MEMORANDUM

Agenda Item No. 11(A)(3)

TO:	Honorable Chairman Jean Monestime and Members, Board of County Commissioners	**DATE:**	May 5, 2015
FROM:	R. A. Cuevas, Jr. County Attorney	**SUBJECT:**	Resolution approving First Amendment to Okeechobee Metrorail Station Transit Oriented Development Lease Agreement between County and City of Hialeah regarding Joint Development at Okeechobee Metrorail Station Site funded in part with Building Better Communities General Obligation Bond Funds; and authorizing County Mayor to execute and deliver the First Amendment

The accompanying resolution was prepared and placed on the agenda at the request of Prime Sponsor Vice Chairman Esteban L. Bovo, Jr.

R. A. Cuevas, Jr.
County Attorney

RAC/lmp

MEMORANDUM
(Revised)

TO: Honorable Chairman Jean Monestime
and Members, Board of County Commissioners

DATE: May 5, 2015

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

SUBJECT: Agenda Item No. 11(A)(3)

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 Mayor'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
Veto _____
Override _____

Agenda Item No. 11(A)(3)
5-5-15

RESOLUTION NO. _____

RESOLUTION APPROVING FIRST AMENDMENT TO OKEECHOBEE METRORAIL STATION TRANSIT ORIENTED DEVELOPMENT LEASE AGREEMENT BETWEEN COUNTY AND CITY OF HIALEAH REGARDING JOINT DEVELOPMENT AT OKEECHOBEE METRORAIL STATION SITE FUNDED IN PART WITH BUILDING BETTER COMMUNITIES GENERAL OBLIGATION BOND FUNDS; AND AUTHORIZING COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE AND DELIVER THE FIRST AMENDMENT

WHEREAS, this Board adopted Resolution No. R-532-14 on June 3, 2014 approving the Okeechobee Metrorail Station Transit Oriented Development Lease Agreement between the County and the City of Hialeah (the "City") dated August 8, 2014 (the "Lease Agreement") pursuant to which the County agreed to lease certain County owned real property ("Property") located adjacent to the Okeechobee Metrorail Station to the City for the development by the City of affordable housing for seniors which will promote Metrorail usage; and

WHEREAS, the City has advised the County that it wishes to (i) amend the minimum number of units requirement from 180 units to 98 units with the equivalent of an additional two units to be used for a recreation center and congregate meal site for the City's elderly meals program, (ii) change the number of phases in which the Property will be developed from three to two, and (iii) amend the timeframe for completion of all the units from nine years to six years; and

WHEREAS, this Board wishes to approve an amendment to the Lease Agreement,

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

Section 1. The foregoing recitals are incorporated in this Resolution and are approved.

Section 2. The First Amendment to Lease Agreement in substantially the form attached to this Resolution as Exhibit "A" (the "First Amendment") is approved and the County Mayor or County Mayor's designee is authorized to execute and deliver the First Amendment on behalf of the County.

The Prime Sponsor of the foregoing resolution is Vice Chairman Esteban L. Bovo, Jr. It 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:

Jean Monestime, Chairman
Esteban L. Bovo, Jr., Vice Chairman

Bruno A. Barreiro	Daniella Levine Cava
Jose "Pepe" Diaz	Audrey M. Edmonson
Sally A. Heyman	Barbara J. Jordan
Dennis C. Moss	Rebeca Sosa
Sen. Javier D. Souto	Xavier L. Suarez
Juan C. Zapata	

The Chairperson thereupon declared the resolution duly passed and adopted this 5th day of May, 2015. 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

HARVEY RUVIN, CLERK

By:_____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency. JRA

Juliette R. Antoine

Exhibit A

FIRST AMENDMENT TO OKEECHOBEE METRORAIL STATION TRANSIT ORIENTED DEVELOPMENT LEASE AGREEMENT

THIS FIRST AMENDMENT TO OKEECHOBEE METRORAIL STATION TRANSIT ORIENTED DEVELOPMENT LEASE AGREEMENT ("First Amendment") dated as of the first day of May, 2015 is between MIAMI-DADE COUNTY ("County"), a political subdivision of the State of Florida ("State"), and the CITY OF HIALEAH ("City"), a municipal corporation of the State.

