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CLERK OF THE BOARD
OF COUNTY COMMISSIONERS
MIAMI-DADE COUNTY, FLORIDA

MEMORANDUM

Agenda Item No. 11(A)(11)

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

DATE: May 17, 2016

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Resolution approving terms of and authorizing execution by the County Mayor of a Second Amendment to the Ground Lease between Miami-Dade County and the Art of Cultural Evolution, Inc., a Florida not-for-profit corporation, for the construction, operation and maintenance of a public art and science facility and providing for a three month extension of certain deadlines set forth therein, with an optional additional three month extension by the County Mayor upon a showing of good cause, for property located at 550 NW 22 Street located in Miami-Dade County, Florida

Resolution No. R-419-16

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

Abigail Price-Williams for
County Attorney

APW/smm

MEMORANDUM

(Revised)

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

DATE: May 17, 2016

FROM: Abigail Price-Williams
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SUBJECT: Agenda Item No. 11(A)(11)

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)(11)
5-17-16

RESOLUTION NO. R-419-16

RESOLUTION APPROVING TERMS OF AND AUTHORIZING EXECUTION BY THE COUNTY MAYOR OR MAYOR'S DESIGNEE OF A SECOND AMENDMENT TO THE GROUND LEASE BETWEEN MIAMI-DADE COUNTY AND THE ART OF CULTURAL EVOLUTION, INC., A FLORIDA NOT-FOR-PROFIT CORPORATION, FOR THE CONSTRUCTION, OPERATION AND MAINTENANCE OF A PUBLIC ART AND SCIENCE FACILITY AND PROVIDING FOR A THREE MONTH EXTENSION OF CERTAIN DEADLINES SET FORTH THEREIN, WITH AN OPTIONAL ADDITIONAL THREE MONTH EXTENSION BY THE COUNTY MAYOR OR MAYOR'S DESIGNEE UPON A SHOWING OF GOOD CAUSE, FOR PROPERTY LOCATED AT 550 NW 22 STREET LOCATED IN MIAMI-DADE COUNTY, FLORIDA; AUTHORIZING COUNTY MAYOR OR MAYOR'S DESIGNEE EXERCISE ANY AND ALL OTHER RIGHTS CONFERRED THEREIN AND TO PERFORM ALL ACTS NECESSARY TO EFFECTUATE SAME

WHEREAS, pursuant to Resolution No. R-351-14, the Board approved the lease between the County and The Art of Cultural Evolution, Inc., a Florida not-for-profit corporation, of a vacant County-owned property located at 550 N.W. 22nd Avenue, located in Miami-Dade County, Florida, (the "Lease") for the construction, operation, and maintenance of a public art and science facility, open to the public (the "Project"); and

WHEREAS, pursuant to Resolution No. R-1108-15, the Board approved a six month extension of certain deadlines set forth within the Lease (the "Amended Lease"); and

WHEREAS, pursuant to the terms of the Amended Lease, The Art of Cultural Evolution, Inc. is required to obtain all permits necessary to commence construction within 24 months of the Commencement Date of the Lease and to substantially complete the construction of the Project within forty two months from the Commencement Date of the Lease; and

WHEREAS, the Lease Commencement Date was May 12, 2014, and accordingly, The Art of Cultural Evolution, Inc. is required to obtain all permits necessary to commence construction of the Project by May 11, 2016, and to substantially complete construction of the Project by November 11, 2017; and

WHEREAS, The Art of Cultural Evolution, Inc. has expressed concern about the ability to comply with its current deadlines due to unanticipated delays in permitting by the City of Miami, and has requested an additional three month extension to finalize the obtaining of its necessary permits, as well as an additional three month extension on substantial completion of the Project, with an optional three month extension by the County Mayor or the Mayor's designee upon a showing of good cause; and

WHEREAS, the Project is intended to serve the community, providing a centralized hub for collaboration and education of the public regarding conservation, ecology, and the environment, including workshops, community outreach programs, and urban farming in order to promote sustainability in the local community and in South Florida; and

WHEREAS, the requested extension and amendment to the Lease would provide the additional time necessary for The Art of Cultural Evolution, Inc. to complete the permitting and construction of the Project,

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

Section 1. This Board incorporates and adopts the foregoing recitals as if fully set forth herein.

Section 2. This Board approves the terms of and authorizes an Amendment to the Lease providing a three month extension of the date that permits must be obtained from May 11, 2016 to August 11, 2016, and a three month extension for completion of the Project from November 11, 2017 to February 11, 2018, in substantially the form attached hereto and made a part hereof as Exhibit "A."

Section 3. This Board authorizes the County Mayor or Mayor's designee to grant an additional three month extension on the respective dates set forth in Section 2, herein, in the sole discretion of the County Mayor or Mayor's designee, upon a showing of good cause, and provided the delay was not caused by The Art of Cultural Evolution, Inc., as set forth in Exhibit "A." This Board further authorizes the County Mayor or Mayor's designee to execute the Second Amendment to Lease, for and on behalf of Miami-Dade County, and authorizes the County Mayor or Mayor's designee to exercise any and all other rights conferred therein and to perform all acts necessary to effectuate same.

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

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

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

The Chairperson thereupon declared the resolution duly passed and adopted this 17th day of May, 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: Christopher Agrippa
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

Debra Herman

SECOND AMENDMENT TO GROUND LEASE

THIS AMENDMENT TO GROUND LEASE (hereinafter "Amended Lease") is entered into and made effective on this _____ day of _____, 2016 by and between Miami-Dade County, a political subdivision of the State of Florida (hereinafter "Landlord" and/or "County"), and The Art of Cultural Evolution, Inc., a not-for-profit Florida corporation (hereinafter "Tenant").

