

MEMORANDUM

Agenda Item No. 8(F)(1)

TO: Honorable Chairman Oliver G. Gilbert, III
and Members, Board of County Commissioners

DATE: October 1, 2024

FROM: Geri Bonzon-Keenan
County Attorney

SUBJECT: Resolution approving terms of
and authorizing execution by the
County Mayor of a First
Amendment to the Lease and
Development Agreement
between Miami-Dade County
and BAC Funding Corporation,
Inc., a Florida not-for-profit
corporation, for the County-
owned property located at 6600
NW 27 Avenue, Miami, Florida;
and authorizing the County
Mayor to take all actions
necessary to exercise all rights
conferred in the lease agreement,
as amended, and to take all
actions necessary to effectuate
same

Resolution No. R-849-24

The accompanying resolution was prepared by the Internal Services Department and placed on the agenda at the request of Prime Sponsor Commissioner Marleine Bastien and Co-Sponsor Commissioner Kionne L. McGhee.


Geri Bonzon-Keenan
County Attorney

GBK/ks

Memorandum



Date: October 1, 2024

To: Honorable Chairman Oliver G. Gilbert, III
and Members, Board of County Commissioners

From: Daniella Levine Cava 
Mayor

Subject: First Amendment to Lease Agreement between Miami-Dade County and BAC Funding Corporation, Inc., a Florida nonprofit corporation, for Property Located at 6600 NW 27 Avenue, Miami, Florida 33147
Folio No. 30-3116-000-0050

Summary

This item is for the approval of a First Amendment (Amendment) to the Lease Agreement between Miami-Dade County (County), and BAC Funding Corporation, Inc. (BAC), a Florida nonprofit corporation, for the property owned by the County located at 6600 NW 27 Avenue, Miami, Florida 33147 (Property). The Property consists of approximately 3.15 acres of land, which was leased to BAC through the Lease and Development Agreement (Lease) dated December 1, 2021, pursuant to Resolution No. R-1087-21. The Property was leased to BAC so that it may redevelop the Property to construct office and commercial space for small and local businesses, in addition to a minimum of 152 affordable housing units, and to develop a community plaza for the use and benefit of area residents (collectively termed the "Project"). BAC requested the Amendment so that it may ensure the economic viability of the Project by being able to utilize the benefits provided by Senate Bill 102 ("Live Local Act") to nonprofit entities constructing affordable housing on a ground lease with a term of at least 99 years.

The proposed Amendment will make the following changes to the Lease:

- 1) Modify the Lease Term from 75 years with a 24-year renewal option to a single 99-year term without renewals from the Lease effective date;
- 2) Remove the 24-year renewal option from the Lease; and
- 3) Extend the time to achieve development milestones of the Project by basing delivery of the milestones on the Amendment effective date, rather than the Lease effective date as originally contemplated.

Recommendation

It is recommended that the Board of County Commissioners (Board) approve the terms of the Amendment and authorize the County Mayor or County Mayor's designee to execute the Amendment between the County and BAC, for the Property located at 6600 NW 27 Avenue, Miami-Dade County, Florida 33147, which is to be utilized for the development of affordable housing, as well as additional features and services to benefit the community. It is further recommended that the Board authorize the County Mayor or County Mayor's designee to exercise all other rights conferred in the Lease, as amended, including but not limited to the right of termination and to exercise the deadline extensions.

Scope

The Property is located in Commission District 2, which is represented by Commissioner Marleine Bastien. Written notice of the Amendment was provided to the District Commissioner.

Fiscal Impact/Funding Source

This Amendment does not have any anticipated fiscal impact to the County. Because the total potential length of the Lease remains unchanged, the proposed Amendment will not affect revenue generation stemming from BAC's rent due under the Lease nor require additional staffing resources or generate additional operational expenses. Pursuant to Article 5 of the Lease, the Tenant is responsible for the

payment of all impositions, before any fine, penalty or interest, including but not limited to any real estate tax, sales tax, ad valorem tax or similar impositions.

Track Record/Monitor

The Director of Public Housing and Community Development is responsible for the monitoring of the Lease.

Delegation of Authority

This item authorizes the County Mayor or County Mayor's designee to execute the Amendment, to take all actions necessary to effectuate the Amendment, and to exercise all other rights conferred in the Lease, as amended, including but not limited to the right of termination and to exercise the deadline extensions.