WITNESSETH:

WHEREAS, the County and the City have entered into the Okeechobee Metrorail Station Transit Oriented Development Lease Agreement dated August 8, 2014 ("Lease") pursuant to which the County agreed to lease certain County owned real property ("Property") located adjacent to the Okeechobee Metrorail Station to the City for the development by the City of affordable housing for seniors which will promote Metrorail usage; and

WHEREAS, the City agreed in the Lease to develop one hundred and eighty (180) senior affordable housing units with ancillary uses and related parking to be constructed all at once or in three phases of sixty (60) units each ("Project"); and

WHEREAS, the City has determined that, due to the unforeseeable discovery of space limitations with the Property including, but not limited to, an adjacent rail line that traverses through the Project site and the discovery of a need for more space in order to provide sufficient parking for seniors, the number of affordable housing units in the Project needs to be reduced from one hundred and eighty (180) to ninety-eight (98) with the equivalent of two (2) additional units to be used for a recreation center and congregate meal site; and

WHEREAS, the County and the City wish to enter into this First Amendment to reduce the number of senior affordable units from one hundred and eighty (180) to ninety-eight (98); and

WHEREAS, the City proposes to proceed with the sixty (60) affordable senior units, including related parking, walkways and greenery, in Phase I for which it has received an allocation of five million five hundred and ninety-two dollars ($5,592,000) from the County's Building Better Communities General Obligation Program; and

WHEREAS, the County's Board of County Commissioners and the City Council have approved the terms of this First Amendment and their respective officials are authorized to execute and deliver it on their behalf,

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained in this First Amendment, the County and the City agree as follows:

ARTICLE I

AMENDMENTS[1]

Section 1.1 The following Sections of the Lease shall be amended as follows:

1.1.1 Section 2.11 **Development Rights** shall mean, for purposes of the Demised Premises and this Lease, the rights granted to Tenant pursuant to the terms of this Lease to develop, design and construct a minimum of 98 ~~180~~ units of affordable housing on the Demised Premises.

1.1.2 Section 2.25. **Phased Development** shall mean the different phases of construction required by the Tenant to achieve a total development of ninety-eight (98) ~~eighty (180)~~ Senior Affordable Housing Units. The number of construction phases shall not exceed two (2) ~~three (3)~~ over the total period to completion of six (6) ~~nine (9)~~ years (each such phase sometimes being referred to as a "Phase").

1.1.3 Section 2.28. **Project** shall mean 98 ~~180~~ units of Senior Housing, whether all units are built in one phase or two ~~three~~ phases as contemplated herein, with sixty (60) units constructed in ~~as to~~ the first phase ~~each phase~~, as such proposed development may be amended and/or revised from time to time as provided for elsewhere in this Lease Agreement.

1.1.4 Section 4.1 **Land Uses** (b) Tenant shall construct, or cause to be constructed, ninety-eight (98) ~~eighty (180)~~ Senior Affordable Housing units on the Demised Premises (subject to Unavoidable Delay) within six (6) ~~nine (9)~~ years of the Commencement Date. Tenant may construct greater than ninety-eight (98) ~~eighty (180)~~ units of Senior Affordable Housing, subject to applicable codes, Laws and Ordinances. If Tenant has not received a Certificate of Occupancy for all ninety-eight (98) ~~eighty (180)~~ units within six (6) ~~nine (9)~~ years of the Commencement Date, subject to Unavoidable Delay, it shall be an Event of Default under this Lease.

1.1.5 Section 4.2 **Phased Development** Tenant may elect to develop all ninety-eight (98) ~~eighty (180)~~ units at one time, or in phases ("Phased Development") while adhering to all terms of the Lease. Should Tenant elect a Phased Development schedule only that portion of the Demised Premises absolutely necessary to efficiently construct that particular phase may be utilized.

[1] Words stricken through are deleted and words underscored are added as new language.

1.1.6 Section 4.3 **Progress of Development** ~~(b) Phase II. Sixty (60) units of Senior Affordable Housing, beyond those completed in Phases I, including required parking. Tenant shall obtain building permit within forty--eight (48) months of Commencement Date. Completion of Construction shall occur within seventy-two (72) months of Commencement Date.~~

(b)~~(c)~~ Phase II. Thirty-eight (38) ~~Sixty (60)~~ units of Senior Affordable Housing, ~~beyond those completed in Phases I and II,~~ including required parking, recreation center and congregate meal site. Tenant shall obtain building permit within forty-eight (48) ~~eighty-four (84)~~ months of Commencement Date. Completion of Construction shall occur within seventy-two ~~one hundred and eight (108)~~ months of Commencement Date.

(c) ~~(d)~~ Notwithstanding the foregoing, the number of units in each Phase may be adjusted provided that there are no less than a total of 60 units completed by the end of Phase I; ~~no less than a total of 120 units completed by the end of Phase II;~~ and no less than a total of 98 ~~180~~ units completed by the end of Phase III.

1.1.7 The last sentence of Section 17.6. **Right to Cure Default of Tenant** (a) shall be replaced with the following: If the Default is caused by the failure to construct or complete the construction of any of the ~~one hundred and eighty (180)~~ ninety-eight (98) units provided for in this Lease, then the new Lease shall give Leasehold Mortgagee or Subleasehold Mortgagee an extended cure period to gain possession and title to the Demised Premises to give the Leasehold Mortgagee additional time it may need to gain possession and leasehold title to the Demised Premises plus equal to such time as may be reasonably necessary to construct the Building or Buildings and any Improvements that Tenant was required to construct under the Lease

1.1.8 Section 19.1 **Events of Default of Tenant** (c) Tenant has not received a Certificate of Occupancy for ninety-eight (98) ~~eighty (180)~~ units of Senior Affordable Housing and a recreational center/ congregate meal site within six (6) ~~nine (9)~~ years of the Commencement Date.

ARTICLE II

REPRESENTATIONS AND WARRANTIES

Section 2.1 Representations and Warranties. Each of the County and the City hereby represents and warrants as follows:

(a) The execution, delivery and performance by it of this Amendment and the Agreement, as amended hereby, are within its powers, have been duly authorized by all necessary action and do not contravene any law, rule or regulation, any judgment, order or decree or any contractual restriction binding on or affecting it.

(b) No authorization, approval or other action by, and no notice to or filing with, any governmental issuer or regulatory body is required for the due execution, delivery and performance by it of this Amendment or the Agreement, as amended by this First Amendment.

(c) This First Amendment and the Lease, as amended, constitute legal, valid and binding obligations enforceable against it in accordance with their respective terms, except that (i) their enforcement may be limited by bankruptcy, reorganization, insolvency, liquidation, moratorium and other laws relating to, or affecting the enforcement of creditors' rights and remedies generally, as the same may be applied in the event of its bankruptcy, reorganization, insolvency, liquidation or similar situation and (ii) no representation or warranty is expressed as to the availability of equitable remedies.

ARTICLE III

MISCELLANEOUS

Section 3.1 Ratification; Severability; Governing Law. Except as specifically amended by this First Amendment, the Lease shall continue in full force and effect in accordance with its terms. In case any one or more of the provisions contained in this First Amendment should be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained in this First Amendment and the Lease shall not in any way be affected or impaired by such determination. This First Amendment shall be governed by and construed in accordance with the laws of the State.

Section 3.2 Counterparts. This First 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.

[The remainder of this page is intentionally left blank; signature page follows.]

IN WITNESS WHEREOF, the County has caused this First Amendment to be executed in its name by the County Mayor and the City has caused this First Amendment to be executed by its Mayor, as of the date written above.

ATTEST:

HARVEY RUVIN, CLERK

By:_____
Deputy Clerk

Approved as to form and legal sufficiency

By:_____

MIAMI-DADE COUNTY, FLORIDA

By:_____
Mayor

ATTEST:

CLERK

By:_____
[Deputy] Clerk

Approved as to form and legal sufficiency

By:_____

CITY OF HIALEAH, FLORIDA

By:_____
Mayor