RECITALS

WHEREAS, by Resolution No. R-351-14, adopted by the Miami-Dade Board of County Commissioners on April 8, 2014, the Board Authorized a Lease Agreement between the above named parties for Premises located at the Landlord is the owner of certain real property, consisting of a vacant parcel of land, located at 550 N.W. 22 Street, Miami-Dade County, Florida, (Folio No.: 01-3125-035-2901), which was amended by Resolution No. R-1108-15, adopted by the Miami-Dade Board of County Commissioners on December 1, 2015 (collectively the "Lease"); and

WHEREAS, Landlord and Tenant are desirous of amending the Lease again in order to provide an additional extension for Tenant to obtain all permits necessary to commence construction, and to substantially complete the construction of the Project (as defined in the Lease); and

WHEREAS, by Resolution No. ____, adopted _____, 2015, the Board of County Commissioners has authorized this amendment of said Lease,

NOW, THEREFORE, in consideration of the mutual promises and covenants contained in this Lease, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties do agree as follows:

***WITNESSETH*:**

1. The foregoing recitals and provisions are hereby adopted and incorporated herein to the Lease.
2. The following paragraphs shall supersede and replace the referenced paragraph in the Lease:
   a. Paragraph 4.05 is hereby amended and restated to read as follows:

4.05 Limitation of the Term. Notwithstanding and prevailing over anything to the contrary in this Lease, should the Tenant fail to substantially complete the construction of the Project within forty five (45) months from the Commencement Date of this Lease, as evidenced by a temporary certificate of occupancy or an equivalent document to be determined in Landlord's discretion, such failure shall be an event of default and this Lease shall automatically terminate, and the Tenant shall immediately vacate the Premises. Additionally, should the Tenant fail to obtain all permits necessary to commence construction within twenty seven (27) months of the Commencement Date of this Lease, then this Lease shall automatically terminate, and the Tenant shall immediately vacate the Premises. In the event of a termination of this Lease for any reason, the Premises, including all Improvements thereon, shall immediately revert to the Landlord at no cost or expense. Notwithstanding the foregoing, however, the County Mayor or the Mayor's designee can extend the timeframes set forth in this paragraph for an additional three months, in the sole and absolute discretion of the County Mayor or the County Mayor's designee, upon a showing of good cause by the Tenant, provided that such delay was not caused by the Tenant by providing written confirmation to the Tenant.

b. Paragraph 9.01 is hereby amended and restated to read as follows:

9.01 Tenant shall complete the construction of the Project, as evidenced by a temporary certificate of occupancy or its equivalent in the Landlord's discretion, within forty two (45) months of the Commencement Date of this Lease. Tenant shall obtain all permits and zoning approvals necessary to commence construction within twenty seven months of the Commencement Date of this Lease. Notwithstanding the foregoing, however, the County Mayor or the Mayor's designee can extend the timeframes set forth in this paragraph for an additional three months, in the sole and absolute discretion of the County Mayor or the County Mayor's designee, upon a showing of good cause by the Tenant, provided that such delay was not caused by the Tenant by providing written confirmation to the Tenant.

c. Paragraph 21.01, section A, is hereby amended and restated to read as follows:

21.01 **TERMINATION BY LANDLORD**: The occurrence of any of the following shall cause this Lease to be terminated by the Landlord, upon the terms and conditions also set forth below, with the Premises and Improvements reverting to the

Landlord at no cost or expense, as follows:

A. Automatic Termination:

1) Institution of proceedings in voluntary bankruptcy by the Tenant.

2) Institution of proceedings in involuntary bankruptcy against the Tenant if such proceedings continue for a period of ninety (90) days or more.

3) Assignment of Lease by Tenant for the benefit of creditors.

4) Failure of Tenant to maintain its not-for-profit tax status.

5) Failure to obtain all permits, including zoning approvals, within twenty seven (27) months from the Commencement Date.

6) Failure to obtain a temporary certificate of occupancy, or equivalent document in the Landlord's sole and absolute discretion, within forty five (45) months of the Commencement Date of this Lease.

Notwithstanding the foregoing, however, the County Mayor or the Mayor's designee can extend the timeframes set forth in this paragraph for an additional three months, in the sole and absolute discretion of the County Mayor or the County Mayor's designee, upon a showing of good cause by the Tenant, provided that such delay was not caused by the Tenant by providing written confirmation to the Tenant.

3. In all other respects, said Lease shall remain in full force and effect in accordance with the terms and conditions specified therein. In the event of any conflict between this Second Amended Lease and the Lease, this Second Amended Lease shall supercede same.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]
[ONLY THE SIGNATURE PAGE REMAINS]

IN WITNESS WHEREOF, Landlord and Tenant have duly executed this Lease, with the intent for it to be legally binding, as of the day and year first above written.

Landlord:

MIAMI-DADE COUNTY

a political subdivision of the State of Florida

_____
Witness/Attest:

By:_____

Name:_____

_____
Witness/Attest:

Title:_____

Date signed: _____

Tenant:

THE ART OF CULTURAL EVOLUTION, INC.

a Florida not-for-profit corporation

_____
Witness/Attest:

By: _____

_____
Witness/Attest:

Name:_____

Title:_____