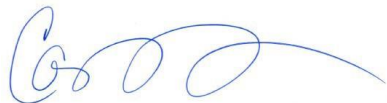
Background

The Property consists of approximately 3.15 acres of land, leased to BAC through the Lease dated December 1, 2021, pursuant to Resolution No. R-1087-21. The Property was leased to BAC so that it may develop a mixed-use project that incorporates an affordable multi-family residential component, and an office/retail component to act as a catalyst for the development of small and minority owned businesses. BAC has operated a business assistance center on the Property since 1988, under a prior lease agreement with the County approved pursuant to Resolution No. R-1629-88.

At the request of BAC and approval of the Board, the County and BAC wish to amend the Lease for the purpose of allowing BAC to utilize the full benefits available to not-for-profit entities through the Live Local Act. More specifically, the proposed amendment will modify the initial term of the Lease from 75 years with a 24-year renewal option to 99 years without the 24-year renewal in order to meet the provisions of the Live Local Act. Furthermore, the Amendment adjusts the development milestones to accommodate BAC by providing additional time to secure financing and commence construction. The County will receive an Initial Rent payment of \$375,000 on the Financial Close Date, which in no event will be later than thirty (30) months from the Amendment effective date, with annual rent payments in the amount of \$15,000 commencing on the Stabilization Date, which in no event will be later than sixty-six (66) months from the Amendment effective date. Upon the 16th anniversary of the Stabilization Date, annual rent will increase to \$40,000 per year, with 3 percent rent increases on each anniversary of the Stabilization Date thereafter, until the last day of the term.

All other terms and conditions remain the same, including but not limited to the County's right to terminate the Lease upon 30 days' notice to BAC upon the occurrence of an event of default and failure by BAC to cure said default.

The Amendment becomes effective on the first day of the next month following the effective date of the resolution approving the Amendment.



Carladenise Edwards
Chief Administrative Officer



MEMORANDUM

(Revised)

TO: Honorable Chairman Oliver G. Gilbert, III
and Members, Board of County Commissioners

DATE: October 1, 2024

FROM: 
Gen Bonzon-Keenan
County Attorney

SUBJECT: Agenda Item No. 8(F)(1)

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. 8(F)(1)
10-1-24

RESOLUTION NO. R-849-24

RESOLUTION APPROVING TERMS OF AND AUTHORIZING EXECUTION BY THE COUNTY MAYOR OR COUNTY MAYOR’S DESIGNEE OF A FIRST AMENDMENT TO THE LEASE AND DEVELOPMENT AGREEMENT BETWEEN MIAMI-DADE COUNTY AND BAC FUNDING CORPORATION, INC., A FLORIDA NOT-FOR-PROFIT CORPORATION, FOR THE COUNTY-OWNED PROPERTY LOCATED AT 6600 NW 27 AVENUE, MIAMI, FLORIDA; AND AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR’S DESIGNEE TO TAKE ALL ACTIONS NECESSARY TO EXERCISE ALL RIGHTS CONFERRED IN THE LEASE AGREEMENT, AS AMENDED, AND TO TAKE ALL ACTIONS NECESSARY TO EFFECTUATE SAME

WHEREAS, on December 1, 2021, pursuant to Resolution No. R-1087-21, the County, as landlord, entered into a Lease and Development Agreement (“Lease”) with BAC Funding Corporation, Inc., a Florida not-for-profit corporation, as tenant (“BAC”), for approximately 3.15 acres of County-owned land located at 6600 NW 27 Avenue, Miami, Florida, 33147, to be utilized by BAC for redevelopment into office and commercial space for small, local businesses, in addition to the construction of a minimum of 152 affordable housing units, and a community plaza for the use and benefit of area residents (together, the “Project”); and

WHEREAS, BAC has requested the County agree to amend the Lease so that it may ensure the economic viability of the Project by being able to utilize the benefits provided by Senate Bill 102, commonly known as the Live Local Act, applicable to not-for-profit entities constructing affordable housing on a ground lease with a term of at least 99 years, as well as by adjustment of the development milestones to accommodate BAC by providing additional time to secure financing and commence construction; and

WHEREAS, the County and BAC are desirous of amending the Lease, namely: (i) to revise the structure of the term of the Lease from an initial term of 75 years with a 24 year option to renew, to an initial term of 99 years from the Amendment effective date with no option to renew; (ii) to remove the 24-year renewal option from the Lease; and (iii) to extend the development milestones of the Project by basing delivery of the milestones on effective date of the amendment, rather than the Lease effective date as originally contemplated; and

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

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

Section 1. The foregoing recitals are incorporated into this resolution and are approved.

