MEMORANDUM

Agenda Item No. 11(A)(15)

TO:	Honorable Chairman Jean Monestime and Members, Board of County Commissioners	**DATE:**	December 1, 2015
FROM:	Abigail Price-Williams County Attorney	**SUBJECT:**	Resolution approving a Second Amendment to the Transit Oriented Development Lease Agreement with Caribbean Village, Ltd, which is an entity affiliated with Pinnacle Housing Group, for provision of an affordable housing development at SW 110 Court and SW 200 Drive, on the north side of SW 200 Street (Caribbean Boulevard) in County Commission District 9; amending the lease to extend certain deadlines by one year, authorize modification of the number of three and four bedroom units to be built and the requirement for provision of retail and commercial space; authorizing the County Mayor to execute same and exercise provisions contained therein; and directing the County Mayor to provide a copy of the lease amendment to the Property Appraiser

The accompanying resolution was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Dennis C. Moss.

Abigail Price-Williams
County Attorney

APW/cp

MEMORANDUM
(Revised)

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

DATE: December 1, 2015

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Agenda Item No. 11(A)(15)

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**

_____ **Statement of social equity 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)(15)
12-1-15

RESOLUTION NO. _____

RESOLUTION APPROVING A SECOND AMENDMENT TO THE TRANSIT ORIENTED DEVELOPMENT LEASE AGREEMENT WITH CARIBBEAN VILLAGE, LTD, WHICH IS AN ENTITY AFFILIATED WITH PINNACLE HOUSING GROUP, FOR PROVISION OF AN AFFORDABLE HOUSING DEVELOPMENT AT SW 110 COURT AND SW 200 DRIVE, ON THE NORTH SIDE OF SW 200 STREET (CARIBBEAN BOULEVARD) IN COUNTY COMMISSION DISTRICT 9; AMENDING THE LEASE TO EXTEND CERTAIN DEADLINES BY ONE YEAR AND AUTHORIZE MODIFICATION OF THE NUMBER OF THREE AND FOUR BEDROOM UNITS TO BE BUILT AND THE REQUIREMENT FOR PROVISION OF RETAIL AND COMMERCIAL SPACE; AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE SAME AND EXERCISE PROVISIONS CONTAINED THEREIN; AND DIRECTING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO PROVIDE A COPY OF THE LEASE AMENDMENT TO THE PROPERTY APPRAISER

WHEREAS, Miami-Dade County (the "County") and Caribbean Village, Ltd., a Florida limited partnership affiliated with Pinnacle Housing Group (the "Developer") entered into a Transit Oriented Lease Agreement dated August 5, 2013, as authorized by County Resolution No. R-343-13 and amended by the First Amendment to Caribbean Village Transit Oriented Development Lease Agreement dated September 8, 2014 (collectively, the "Lease"); and

WHEREAS, the Lease is a ground lease for the development of 170 units of affordable housing, approximately 12,500 square feet of retail/commercial space, and 150 parking spaces for Miami-Dade Transit (the "Project") on County-owned properties located at SW 110 Court and SW 200 Drive, on the north side of SW 200 Street (Caribbean Boulevard) adjacent to the County Busway in Commission District 9 (the "Property"); and

WHEREAS, in addition to the lease of County-owned properties to the Developer, $5,000,000.00 from the Building Better Communities General Obligation Bond has been allocated as a portion of the total development costs of the Project; and

WHEREAS, the Developer has requested an extension of certain deadlines by one year and modification of certain other provisions of the Lease, so that the Project can be completed feasibly and necessary rezoning requested and considered; and

WHEREAS, in particular, the Developer has requested (1) a one year extension of a deadline to secure and close on financing until December 31, 2016, (2) a one year extension of a deadline to complete the first phase of the Project until December 31, 2018, (3) the authority to modify the unit mix of three and four bedroom units, subject to the approval of the Landlord, which shall not be unreasonably withheld, conditioned or delayed based on then-existing market conditions, as evidenced by a market study secured by the County and paid for by the Developer, (4) the authority to not provide commercial or retail space in the development, but if it is provided, to only be required to provide up to 5,000 square feet instead of 12,500 square feet of such space, and (5) other non-substantive amendments, including amendments that are standard and customarily contained in lease amendments; and

WHEREAS, in light of the County's commitment to the Project and to the provision of affordable housing for eligible persons and for other good and valuable consideration, the County agrees to amend the Lease as provided in this resolution,

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

Section 1. Incorporates and approves the foregoing recitals as if fully set forth herein.

Section 2. This Board hereby approves the Second Amendment to the Lease, in substantially the form attached hereto as Exhibit "A" and made a part hereof, and authorizes the County Mayor or County Mayor's designee to execute the amendment and to exercise all rights conferred therein.

Section 3. This Board directs the County Mayor or County Mayor's designee to provide a copy of Second Amendment to the Property Appraiser.

The Prime Sponsor of the foregoing resolution is Commissioner Dennis C. Moss. 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 1st day of December, 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.

Cynthia Johnson-Stacks

SECOND AMENDMENT TO CARIBBEAN VILLAGE TRANSIT ORIENTED DEVELOPMENT LEASE AGREEMENT

THIS SECOND AMENDMENT TO CARIBBEAN VILLAGE TRANSIT ORIENTED DEVELOPMENT LEASE AGREEMENT (this "Second Amendment") is made and entered into as of _____, 2015 (the "Effective Date") by and between **MIAMI-DADE COUNTY**, a political subdivision of the State of Florida through the department of Public Housing and Community Development ("Landlord") and **CARIBBEAN VILLAGE, LTD.**, a Florida limited partnership ("Tenant").

