

MEMORANDUM

Agenda Item No. 14(A)(8)

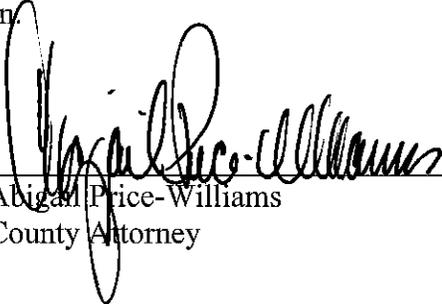
TO: Honorable Chairman Jean Monestime
and Members, Board of County Commissioners

DATE: November 15, 2016

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Resolution approving a Fourth Amendment to the Ground Lease between Miami-Dade County and the Mourning Family Foundation, Inc. providing for the development of affordable rental housing for families and the elderly on County-owned land at the southwest corner of Northwest 3rd Avenue and Northwest 17th Street in County Commission District 3; amending the Ground Lease to extend certain deadlines; approving the assignment of the Ground Lease and Miami-Dade County's consent to assignment of Ground Lease; consenting to the Fourth Amendment to sublease agreement authorizing the County Mayor to execute same and exercise provisions contained therein; and directing the County Mayor to provide a copy of the Fourth Amendment to Ground Lease to the Property Appraiser

The accompanying resolution was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Audrey M. Edmonson


Abigail Price-Williams
County Attorney

APW/smm



MEMORANDUM

(Revised)

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

DATE: November 15, 2016

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Agenda Item No. 14(A)(8)

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. 14(A)(8)
11-15-16

RESOLUTION NO. _____

RESOLUTION APPROVING A FOURTH AMENDMENT TO THE GROUND LEASE BETWEEN MIAMI-DADE COUNTY AND THE MOURNING FAMILY FOUNDATION, INC. PROVIDING FOR THE DEVELOPMENT OF AFFORDABLE RENTAL HOUSING FOR FAMILIES AND THE ELDERLY ON COUNTY-OWNED LAND AT THE SOUTHWEST CORNER OF NORTHWEST 3RD AVENUE AND NORTHWEST 17TH STREET IN COUNTY COMMISSION DISTRICT 3; AMENDING THE GROUND LEASE TO EXTEND CERTAIN DEADLINES; APPROVING THE ASSIGNMENT OF THE GROUND LEASE AND MIAMI-DADE COUNTY'S CONSENT TO ASSIGNMENT OF GROUND LEASE; CONSENTING TO THE FOURTH AMENDMENT TO SUBLEASE AGREEMENT 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 FOURTH AMENDMENT TO GROUND LEASE TO THE PROPERTY APPRAISER

WHEREAS, Miami-Dade County (County) and Alonzo Mourning Charities, Inc. (Lessee) entered into a Ground Lease for development of affordable rental housing for families and the elderly on County-owned land located at the southwest corner of northwest 3rd avenue and northwest 3rd Avenue and northwest 17th street in County Commission District 3 on December 2, 2008, pursuant to County Resolution No. R-1369-08 (Project); and

WHEREAS, subsequently, the Board of County Commissioners (Board) authorized an amendment of this ground lease to provide for extension of certain deadlines, pursuant to County Resolution No. R-522-12; an amendment to provide for the increase in revenue to the County of \$211,000.00, consent to amendments to subleases, and acknowledge the change of name of the Lessee to Mourning Family Foundation, pursuant to County Resolution No. R-750-12; an

amendment to extend the commencement and completion date requirements and certain other terms under the lease agreement and authorize the execution of a joinder to restrictive covenant agreement, pursuant to County Resolution No. R-481-13; and an amendment to allow the Lessee to have the right to add a third phase with up to 80 residential units on a portion of the site of the Phase II land, pursuant to County Resolution No. R-773-13 (collectively, Ground Lease); and

WHEREAS, in September 2016, a successful grand opening for the first phase of this development was held and the County has been informed that all 84 units of the Phase I of the Project are leased to residents who make less than 60 percent of the neighborhood's median income with rents ranging from \$760.00 to \$990.00 per month; and

WHEREAS, in order to develop the remaining phases of the project, the Lessee is seeking (1) additional amendments to the Ground Lease to extend the time to obtain a commitment for financing for Phase II (elderly housing) of the Project, (2) approval of the assignment of the Ground Lease to AM Affordable Housing, Inc., a 501(c)(3) not-for-profit entity that has the same or similar board of directors as the Mourning Family Foundation, Inc., which has as its sole mission the provision of affordable housing, and (3) consent to a Fourth Amendment to Sublease Agreement between AM Affordable Housing, Inc. and its Sublessee AMC HTG 2, Ltd., a Florida limited partnership, in which the Sublessee agrees to abide by and be bound by all of the obligations of the Lessee under the Ground Lease, as amended by the Fourth Amendment; 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 Ground 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. Approves the Fourth Amendment to Ground Lease, in substantially the form attached to this resolution as Exhibit "A."

