE (the "Amendment") is made and entered into as of the ___ day of _____, 2013 (the "Execution Date") by and between Miami-Dade County, a Political Subdivision of the State of Florida, herein sometimes designated or referred to as the "COUNTY" or the "LANDLORD" or the "LESSOR" and Biscayne River Village I, LLC, a Florida limited liability company hereinafter call the "TENANT" or the "LESSEE" collectively "LESSOR" and "LESSEE" shall be referred to as the "PARTIES".

WITNESSETH:

WHEREAS, LESSOR and Biscayne River Village I, LLC, a Florida limited liability company entered into that certain Ground Lease with an effective date of the 28th day of February, 2012 (the "LEASE"); and

WHEREAS, Biscayne River Village I, LLC, a Florida limited liability company assigned its interest under the LEASE to Biscayne River Village Phase I, Ltd., a Florida limited partnership on the 28th day of February, 2012; and

WHEREAS, Biscayne River Village Phase I, Ltd., a Florida limited partnership assigned its interest under the LEASE to LESSEE on the 26th day of July, 2013; and

WHEREAS, the LESSOR and the LESSEE wish to amend the LEASE in order to amend and restate certain sections of the LEASE, as provided herein below.

NOW, THEREFORE, the LESSOR and the LESSEE hereby agree to amend the LEASE as follows:

1. The PARTIES hereto agree that the above WHEREAS clauses are true and correct and are hereby incorporated by reference and made a part hereof.

2. Section 1.2 is hereby amended and restated as follows: WHEREAS, the LESSEE desires to lease such property from the COUNTY to develop a 80-unit workforce housing residential housing complex pursuant to the requirements of the Miami-Dade County Workforce Housing Plan, as currently adopted (hereinafter, the "Development"); and

3. Section 4.1.1 is hereby amended and restated as follows: Lessee shall construct on the DEMISED PREMISES at least 80-unit workforce housing residential housing complex pursuant to the requirements of the Miami-Dade County Workforce Housing Plan, as currently adopted, with a project setup as described in Exhibit "D" attached hereto and incorporated herein (the "Project"). The Demised Premises with the Project shall be considered the "Development". Any change(s) to the foregoing shall be subject to the approval of the Board of County Commissioners.

4. Section 8.1 is hereby amended and restated as follows: It is hereby

agreed that all existing structures shall be demolished and that said lands shall be utilized only for the purposes as are outlined above. However, the LESSEE, at its own expense, shall make such improvements, as provided herein, upon said land so that they may be used for the purposes for which this LEASE is made and entered into. Such improvements are to be at the sole cost and expense of the LESSEE. All phases of construction required pursuant to this LEASE shall be completed by December 31, 2016 unless a later date is approved in writing by the County Mayor or the County Mayor's designee.

Section 8.2 is hereby intentionally deleted.

5. Section 21.2.8 is hereby amended and restated as follows: In the event that the LESSEE: (a) fails to obtain adequate financing to complete construction of the Development by December 31, 2014 as set forth in EXHIBIT "B" attached and/or (b) fails to complete construction of the Development by December 31, 2016. Completion of construction shall mean the receipt by the Lessee of a Certificate of Occupancy from the appropriate government authority.

6. Section 21.2.9 is hereby amended and restated as follows: Failure by the LESSEE to construct at least 80-unit workforce housing residential housing complex pursuant to the requirements of the Miami-Dade County Workforce Housing Plan, as currently adopted.

7. Section 23.1 is hereby amended to provide that written notice to LESSEE shall be provided to: Biscayne River Village I, LLC c/o Reef Miami, LLC, 200 South Biscayne Boulevard, 40th Floor, Miami, Florida 33131, Attn: Michael Cox.

8. Section 28.5 is hereby amended and restated as follows: LESSEE agrees to execute any restrictive covenants required by the FHFC or the COUNTY, should COUNTY funding be utilized for the Development, to ensure compliance with the affordable housing requirements of the funding source and the COUNTY. The restrictive covenant required by the COUNTY shall be in such form as approved by the Miami-Dade County Attorney's Office and shall, at a minimum, include a requirement that the approximately 80-unit workforce housing residential housing complex shall be rented to households complying with the requirements of the Miami-Dade County Workforce Housing Plan, as currently adopted. This restrictive covenant shall not be subordinated to the interest of any lender financing the construction of the Development without the prior consent of the Board of County Commissioners.