Section 2. This Board hereby approves the First Amendment to the Lease and Development Agreement between the County and BAC Funding Corporation, Inc. (“Amendment”), in substantially the form attached hereto and made a part hereof as Exhibit 1, for the property located at 6600 NW 27 Avenue, Miami, Florida.

Section 3. This Board authorizes the County Mayor or County Mayor’s designee to execute the Amendment for and on behalf of the County, to exercise all rights conferred in the Lease, as amended, including, but not limited to, the right of termination and exercise of the deadline extensions, and to take all actions necessary to effectuate same.

Section 4. This Board directs the County Mayor or County Mayor’s designee to provide the Property Appraiser’s Office with a copy of the executed lease within 30 days of its execution.

Section 5. This Board directs the County Mayor or County Mayor’s designee, pursuant to Resolution No. R-974-09, to record in the public record all instruments creating or reserving a real property interest in favor of the County and to provide a copy of such recorded instruments to the Clerk of the Board within 30 days of execution and final acceptance. This Board directs the Clerk of the Board, pursuant to Resolution No. R-974-09, to attach and permanently store a recorded copy of any instrument provided in accordance herewith together with this resolution.

The foregoing resolution was offered by Commissioner **Oliver G. Gilbert, III** ,
who moved its adoption. The motion was seconded by Commissioner **Marleine Bastien**
and upon being put to a vote, the vote was as follows:

Oliver G. Gilbert, III, Chairman		aye
Anthony Rodríguez, Vice Chairman		aye
Marleine Bastien	aye	Juan Carlos Bermudez aye
Kevin Marino Cabrera	aye	Sen. René García aye
Roberto J. Gonzalez	absent	Keon Hardemon aye
Danielle Cohen Higgins	aye	Eileen Higgins absent
Kionne L. McGhee	aye	Raquel A. Regalado aye
Micky Steinberg	aye	

The Chairperson thereupon declared this resolution duly passed and adopted this 1st day of October, 2024. 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

JUAN FERNANDEZ-BARQUIN, CLERK

By: Basia Pruna
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

A handwritten signature in black ink, appearing to be "TAS", is written over a horizontal line.

Terrence A. Smith
Debra Herman

Exhibit 1

FIRST AMENDMENT TO LEASE AND DEVELOPMENT AGREEMENT

THIS FIRST AMENDMENT TO LEASE AND DEVELOPMENT AGREEMENT (this “**Amendment**”), dated as of the ____ day of _____, 2024, is made by and between MIAMI-DADE COUNTY, a political subdivision of the State of Florida, through the Public Housing and Community Development Department, having its principal office and place of business at 701 N.W. First Court, 16 Floor, Miami, Florida 33136, its successors and assigns (hereinafter called “**County**” or “**Landlord**”), and BAC FUNDING CORPORATION, a Florida not-for-profit corporation, having its principal office and place of business at 6600 N.W. 27 Avenue, Miami, Florida 33147, and its permitted successors and assigns (hereinafter called “**BAC**” or “**Tenant**”).

R E C I T A L S:

A. Landlord and Tenant entered into that certain Lease and Development Agreement dated December 1, 2021 (as the same may hereafter be modified or amended, the “**Lease**”), with respect to the development of Landlord’s land located at 6600 N.W. 27th Avenue, Miami-Dade County, Florida 33147, also referred to as the “**Demised Property**” or “**Property**,” which land is legally described on Exhibit A of the Lease.

B. The parties wish to enter into this Amendment to (i) extend the Initial Term to a total of 99 years, (ii) extend the development milestones for the Project, and (iii) address such other related matters as more particularly set forth in this Amendment.

NOW, THEREFORE, in consideration of the foregoing and good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant, each for themselves and their respective successors and assigns, do hereby covenant and agree as follows:

1. **Recitals; Capitalized Terms.** The foregoing Recitals are incorporated herein by reference. Capitalized terms not defined in this Amendment shall have the meanings ascribed to them in the Lease.

2. **Amendment Effective Date.** This Amendment shall become effective on the date of execution of this Amendment by the County Mayor or Mayor’s designee following (i) the approval of this Amendment by the Board, and the expiration of the ten (10) day veto period by the Mayor, unless vetoed by the Mayor, or if vetoed, a two-thirds (2/3) vote of the Board overriding the Mayor’s veto is obtained (the “**Amendment Effective Date**”).

3. **Extension of Initial Term.** The Initial Term of the Lease is hereby extended to a period of ninety-nine (99) years from the Effective Date, unless earlier terminated or extended as provided in the Lease, as amended by this Amendment.