Section 3. Approves the Assignment of Ground Lease and Miami-Dade County's Consent to Assignment of the Ground Lease in substantially the form attached to this resolution as Exhibit "B," which consents to the assignment of the Ground Lease from the Mourning Family Foundation, Inc., a Florida non-profit corporation to AM Affordable Housing, Inc., a Florida non-profit corporation.

Section 4. Consents to AM Affordable Housing, Inc., a Florida non-profit corporation entering into the Fourth Amendment to Sublease Agreement with AMC HTG 2, Ltd., a Florida limited partnership, in substantially the form attached to this resolution as Exhibit "C."

Section 5. Authorizes the County Mayor or County Mayor's designee to enter into or execute such amendment, assignment or consent and exercise provisions contained therein on behalf of the County.

Section 6. This Board directs the County Mayor or County Mayor's designee to provide a copy of the Fourth Amendment to the Ground Lease to the Property Appraiser.

The Prime Sponsor of the foregoing resolution is Commissioner Audrey M. Edmonson. 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 15th day of November, 2016. 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.



Shannon D. Summerset-Williams
Cynthia Johnson-Stacks

FOURTH AMENDMENT TO GROUND LEASE
PHASE II (Elderly Units)

This Fourth Amendment to Ground Lease ("Fourth Amendment") is made as of _____, 2016, 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 "LESSOR" and AM AFFORDABLE HOUSING, INC., a Florida not-for-profit corporation, hereinafter called the "LESSEE."

WHEREAS, LESSOR and Alonzo Mourning Charities, Inc. ("AMC"), entered into that certain Ground Lease dated December 19, 2008 authorized pursuant to Resolution R-1369-08; and

WHEREAS, subsequently, the Board of County Commissioners (Board) authorized an amendment of this ground lease to provide for extension of certain deadlines, pursuant to County Resolution No. R-522-12; a first amendment to provide for the increase in revenue to the County of \$211,000.00, consent to amendments to subleases, and acknowledge the change of name of the Lessee to Mourning Family Foundation, pursuant to County Resolution No. R-750-12; a second amendment to extend the commencement and completion date requirements and certain other terms under the lease agreement and authorize the execution of a joinder to restrictive covenant agreement, pursuant to County Resolution No. R-481-13; and a third amendment to allow the Lessee to have the right to add a third phase with up to eighty (80) residential units on a portion of the site of the Phase II land, pursuant to County Resolution No. R-773-13 (collectively, Ground Lease);

WHEREAS, AMC changed its name to Mourning Family Foundation, Inc. ("MFF") on July 5, 2012; and

WHEREAS, MFF assigned its leasehold interest in the Ground Lease to LESSEE on _____, 2016; and

WHEREAS, LESSOR and LESSEE desire to enter into this Fourth Amendment to amend the Ground Lease.

NOW THEREFORE, for good and sufficient mutual consideration, the receipt and sufficiency of which is hereby acknowledged by both parties, it is agreed to by LESSOR and LESSEE as follows:

1. The Ground Lease remains in full force and effect, and remains unmodified except as expressly amended by the Amendment, the Second Amendment, the Third Amendment and this Fourth Amendment. This Fourth Amendment revises and replaces those certain provisions in the Ground Lease, as amended, in conflict herewith. The foregoing recitals are true and correct and incorporated herein.
2. Exhibits:

- A. Exhibit "B" of the Amendment, the Project Timeline, is hereby deleted and replaced with the attached Exhibit "B".

-
3. The second paragraph of Section 3.1 of the Ground Lease is hereby deleted and replaced with the following:

In the event that the LESSEE fails to secure a firm commitment for financing by December 13, 2018, this Lease Agreement for PHASE II (Elderly Units) shall terminate automatically. Evidence of the above shall be delivered to LESSOR within thirty (30) days of the commitment letter. The Term of this Lease may only be extended, as allowed by the terms of this LEASE.

4. The last sentence of Section 8.1 of the Ground Lease is hereby deleted and replaced with the following:

All construction required pursuant to this LEASE shall be completed by June 30, 2020, unless a later date is approved in writing by the County Mayor or the County Mayor's designee.

5. In the event of any conflict between the terms and provisions of this Fourth Amendment and the terms and provisions of the Ground Lease, as amended, the terms and provisions of this Fourth Amendment shall control. Any capitalized terms not defined in this Fourth Amendment shall have the meaning as set forth in the Ground Lease.

6. This Fourth Amendment may be executed in counterparts, each of which shall be deemed an original document, but all of which will constitute one single document. A facsimile or email copy of this Fourth Amendment and any signatures thereof shall be considered for all purposes as originals.