9. This Amendment may be executed and delivered in any number of counterparts, each of which so executed and delivered shall be deemed to be an original and all of which shall constitute one and the same instrument. Signatures may be given via facsimile and/or email and any such facsimile and/or email signatures shall be treated in the same fashion as original signatures and shall be binding on the parties hereto.

10. In the event of a conflict between the provisions of the LEASE and this Amendment, the provisions of this Amendment shall govern and control.

11. This Amendment and the rights and obligations of the parties named herein shall be binding upon and inure to the benefit of their respective successors and assigns.

12. If any provision of this Amendment or the application thereof to any person or circumstances shall be held invalid or unenforceable pursuant to a non-appealable judgment entered by a court of law having jurisdiction over the Development, then the remainder of this Amendment and the application of such provision shall not be affected thereby and shall remain enforceable pursuant to its terms.

In Witness Whereof, the parties have executed this Amendment effective as of the Execution Date.

TENANT:

Biscayne River Village I, LLC, a Florida limited liability company

By: Workforce Housing Foundation, Inc., a Florida not-for-profit corporation, its sole member

By: _____

Name: _____

Title: _____

ATTEST:

LANDLORD:

HARVEY RUVIN, CLERK

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

By: _____
Deputy Clerk

By: _____
County Mayor

Approved as to form and legal sufficiency:

Assistant County Attorney

EXHIBIT B
PROJECT TIMELINE

EXHIBIT D
PROJECT SETUP

EXHIBIT I

AMENDMENT TO GROUND LEASE

This AMENDMENT TO GROUND LEASE (the "Amendment") is made and entered into as of the ___ day of _____, 2013 (the "Execution Date") by and between Miami-Dade County, a Political Subdivision of the State of Florida, herein sometimes designated or referred to as the "COUNTY" or the "LANDLORD" or the "LESSOR" and Biscayne River Village II, LLC, a Florida limited liability company hereinafter call the "TENANT" or the "LESSEE" collectively "LESSOR" and "LESSEE" shall be referred to as the "PARTIES".

WITNESSETH:

WHEREAS, LESSOR and Biscayne River Village II, LLC, a Florida limited liability company entered into that certain Ground Lease with an effective date of the 28th day of February, 2012 (the "LEASE"); and

WHEREAS, Biscayne River Village II, LLC, a Florida limited liability company assigned its interest under the LEASE to Biscayne River Village Phase II, Ltd., a Florida limited partnership on the 28th day of February, 2012; and

WHEREAS, Biscayne River Village Phase II, Ltd., a Florida limited partnership assigned its interest under the LEASE to LESSEE on the 26th day of July, 2013; and

WHEREAS, the LESSOR and the LESSEE wish to amend the LEASE in order to amend and restate certain sections of the LEASE, as provided herein below.

NOW, THEREFORE, the LESSOR and the LESSEE hereby agree to amend the LEASE as follows:

1. The PARTIES hereto agree that the above WHEREAS clauses are true and correct and are hereby incorporated by reference and made a part hereof.

2. Section 4.1.1 is hereby amended and restated as follows: Lessee shall construct on the DEMISED PREMISES at least fifty-four (54) elderly, affordable, residential housing units for individuals and households, with a project setup as described in Exhibit "D" attached hereto and incorporated herein (the "Project"). At least 17 units of the Project shall be set aside for households with incomes at or below thirty-three percent (33%) of Adjusted Median Income ("AMI"), together with common areas and amenities appurtenant thereto, to be leased or provided to persons qualifying under current Florida Housing Finance Corporation guidelines. The Project set aside for households with incomes at or below thirty-three percent (33%) of AMI shall be referred to in this agreement as "Extremely Low Income Units". All 17 of the Extremely Low Income Units shall be one-bedroom units and shall be set aside for elderly residents. The remaining 37 units shall be rented to elderly individuals and households with incomes at or below sixty percent (60%) of AMI together with common areas and amenities appurtenant thereto, to be leased or provided to persons qualifying under current Florida Housing Finance Corporation guidelines. LESSEE hereby irrevocably

grants a license, for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged by the LESSEE, to Biscayne River Village Phase I, Ltd., a Florida limited partnership (the "Licensee") in order for the Licensee to have access to construct, maintain and use parking spaces on the DEMISED PREMISES to accommodate any need for overflow parking regarding the property located at 395 N.W. 1st Street, Miami, Miami-Dade County, Florida in connection with the parking requirements for a workforce housing residential housing complex to be constructed/constructed thereon. The DEMISED PREMISES with the Project shall be considered the "Development". Any change(s) to the foregoing shall be subject to the approval of the Board of County Commissioners.