4. **Renewal Option.** Section 1.2(B) of the Lease is hereby deleted in its entirety and replaced with the term “Intentionally Deleted.” All references in the Lease to the term “Option” are hereby deleted in their entirety. The term “Term” is hereby amended to mean the Initial Term only.

5. **Stabilization Date.** The definition of the term “Stabilization Date” in Section 2.44 of the Lease is hereby amended to mean the date that is six (6) months after the Completion of Construction and no later than sixty-six (66) months after the Amendment Effective Date, subject to any extension pursuant to Unavoidable Delay.

6. **Commencement of Construction;** Outside Date for Completion of Construction; Termination. Sections 4.4(A) and (B) of the Lease are hereby deleted in their entirety and replaced with the following:

(A) Subject to the terms and provisions of this Lease, Tenant shall commence and complete the development of the Project pursuant to the following deadlines, subject to any extensions for Unavoidable Delay:

(a) Tenant shall, within twelve (12) months from the Amendment Effective Date, deliver to the Landlord (specifically to the Directors of Public Housing and Community Development Department, the Internal Services Department, or their designees) copies of its updated construction budget, including, but not limited to a preliminary sources and uses statement, which budget shall replace the budget provided to Landlord pursuant to the original Lease.

(b) Tenant shall obtain all required subdivision approvals and zoning changes required to construct the Improvements on the Demised Property within twelve (12) months from the Amendment Effective Date (the “**Subdivision and Zoning Deadline**”).

(c) Tenant shall, within twenty-four (24) months from the Amendment Effective Date, provide to the Landlord (specifically to the Directors of Public Housing and Community Development Department, the Internal Services Department or their designees) any and all Plans and Specifications, as well as Construction Plans for written approval. This written approval is in addition to any approval and/or authorization that the Tenant must secure from any other agency and/or department of the Landlord.

(d) Tenant shall obtain all permits and entitlements required to construct the Improvements on the Demised Property (including, but not limited to, site plan approval and building permits) and shall close on the financing for the construction of the Improvements (collectively, the “**Predevelopment Conditions**”) within thirty (30) months of the Amendment Effective Date, subject to Unavoidable Delay (the “**Predevelopment Deadline**”). The date of the closing of the financing for the construction of the Project shall be the “**Financial Close Date.**” Notwithstanding anything contained in **Section 1.2(A)** of the Lease to the contrary, the Financial Close Date must occur within thirty (30) months of the Amendment Effective Date, subject to Unavoidable Delay. Further, notwithstanding anything contained in **Section 3.1** of the Lease to the contrary, Tenant shall pay to Landlord the Initial Rent on the Financial Close Date, but in no event later than thirty (30) months after the Amendment Effective Date, subject to any extensions due to Unavoidable Delay.

(e) Tenant shall, within thirty-six (36) months of the Amendment Effective Date, provide to the Landlord (specifically to the Directors of Public Housing and Community Development Department, the Internal Services Department or their designees) copies of any and all contracts, agreements and/or arrangements that it has with the development company that will be performing and/or managing the construction of the Project.

(f) Tenant shall Commence Construction within thirty-six (36) months of the Amendment Effective Date.

(g) Subject to Unavoidable Delay, Tenant shall cause the Completion of Construction to occur no later than sixty (60) months after the Amendment Effective Date (the “**Outside Completion Date**”).

(h) The timeframes set forth in **Section 4.4(A)(a) - (f)** may be each extended for a six month period by the County Mayor or the County Mayor’s designee in its sole and absolute discretion, provided that the County Mayor or County Mayor’s designee determines that the Outside Completion Date will not need to be extended as a result of such extension based upon a reasonable demonstration of same by Tenant. Any extension of the Outside Completion Date shall only be granted with approval of the Board.

(B) **Tenant’s or Landlord’s Right to Terminate.** If within eighteen (18) months from the Amendment Effective Date (“**Inspection Period**”), the Tenant reasonably determines that Tenant is not able to develop the Project, substantially as contemplated in **Article 4** and as illustrated in the Development Concept, then the Tenant shall forthwith provide notice of same to Landlord, and the Tenant or the Landlord shall have the right to terminate this Lease by giving written notice of termination. In such event this Lease shall terminate fifteen (15) days following the receipt of such notice of termination and any and all construction materials located on the Demised Property and not incorporated therein shall be removed by Tenant upon written request of the Landlord. Tenant shall not Commence Construction and shall not draw down any financing proceeds as a result of any approved Leasehold Mortgage until the expiration of the Inspection Period or following the delivery and issuance by the Tenant of an executed letter addressed to the County whereby Tenant waives the remaining time in the Inspection Period and its right to terminate this Lease, as set forth in this **Section 4.4(B)**.

