

MEMORANDUM

Agenda Item No. 11(A)(20)

TO: Honorable Chairwoman Audrey M. Edmonson
and Members, Board of County Commissioners

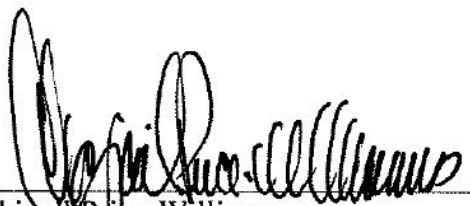
DATE: October 6, 2020

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Resolution approving a Sixth Amendment to the Ground Lease between Miami-Dade County and Am Affordable Housing, Inc. providing for the development of affordable rental housing for families 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, extend the term of the lease from 65 years to 75 years, revise eligible tenants from solely elderly to families or elderly, revise eligible income requirements, adjust the total number of units required to be constructed; authorizing the County Mayor to execute same and exercise provisions contained therein; and directing the County Mayor to provide a copy of the Sixth Amendment to Ground Lease to the Property Appraiser

Resolution No. R-1034-20

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



Abigail Price-Williams
County Attorney

APW/uw



MEMORANDUM

(Revised)

TO: Honorable Chairwoman Audrey M. Edmonson
and Members, Board of County Commissioners

DATE: October 6, 2020

FROM: 
Abigail Price-Williams
County Attorney

SUBJECT: Agenda Item No. 11(A)(20)

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 present ____, 2/3 membership ____, 3/5's ____, unanimous ____, CDMP 7 vote requirement per 2-116.1(3)(h) or (4)(c) ____, CDMP 2/3 vote requirement per 2-116.1(3)(h) or (4)(c) ____, or CDMP 9 vote requirement per 2-116.1(4)(c)(2) ____ 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)(20)
10-6-20

RESOLUTION NO. R-1034-20

RESOLUTION APPROVING A SIXTH AMENDMENT TO THE GROUND LEASE BETWEEN MIAMI-DADE COUNTY AND AM AFFORDABLE HOUSING, INC. PROVIDING FOR THE DEVELOPMENT OF AFFORDABLE RENTAL HOUSING FOR FAMILIES 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, EXTEND THE TERM OF THE LEASE FROM 65 YEARS TO 75 YEARS, REVISE ELIGIBLE TENANTS FROM SOLELY ELDERLY TO FAMILIES OR ELDERLY, REVISE ELIGIBLE INCOME REQUIREMENTS, ADJUST THE TOTAL NUMBER OF UNITS REQUIRED TO BE CONSTRUCTED; 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 SIXTH 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, on November 15, 2016 this Board adopted Resolution No. R-1112-16 which (1) approved 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) approved 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) consented 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 agreed 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, on September 5, 2018 this Board adopted Resolution No. R-932-18 which (1) approved the fifth amendment to the Ground Lease which extended the time to obtain a commitment for financing for Phase II (elderly housing) of the Project from December 13, 2018 to December 13, 2020 and extended the time to complete construction from June 30, 2020 to June

30, 2022, unless a later date was approved in writing by the County Mayor or the County Mayor's designee, and (2) consented to a Fifth Amendment to Sublease Agreement between AM Affordable Housing, Inc. and its Sublessee AMC HTG 2, Ltd., a Florida limited partnership, in which the Sublessee agreed to abide by and be bound by all of the obligations of the Lessee under the Ground Lease, as amended by the Fifth Amendment; and

WHEREAS, in order to develop the remaining phases of the project, the Lessee is currently seeking approval of a sixth amendment to the Ground Lease to: (1) extend the time to obtain a commitment for financing for Phase II (elderly housing) of the Project from December 13, 2020 to December 13, 2023 and to complete construction from June 30, 2022 to June 30, 2025, unless a later date is approved in writing by the County Mayor or the County Mayor's designee (2) extend the term of the lease from 65 years to 75 years, (3) revise eligible tenants from solely elderly to families or elderly, (4) revise eligible income requirements, and (5) adjust the total number of units required to be constructed; 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 Sixth Amendment to Ground Lease, in substantially the form attached to this resolution as Exhibit "A."

Section 3. Authorizes the County Mayor or County Mayor's designee to enter into or execute such amendment, and exercise provisions contained therein on behalf of the County.

Section 4. This Board directs the County Mayor or County Mayor's designee to provide a copy of the Sixth Amendment to the Ground Lease to the Property Appraiser.