3. Section 8.1 is hereby amended and restated as follows: It is hereby agreed that all existing structures shall be demolished and that said lands shall be utilized only for the purposes as are outlined above. However, the LESSEE, at its own expense, shall make such improvements, as provided herein, upon said land so that they may be used for the purposes for which this LEASE is made and entered into. Such improvements are to be at the sole cost and expense of the LESSEE. All phases of construction required pursuant to this LEASE shall be completed by December 31, 2016 unless a later date is approved in writing by the County Mayor or the County Mayor's designee.

Section 8.2 is hereby intentionally deleted.

4. Section 21.2.8 is hereby amended and restated as follows: In the event that the LESSEE: (a) fails to obtain adequate financing to complete construction of the Development by December 31, 2014 as set forth in EXHIBIT "B" attached and/or (b) fails to complete construction of the Development by December 31, 2016. Completion of construction shall mean the receipt by the Lessee of a Certificate of Occupancy from the appropriate government authority.

5. Section 21.2.9 is hereby amended and restated as follows: Failure by the LESSEE to: (a) construct at least fifty-four (54) units in the Project set up required by this LEASE, and (b) rent at least 17 units in the Project as Extremely Low Income Units, and (c) rent the remaining units in the Project (those that are not required to be Extremely Low Income Units) to individuals and households with incomes at or below sixty percent (60%) of AMI.

6. Section 23.1 is hereby amended to provide that written notice to LESSEE shall be provided to: Biscayne River Village II, LLC c/o Reef Miami, LLC, 200 South Biscayne Boulevard, 40th Floor, Miami, Florida 33131, Attn: Michael Cox.

7. Section 28.5 is hereby amended and restated as follows: LESSEE agrees to execute any restrictive covenants required by the FHFC or the COUNTY, should COUNTY funding be utilized for the Development, to ensure compliance with the affordable housing requirements of the funding source and the COUNTY.

The restrictive covenant required by the COUNTY shall be in such form as approved by the Miami-Dade County Attorney's Office and shall, at a minimum, include a requirement that of approximately fifty-four (54) affordable elderly residential housing units (the "Project"), 17 shall be rented to households with incomes at or below thirty-three percent (33%) of Adjusted Median Income ("AMI"), and the remainder of the units shall be rented to individuals and households with incomes at or below sixty percent (60%) of AMI for the term of the LEASE. This restrictive covenant shall not be subordinated to the interest of any lender financing the construction of the Development without the prior consent of the Board of County Commissioners.

8. This Amendment may be executed and delivered in any number of counterparts, each of which so executed and delivered shall be deemed to be an original and all of which shall constitute one and the same instrument. Signatures may be given via facsimile and/or email and any such facsimile and/or email signatures shall be treated in the same fashion as original signatures and shall be binding on the parties hereto.

9. In the event of a conflict between the provisions of the LEASE and this Amendment, the provisions of this Amendment shall govern and control.

10. This Amendment and the rights and obligations of the parties named herein shall be binding upon and inure to the benefit of their respective successors and assigns.

11. If any provision of this Amendment or the application thereof to any person or circumstances shall be held invalid or unenforceable pursuant to a non-appealable judgment entered by a court of law having jurisdiction over the Development, then the remainder of this Amendment and the application of such provision shall not be affected thereby and shall remain enforceable pursuant to its terms.

In Witness Whereof, the parties have executed this Amendment effective as of the Execution Date.

TENANT:

Biscayne River Village II, LLC, a Florida
limited liability company

By: Workforce Housing Foundation, Inc., a
Florida not-for-profit corporation, its sole
member

By: _____

Name: _____

Title: _____

ATTEST:

HARVEY RUVIN, CLERK

By: _____
Deputy Clerk

LANDLORD:

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

By: _____
County Mayor

Approved as to form and legal sufficiency:

Assistant County Attorney

EXHIBIT B
PROJECT TIMELINE

EXHIBIT D
PROJECT SETUP