7. **Right to Sever Lease.** Section 17.15(c) of the Lease is hereby deleted in its entirety and replaced with the following: “Tenant provides Landlord with an agreement reasonably satisfactory to Landlord to be recorded in the public records addressing the uniform operation of the shared areas of the Retail and Office Complex and the Residential Complex; and”

8. **Priority of First Amendment.** Except as amended and modified by this Amendment, all of the terms, covenants, conditions, and agreements of the Lease shall remain in full force and effect. In the event of any conflict between the provisions of the Lease and the provisions of this Amendment, this Amendment shall prevail.

9. **Governing Law.** This Amendment shall be governed by and construed in accordance with the laws of the State of Florida. Further, the parties agree that the venue shall be in Miami-Dade County.

10. **Counterparts.** This Amendment may be executed in multiple counterparts, each of which shall be deemed an original and all of which shall constitute one agreement and the signatures of any party to any counterpart shall be deemed to be a signature to, and may be appended to, any other counterpart. Signatures to this Amendment, any amendment hereof and any notice given hereunder, delivered electronically via .pdf, .jpeg, .TIF, .TIFF or similar electronic format shall be deemed an original signature and fully effective as such for all purposes. Each party agrees to deliver promptly an executed original of this Amendment with its actual signature to the other party, but a failure to do so shall not affect the enforceability of this Amendment, it being expressly agreed that each party to this Amendment shall be bound by its own electronically transmitted signature and shall accept the electronically transmitted signature of the other party to this Amendment.

11. **Joint Preparation.** The preparation of this Amendment has been a joint effort of the parties, and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

12. **Captions.** The title of this Amendment and the headings of the various articles, sections and subsections have been inserted only for the purpose of convenience, are not part of this Amendment and shall not be deemed in any manner to modify, explain, expand or restrict any of the provisions of this Amendment.

13. **Entire Agreement.** Except as otherwise expressly provided herein, this Amendment and the Lease constitute the entire agreement of the parties hereto with respect to the matters addressed herein and supersedes all prior or contemporaneous contracts, promises, representations, warranties and statements, whether written or oral, with respect to such matters.

IN WITNESS WHEREOF, Landlord has caused this Amendment to be executed in its name by the County Mayor; as authorized by the Board of County Commissioners, and Tenant has caused this Amendment to be executed by its duly authorized representative all on the day and year first hereinabove written.

(OFFICIAL SEAL)

LANDLORD

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

ATTEST:
JUAN FERNANDEZ-BARQUIN,
Clerk of the Court and Comptroller

By: _____
(Deputy Clerk's Signature)

By: _____
Name: _____
Title: _____

Print Name: _____

Date: _____

Approved by the County Attorney as
to form and legal sufficiency:

By: _____
Print Name: _____
Title: Assistant County Attorney

STATE OF FLORIDA)
) SS:
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me, by means of [] physical presence or [] online notarization, this ____ day of _____, 2024, by _____, as _____ of MIAMI-DADE COUNTY, a political subdivision of the State of Florida, on behalf of such political subdivision, who [] is personally known to me or [] produced a valid _____ driver's license as identification.

Print or Stamp Name:
Notary Public, State of Florida
Commission No.:
My Commission Expires:

TENANT

BAC FUNDING CORPORATION, a Florida
not-for-profit corporation

By: 
Name: RONALD E. FRAZIER
Title: CHAIRMAN/CEO

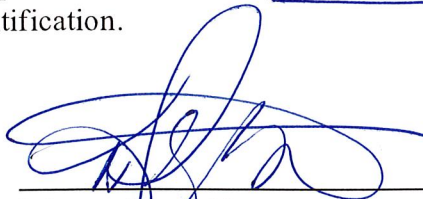
STATE OF FLORIDA)

) SS:

COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me, by means of ☒ physical
presence or ☐ online notarization, this 26th day of MARCH, 2024, by Ronald Frazier as
Chairman of BAC FUNDING CORPORATION, a Florida not-for-profit corporation, on
behalf of such not-for-profit corporation. He or she is personally known to me or produced a valid
_____ driver's license as identification.





Print or Stamp Name:
Notary Public, State of Florida
Commission No.:
My Commission Expires: