OFFICIAL FILE COPY
CLERK OF THE BOARD
OF COUNTY COMMISSIONERS
MIAMI-DADE COUNTY, FLORIDA

MEMORANDUM

Agenda Item No. 14(A)(4)

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

DATE: February 3, 2015

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

SUBJECT: Resolution approving amendment number one to the ground lease between Miami-Dade County and APC Seventh Avenue Holdings, LLC for the Seventh Avenue Transit Village Project to allow the completion of phase one to occur no later than June 16, 2016; to allow for family housing on both phase one and phase two of the project, and to confirm that there are no further requirements imposed upon tenant for commercial and retail use, all as set forth in the amendment
Resolution No. R-161-15

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

R. A. Cuevas, Jr.
County Attorney

RAC/cp

MEMORANDUM
(Revised)

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

DATE: February 3, 2015

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

SUBJECT: Agenda Item No. 14(A)(4)

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. 14(A)(4)
2-3-15

RESOLUTION NO. R-161-15

RESOLUTION APPROVING AMENDMENT NUMBER ONE TO THE GROUND LEASE BETWEEN MIAMI-DADE COUNTY AND APC SEVENTH AVENUE HOLDINGS, LLC FOR THE SEVENTH AVENUE TRANSIT VILLAGE PROJECT TO ALLOW THE COMPLETION OF PHASE ONE TO OCCUR NO LATER THAN JUNE 16, 2016; TO ALLOW FOR FAMILY HOUSING ON BOTH PHASE ONE AND PHASE TWO OF THE PROJECT, AND TO CONFIRM THAT THERE ARE NO FURTHER REQUIREMENTS IMPOSED UPON TENANT FOR COMMERCIAL AND RETAIL USE, ALL AS SET FORTH IN THE AMENDMENT; AND AUTHORIZING COUNTY MAYOR OR DESIGNEE TO EXECUTE SAME AND EXERCISE PROVISIONS CONTAINED THEREIN

WHEREAS, the Seventh Avenue Transit Village Project ("Project"), a mixed-use transit-oriented development, is currently being developed on 2.48 acres of County-owned property located on the south-east quadrant of NW 62 Street and NW 7 Avenue, with the primary goal of revitalizing the neighborhood's commercial area; and

WHEREAS, the Project will include a transit hub and bus station, affordable housing, retail/commercial space, a 120 seat multi-purpose theater for both public and County use with an arts center component attached to the theater, and a multi-level parking garage with adequate parking for all residents, retail customers, and members of the community; and

WHEREAS, the unanticipated duration of the process and litigation associated with relocating the pre-existing tenants on the property comprising the Seventh Avenue Transit Village makes the granting of a one-year extension for the completion of phase one reasonable; and

WHEREAS, allowing for family housing is consistent with the intended purposes of providing affordable housing in a mixed-use setting; and

WHEREAS, this Board desires to amend the ground lease between the County and APC Seventh Avenue Holdings, LLC to facilitate the development of the Seventh Avenue Transit Development Project,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board approves amendment number one to the ground lease between Miami-Dade County and APC Seventh Avenue Holdings, LLC for the Seventh Avenue Transit Village project in substantially the form attached hereto, to allow the completion of phase one to occur no later than June 16, 2016, to allow for family housing on both phase one and phase two of the project, and to confirm that there are no further requirements imposed upon tenant for commercial and retail use, all as set forth in the amendment, and authorizes the County Mayor or designee to execute same and exercise all provisions contained therein.

The Prime Sponsor of the foregoing resolution is Commissioner Audrey M. Edmonson. It was offered by Commissioner **Audrey Edmonson**, who moved its adoption. The motion was seconded by Commissioner **Rebeca Sosa** and upon being put to a vote, the vote was as follows:

Jean Monestime, Chairman **nay**
Esteban L. Bovo, Jr., Vice Chairman **aye**

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

The Chairperson thereupon declared the resolution duly passed and adopted this 3rd day of February, 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: Christopher Agrippa
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

Bruce Libhaber

AMENDMENT NO. 1 TO THE GROUND LEASE BETWEEN MIAMI-DADE COUNTY AND APC SEVENTH AVENUE HOLDINGS, LLC (Seventh Avenue Transit Village)

This Lease Amendment (Amendment) made as of the ____ day of January, 2015 between MIAMI-DADE COUNTY, a political subdivision of the State of Florida, through the Department of Housing and Community Development, having its principal office and place of business at 701 N.W. 1st Court, Suite 1400, Miami, Florida 33136, and Miami-Dade Transit, having its principal office and place of business at 701 N.W. 1st Court, Suite 1700, Miami, Florida 33136 (together hereinafter called "Landlord"), and APC SEVENTH AVENUE HOLDINGS, LLC, a Florida limited liability company, having its principal office and place of business at 2950 SW 27th Avenue, Suite 200, Miami, Florida 33133 (hereinafter called "Tenant")

WITNESSETH:

A. By Ground Lease dated March 23, 2011 (the "Lease"), Landlord demised and leased to Carlisle Development Group, LLC ("Original Tenant") certain real property, as more specifically described in the Lease.

B. Original Tenant assigned all of its right, title and interest in and to the lease to CDG Seventh Avenue Holdings, LLC ("CDG Holdings"), pursuant to Assignment and Acceptance Agreement dated March 23, 2011. CDG Holdings assigned of its right, title and interest in and to the lease to Tenant pursuant to Assignment and Acceptance Agreement dated as of October 1, 2013.

C. The Lease calls for the completion of Tenant's improvements within a specified period of time, which time period commences on the Commencement Date of the Lease. However, commencement of construction of Tenant's improvements, as contemplated in the Lease, was substantially delayed due to litigation brought by a former occupant of the Demised Property. The result is that Tenant cannot feasibly complete construction of its improvements within the time period prescribed by the Lease.

D. The Lease calls for the designation of one portion of the Demised Property as an "elderly" housing development, and one portion as "family" housing. The "family" housing portion of the Demised Property is now under construction. The rules promulgated by the Florida legislature which govern the allocation of Low-Income Housing Tax Credits by the Florida Housing Finance Corporation have changed, since the date of the Lease, so that such an allocation is highly unlikely to be awarded to Tenant for "elderly" housing on the balance of the Demised Property. The only feasible development for the balance of the Demised Property is additional housing in the "family" demographic.

E. Landlord and Tenant desire to modify certain terms and provisions of the Lease as hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant covenant and agree as follows:

1. Recitals. The foregoing recitals are true and correct and by this reference are incorporated as if fully set forth herein. Terms which are capitalized but not defined herein shall have the meanings given to such terms in the Lease.

2. Demographic Designation. Section 4.3 (a) of the Lease provides that "Tenant shall designate one of the Phases for "family" demographic and the other Phase for "elderly" demographic, and shall have the sole right to select which Phase shall be designated for each such demographic." Section 4.3(a) of the Lease is hereby modified to provide that each Phase shall be for "family" demographic and that the Lease shall contain no requirement that either Phase be designated for "elderly" demographic.

3. Construction Schedule. Section 4.3 (a) (1) of the lease provides as follows:

> "Tenant agrees that Completion of Construction for Phase I will be within twenty four months following the Commencement of Construction of Phase I, but in any event within forty eight (48) months following the Commencement Date. Should Completion of Construction for Phase I fail to occur within forty eight (48) months from the Commencement Date it shall be an Event of Default, and in addition to any other remedy available to Landlord, if Tenant shall not have already obtained a building permit for Phase II and commenced construction of Phase II, then Phase II shall revert to Landlord upon Landlord providing the Tenant with notice of such reversion."

It is acknowledged that (a) the Commencement Date of the Lease was June 16, 2011 and (b) the commencement of construction of Phase I occurred in June of 2014. Section 4.3 (a) (1) of the Lease is hereby modified to provide that the forty eight (48)-month period referred to in the language quoted above, which would require that Phase I be completed by June 16, 2015, is extended to be a sixty (60)-month period, thereby requiring that Phase I be completed by June 16, 2016, which remains within the original twenty-four month period contemplated for the construction of Phase I.

Further, Section 4.3(c) of the lease is hereby modified to provide that the outside completion date for Phase II is extended to the date which is eight (8) years following the Commencement Date of the Lease.

4. Commercial or Retail Space. Section 3.5 of the Lease provides that "Tenant has available space to lease approximately twenty thousand (20,000) square feet for such commercial or

retail use." Section 3.5 of the Lease is hereby modified to provide that Tenant has already included in Phase I approximately 1,735 square feet of space in the Demised Property for commercial or retail use, approximately 23,667 square feet of space for transit and cultural purposes, and is planning an additional approximate 4,000 square feet of space for further commercial or retail use in Phase II. Landlord confirms that there are no further requirements imposed upon Tenant or the Demised Property for commercial or retail use.

5. No Conflict. In the event of conflict between the Lease and this Amendment, this Amendment shall prevail.

6. No Further Modifications; Ratification. Except as expressly modified and amended by this Amendment, the terms and provisions of the Lease are hereby ratified and confirmed.

BALANCE OF THIS PAGE INTENTIONALLY LEFT BLANK;
SIGNATURES APPEAR ON FOLLOWING PAGE(S)

IN WITNESS WHEREOF, Landlord and Tenant have executed this Amendment on the date first set forth above.

Signed in the presence of:

_____

Print Name: _____

_____

Print Name: _____

LANDLORD:

MIAMI-DADE COUNTY, a political subdivision of the State of Florida
BY ITS BOARD OF COUNTY COMMISSIONERS

By:_____
Name:_____
Title:_____

ATTEST:

HARVEY RUVIN, CLERK

By:_____

#3958585 v3
34756-0298