W I T N E SS E T H:

WHEREAS, Landlord and Tenant entered into that certain Caribbean Village Transit Oriented Lease Agreement dated as of August 5, 2013, as amended by that certain First Amendment to Caribbean Village Transit Oriented Development Lease Agreement dated as of September 8, 2014 (collectively, the "Lease") pursuant to which Landlord leases to Tenant the Demised Property; and

WHEREAS, Tenant has determined that it needs to rezone the Demised Property to accomplish the purposes of this Lease, and such rezoning will take approximately eight (8) months to be undertaken; and

WHEREAS, Landlord and Tenant have agreed to amend certain terms of the Lease.

NOW, THEREFORE, in consideration of the foregoing premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Recitals. The foregoing recitals are true and correct and are incorporated herein by this reference. All capitalized terms used herein and not expressly defined herein shall have their meaning as set forth in the Lease.

2. Amendment to Section 1.3.

(a) Notwithstanding anything contained in the Lease to the contrary, the parties acknowledge and agree that the "Execution Date" of the Lease is August 5, 2013.

(b) All references in Section 1.3 of the Lease to "December 31, 2015" are hereby deleted and replaced with "December 31, 2016".

(c) Clauses (2.) and (3.) of Section 1.3 of the Lease is hereby amended by deleting and replacing the words "within three (3) years of the Execution Date" with "by December 31, 2016."

3. Amendment to Section 1.6. All references in Section 1.6(a.) of the Lease to "December 31, 2015" are hereby deleted and replaced with "December 31, 2016."

4. Unit Mix. Notwithstanding Section 4.1(c) of the Lease, Landlord and Tenant hereby agree that if Phase Two is not developed as Senior Housing, then Tenant may modify the unit mix of three (3) bedroom units and four (4) bedroom units, in consultation with and upon approval of Landlord, not be unreasonably withheld, conditioned or delayed, based on then-existing market conditions, as evidenced by a market study secured by the Landlord, at the expense of the Tenant. Payment for such market study shall be made by the Tenant, prior to the Landlord ordering or securing the market study.

5. Retail Development. Section 4.1(d) of the Lease is hereby deleted in its entirety and replaced with the following: "The parties acknowledge and agree that the Tenant shall not be obligated to develop any portion of Phase One for commercial or retail use, and Tenant and Landlord shall mutually agree upon how much, if any, commercial or retail space shall be developed in Phase Two, but in no event shall Tenant be required to construct more than 5,000 square feet of retail or commercial use in Phase Two of the Project."

6. Phase I Completion Date. Section 4.2 of the Lease is hereby amended to provide that the Phase One Completion Date is hereby extended to December 31, 2018. Notwithstanding the extension of the Phase One Completion Date, the Outside Completion Date shall remain December 31, 2020.

7. Development Concept. Exhibit B of the Lease is hereby amended to provide that, in total, the Caribbean Village development project will consist of not less than one hundred seventy (170) Resolution Units, with the possibility, if permissible by law, of additional Affordable Housing units, along with up to 5,000 square feet of commercial and/or retail space in Phase Two of the Project, if permissible by law, to serve the residents of the buildings, and/or MDT patrons, and/or the wider community.

8. Ratification. Except as modified by this Second Amendment, the Lease shall be otherwise unmodified and considered in full force and effect, and the parties ratify and confirm the terms of the Lease, as modified hereby.

9. No Waiver. Landlord and Tenant acknowledge that neither party is waiving any of their rights under the Lease by the execution of this Second Amendment.

10. Benefit and Binding Effect. This Second Amendment shall be binding upon and inure to the benefit of the parties to this Second Amendment, their legal representatives, successors, and permitted assigns.

11. Amendment. This Second Amendment may not be changed, modified, or discharged in whole or in part except by an agreement in writing signed by all parties to this Second Amendment.

12. Conflict. In the event of any conflict between the terms of the Lease and this Second Amendment, this Second Amendment shall control.

13. Governing Law. This Second Amendment shall be governed by, and construed in accordance with, the laws of the State of Florida.

14. Lease in Full Force and Effect. Except as modified by this Second Amendment, the Lease shall otherwise remain in full force and effect and the parties ratify and confirm the terms of the Lease as modified by this Second Amendment. All references to the Lease shall mean the Lease as modified by this Second Amendment.

15. Counterparts; Electronic Delivery. This Second Amendment may be executed in counterparts, each of which, when executed, shall be deemed an original, and all of which shall be deemed one and the same instrument. Electronic transmission of signatures of the parties shall be deemed legally binding and enforceable against the parties.

[SIGNATURES APPEAR ON FOLLOWING PAGE.]

IN WITNESS WHEREOF, the parties hereto have executed this Second Amendment as of the day and year first above written.

Witnesses:

LANDLORD:

MIAMI-DADE COUNTY, a political subdivision of the State of Florida,

_____
Print Name: _____

_____
Print Name: _____

By: _____
Name: _____
Title: _____

TENANT:

CARIBBEAN VILLAGE, LTD., a Florida limited partnership

By: PHG-Caribbean, LLC,
a Florida limited liability company,
its Managing General Partner

_____
Print Name: Norma A Santana

_____
Print Name: Lilybeth De León

By: _____
Name: David O. Deutch
Title: Vice President

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