The Prime Sponsor of the foregoing resolution is Chairwoman 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:

Audrey M. Edmonson, Chairwoman

Rebeca Sosa, Vice Chairwoman

Esteban L. Bovo, Jr.	aye	Daniella Levine Cava	aye
Jose "Pepe" Diaz	aye	Sally A. Heyman	aye
Eileen Higgins	aye	Barbara J. Jordan	aye
Joe A. Martinez	aye	Jean Monestime	aye
Dennis C. Moss	absent	Sen. Javier D. Souto	aye
Xavier L. Suarez	aye		

The Chairperson thereupon declared this resolution duly passed and adopted this 6th day of October, 2020. 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: **Melissa Adames**
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

A handwritten signature in black ink, appearing to be "Shannon D. Summerset-Williams", written over a horizontal line.

Shannon D. Summerset-Williams

SIXTH AMENDMENT TO GROUND LEASE
PHASE II

This Sixth Amendment to Ground Lease (“Sixth Amendment”) is made as of _____, 2020, 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; 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, a fourth amendment, extending certain time periods as set forth therein, pursuant to County Resolution No. R-1112-16, a fifth amendment, extending certain time periods as set forth therein and consenting to certain changes in the sublease, pursuant to County Resolution No. R-932-18 (collectively, Ground Lease); and

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 November 28, 2016; and

WHEREAS, the LESSEE has requested an additional amendment to the Ground Lease (1) extend the time to obtain a commitment for financing for Phase II (elderly housing) of the Project from December 13, 2020 to December 13, 2023 and to complete construction from June 30, 2022 to June 30, 2025, unless a later date is approved in writing by the County Mayor or the County Mayor’s designee (2) extend the term of the lease from 65 years to 75 years, (3) revise eligible tenants from solely elderly to families or elderly, (4) revise eligible income requirements, and (5) adjust the total number of units required to be constructed; and

WHEREAS, LESSOR and LESSEE desire to enter into this Sixth 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, the Fourth Amendment, the Fifth Amendment, and this Sixth Amendment. This Sixth 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 third sentence of the first paragraph of Section 3.1 of the Ground Lease is hereby deleted and replaced with the following:

The term of the lease shall expire seventy-five {75} years and one [1] day after the Commencement Date {the "Term of the Lease"}, unless this Lease is terminated earlier pursuant to the provisions contained herein.

4. 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 (or Sublessee) fails to secure a firm commitment for financing by December 13, 2023, this Lease Agreement for PHASE II 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.

5. Section 4.1.1 of the Ground Lease, previously amended by the Third Amendment to the Ground Lease, is hereby deleted and replaced with the following:

Up to one-hundred and ninety-four (194) in two phases, but not less than 75 in Phase II, affordable residential housing units (the "Residential Units"), all of which shall be rented to very-low, low, and/or moderate-income households (as these terms are defined in Section 420.9071 of the Florida Statutes) (the "Income Requirements"), together with common areas and amenities appurtenant thereto, to be leased or provided to persons qualifying under Sec. 42 of the Code and Miami-Dade County Surtax guidelines. Lessee Shall have the, right but not the obligation, to construct on the parcel identified as "Parcel C" in Exhibit A of the Second Amendment, the remainder of the 194 units not built in Phase II (the "Phase III Units"), all of which shall be rented to very-low, low, and/or moderate-income households (as these terms are defined in Section 420.9071 of the Florida Statutes) (the "Income Requirement"), together with

common areas and amenities appurtenant thereto, to be leased or provided to persons qualifying under Sec. 42 of the Code and Miami-Dade county Surtax guidelines.

Tenant may, at its election, construct as many additional units, greater than the aggregate of 194 units described in this Section 4.1.1 above, as it desires and for which it is able to obtain Permits and other governmental approvals.

Notwithstanding the foregoing, one (1) unit occupied by a property management employee, may be exempt from the Income Requirement. The final number of Residential units to be built upon the Demised Premises may increase or decrease by up to ten percent (10%) of the number of Residential Units set forth herein, without the need to obtain the County's approval of such change.

6. 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, 2025, unless a later date is approved in writing by the County Mayor or the County Mayor's designee.

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

8. This Sixth 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 Sixth 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 Sixth Amendment to be executed by their respective and duly authorized officers the day and year first above written.

WITNESSES:

Print Name: _____

Print Name: _____

LESSEE:

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

By: _____
_____, Secretary

(OFFICIAL SEAL)

ATTEST:

HARVEY RUVIN, CLERK

By: _____
Deputy Clerk

LESSOR:

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

By: _____
County Mayor

Approved as to form and legal sufficiency:

Assistant County Attorney

EXHIBIT “B”

PROJECT TIMELINE*

As to the Phase II Units only:

12/13/23 - Secure firm financing commitment

06/30/25 - Completion of Construction

*All dates are estimates only.