(Signatures appear on the following page)

IN WITNESS WHEREOF, the LESSOR and LESSEE have caused this Fourth Amendment to be executed by their respective and duly authorized officers the day and year first above written.

LESSEE:

WITNESSES:

AM AFFORDABLE HOUSING,
INC., a Florida non-profit corporation

Print Name: _____

By: _____

Name: _____

Print Name: _____

Title: _____

(OFFICIAL SEAL)

LESSOR:

ATTEST:

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*

As to the Phase II Units only:

- 12/13/18 - Secure firm financing commitment
- 06/30/19 - Commence construction
- 06/30/20 - Certificate of Occupancy
- 1/1/21 - Residents begin move in

*All dates are estimates only.

EXHIBIT B

ASSIGNMENT OF GROUND LEASE AND MIAMI-DADE COUNTY CONSENT TO ASSIGNMENT OF GROUND LEASE

THIS ASSIGNMENT OF LEASE (the "Assignment") is made as of the ____ day of _____, 2016, by and between MOURNING FAMILY FOUNDATION, INC., a Florida non-profit corporation, (the "Assignor") and AM AFFORDABLE HOUSING, INC., a Florida non-profit corporation (the "Assignee").

RECITALS

A. Assignor is the lessee under that certain Ground Lease dated December 19, 2008 made by and between Miami-Dade County, a political subdivision of the State of Florida, as lessor (the "Lessor"), and Alonzo Mourning Charities, Inc., a Florida non-profit corporation ("AMC"), as lessee, as amended pursuant to that certain Amendment to Ground Lease, dated December 13, 2012, that certain Second Amendment to Ground Lease, dated June 18, 2013, and that certain Third Amendment to Ground Lease, dated October 23, 2013 (collectively, the "Lease");

B. AMC changed its name to Mourning Family Foundation, Inc. ("MFF"), on July 5, 2012;

C. Assignor desires to assign and transfer its interests and rights in the Lease to Assignee and Assignee desires to accept the assignment.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the sum of Ten Dollars (\$10) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties to this Assignment hereby agree as follows:

TERMS

1. **Recitals**. The foregoing Recitals are true and correct and are hereby incorporated by reference and made a part of this Assignment.

2. **Representations**. Assignor represents and warrants to Assignee that Assignor: (i) has received no notice(s) of default under the Lease; (ii) has no knowledge of any event that has occurred or failed to occur which, with the passage of time, or the giving of notice; or both, would constitute a default under the Lease; and (iii) and that Assignor has full right and authority to assign the interests and rights assigned hereby.

3. **Assignment**. Assignor hereby assigns to Assignee, and Assignee hereby accepts the assignment of, all of Assignor's right, title and interest as lessee under the Lease, to have and

to hold the same unto Assignee, its successors and assigns, for the remainder of the term of the Lease.

4. **Assumption.** ~~As of the date hereof, Assignee hereby assumes the performance and observance of, and agrees that it shall well and truly perform and observe all the terms, covenants, and conditions of the Lease to be performed by the lessee thereunder, all with full force and effect as if Assignee was the original lessee under the Lease.~~

5. **Sublease.** Assignee acknowledges that with the assumption of the lessee's interest in the Lease as set forth in this Assignment, Assignee ("Sublessor") becomes the sublessor under and pursuant to that certain Sublease Agreement, dated April 22, 2009, as amended by that certain Amendment to Sublease Agreement, dated December 13, 2012, that certain Second Amendment to Sublease Agreement, dated September 11, 2013, and that certain Third Amendment to Sublease Agreement, dated October 24, 2013 (collectively, the "Sublease"), pursuant to which Sublessor has subleased to AMC HTG 2, Ltd., a Florida limited partnership, the Demised Premises defined in the Lease. As of the date hereof, Assignee hereby assumes the performance and observance of, and agrees that it shall well and truly perform and observe all the terms, covenants, and conditions of the Sublease to be performed by the Sublessor thereunder, all with full force and effect as if Assignee was the original sublessor under the Sublease.

6. **Execution.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

7. **Miscellaneous.** This Assignment shall be binding upon and inure to the benefit of the parties hereto, their heirs, executors, administrators, successors and assigns.

8. **Consent of Lessor.** This Assignment is subject to the consent of Lessor.

Signatures appear on following page.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

WITNESSES:

Name: _____

Name: _____

ASSIGNOR:

MOURNING FAMILY FOUNDATION,
INC., a Florida non-profit corporation, f/k/a
Alonzo Mourning Charities, Inc.

By: _____

Allen S. Furst, Secretary

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.

SIGNATURES CONTINUED ON FOLLOWING PAGE.

WITNESSES:

ASSIGNEE:

AM AFFORDABLE HOUSING , INC., a
Florida non-profit corporation

Name: _____

By: _____
Allen S. Furst, Secretary

Name: _____

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.

SIGNATURES CONTINUED ON FOLLOWING PAGE.

By signing below, Miami-Dade County, as Lessor, hereby consents to this Assignment of Ground Lease.

Approved as to form and legal sufficiency:

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

Print Name: _____
Assistant County Attorney

By _____
Russell Benford, Deputy Mayor

Attest: _____
Harvey Ruvlin, Clerk of the Board

FOURTH AMENDMENT TO SUBLEASE AGREEMENT

Phase II (Elderly)

This Fourth Amendment to Sublease Agreement ("Fourth Amendment") is made as of this _____ day of _____, 2016, by and between AM AFFORDABLE HOUSING, INC., a Florida not-for-profit corporation, ("Sublessor"), and AMC HTG 2, LTD., a Florida limited partnership ("Sublessee").

WITNESSETH:

A. WHEREAS, Mourning Family Foundation, Inc. ("MFF"), f/k/a Alonzo Mourning Charities, Inc. ("AMC"), as lessee, leased from Miami-Dade County, Florida, as lessor ("Landlord" or "County"), certain lands ("Demised Premises"), pursuant to that certain Ground Lease dated December 19, 2008, which was amended by that certain Amendment to Ground Lease, dated December 13, 2012, that certain Second Amendment to Ground Lease, dated August 26, 2013, that certain Third Amendment to Ground Lease, dated October 23, 2013 (the "Third Amendment to Ground Lease") and that certain Fourth Amendment to Ground Lease, dated _____, 2016 (the "Fourth Amendment to Ground Lease") (collectively the "Ground Lease Amendments"), a copy of which Fourth Amendment to Ground Lease is attached hereto as Exhibit "A" and incorporated herein by reference (collectively herein known as the "Lease").

B. WHEREAS, MFF and Sublessee entered into that certain Sublease Agreement, dated April 22, 2009 (the "Sublease"), pursuant to which MFF agreed to sublease to Sublessee the Demised Premises.

C. WHEREAS, MFF and Sublessee entered into that certain Amendment to Sublease Agreement, dated December 13, 2012 (the "Sublease Amendment").

D. WHEREAS, MFF and Sublessee entered into that certain Second Amendment to Sublease Agreement, dated September 11, 2013 (the "Second Sublease Amendment").

E. WHEREAS, Mff and Sublessee entered into that certain Third Amendment to Sublease Agreement, dated October 24, 2013 (the "Third Sublease Amendment").

F. WHEREAS, MFF assigned its leasehold interest in the Ground Lease, as amended, to Sublessor on _____, 2016; and

G. WHEREAS, Sublessor and Sublessee intend to further modify and amend the Sublease and acknowledge the Fourth Amendment to Ground Lease.

H. NOW, THEREFORE, for value received, the receipt and sufficiency of which are hereby acknowledged, the parties hereto covenant and agree as follows:

~~JK~~

EXHIBIT "C"

1. The foregoing recitals are true and correct and are incorporated herein. All capitalized terms used herein but not otherwise defined shall have the meanings ascribed to them in the Lease and/or Sublease, as previously amended.

2. Sublessee agrees to perform and be bound by all of the obligations of the lessee under the Lease and specifically the modifications as noted in the Fourth Amendment to Ground Lease, as it may be further amended from time to time, and to fully and faithfully observe and perform each and every term, covenant, and condition of the Lease, as it may be amended from time to time, which the lessee thereunder is obligated to observe and perform, except as specifically modified by the Sublease, as amended.

3. In the event of any conflict between the terms and provisions of this Fourth Amendment and the terms and provisions of the Sublease, as previously amended, the terms and provisions of this Fourth Amendment shall control.

4. This Fourth Amendment may be executed in counterparts, each of which shall be deemed an original document, but all of which will constitute one single document. A facsimile or email copy of this Fourth Amendment and any signatures thereof shall be considered for all purposes as originals.

(Signatures Appear on Following Page)

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

WITNESSES:

Name: _____

Name: _____

SUBLESSOR:

AM AFFORDABLE HOUSING, INC., a
Florida non-profit corporation

By: _____
Name: _____
Title: _____

SUBLEESSEE:

AMC HTG 2, LTD., a Florida limited
partnership

Name: _____

Name: _____

By: _____
Name: _____
Title: _____

2

EXHIBIT "C"

By signing below, Miami-Dade County, as Landlord, hereby consents to this Fourth Amendment to Sublease Agreement

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

Approved as to form and legal sufficiency:

Print Name: _____
Assistant County Attorney

By _____
Russell Benford, Deputy Mayor

Attest: _____
Harvey Ruvlin, Clerk of the Board

EXHIBIT "C"

EXHIBIT "A"

Copy of Fourth Amendment to Ground Lease