

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

CORAL BAY COVE, LLC,

Petitioner,

vs.

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

FHFC Case No:2015-022BP

APPLICATION NO: 2015-214C

REQUEST FOR APPLICATIONS: 2014-116

FORMAL WRITTEN PROTEST OF AWARD

Pursuant to sections 120.569 and 120.57(3), Florida Statutes, and Chapter 28-110 and rule 28-106.201, Florida Administrative Code, Petitioner, Coral Bay Cove, LLC, files this Formal Written Protest of Award and states:

Affected Agency

1. The agency affected is the Florida Housing Finance Corporation ("Florida Housing"), 227 N. Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329. The telephone number is 850-488-4197.

Petitioner

2. The Petitioner is Coral Bay Cove, LLC ("Coral Bay"). Petitioner's address is 3050 Biscayne Boulevard, Suite 300, Miami, Florida 33137. Petitioner's telephone number is 305-538-9552.

Petitioner's Counsel

3. Counsel for Coral Bay and Petitioner's address for this proceeding is:

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Background

1. Florida Housing administers various affordable housing programs including the Housing Credit ("HC") Program pursuant to Section 42 of the Internal Revenue Code and section 420.5099, Florida Statutes, under which Florida Housing is designated as the Housing Credit agency for the state of Florida within the meaning of section 42(h)(7)(A) of the Internal Revenue Code, and Chapters 67-48 and 67-60, Florida Administrative Code.

2. Florida Housing administers competitive solicitation processes to implement the provisions of the housing credit program under which developers apply for funding. Chapter 67-60, Florida Administrative Code.

3. The failure of an application to be completed in accordance with the competitive solicitation shall be grounds for a determination of non-responsiveness and the application will not be considered for funding. Rule 67-60.006, Florida Administrative Code.

4. Furthermore, by submitting an application, each applicant certifies that:

Proposed Developments funded with Housing Credits will be subject to the requirements of the RFA, the Application requirements outlined in Rule Chapter 67-60, F.A.C., the credit underwriting and HC Program requirements outlined in

Rule Chapter 67-48, F.A.C. and the Compliance requirements of Rule Chapter 67-53, F.A.C.

(RFA 2014-116 at Pg. 8).

5. Because the demand for HC funding exceeds that which is available under the HC Program, qualified affordable housing developments must compete for this funding. To assess the relative merits of proposed developments, Florida Housing has established a competitive solicitation process known as the Request for Applications pursuant to Chapters 67-48 and 67-60, Florida Administrative Code.

6. On or about November 21, 2014, Florida Housing issued RFA 2014-116 Housing Credit Financing for Affordable Housing Development Located in Miami-Dade County (“RFA”). The application deadline for the RFA was February 10, 2015 (“Application Deadline”).

7. Specifically, Florida Housing’s solicitation process for RFA 2014-116, as set forth in rules 67-60.001 - .009, Florida Administrative Code, involves the following:

- a) Florida Housing publishes its competitive solicitation (RFA) in the Florida Administrative Register;
- b) applicants prepare and submit their response to the competitive solicitation;
- c) Florida Housing appoints a scoring committee to evaluate the applications;
- d) the scoring committee makes recommendations to Florida Housing’s Board, which are then voted on by the Board; and
- e) applicants not selected for funding may protest the results of the competitive solicitation process.

Notice of Agency Action

8. Coral Bay received notice of Florida Housing's Final Agency Action entitled "RFA 2014-116 Recommendations" dated May 8, 2015 ("Corporation's Notice"), on or about May 8, 2015 (See attached Exhibit "A").

Notice of Protest and Procedural Background

9. On May 12, 2015, Coral Bay timely filed its Notice of Protest in which it challenged the selection of the applications in the Corporation's Notice (See attached Exhibit "B").

10. In accordance with Section 120.57(3), Florida Statutes, this Petition is being filed within 10 days of the date that Coral Bay filed its Notice of Protest.

11. Section 120.57(3), Florida Statutes, sets forth the procedures applicable to protests to contract solicitations or awards. Section 120.57(3)(f), Florida Statutes, provides the following: "In a competitive-procurement protest, other than a rejection of all bids, proposals, or replies, the administrative law judge shall conduct a de novo proceeding to determine whether the agency's proposed action is contrary to the agency's governing statutes, the agency's rules or policies, or the solicitation specifications. The standard of proof for such proceedings shall be whether the proposed agency action was clearly erroneous, contrary to competition, arbitrary, or capricious."

12. An agency action is capricious if the agency takes the action without thought or reason or irrationally and an agency action is arbitrary if it is not supported by facts or logic. See Agrico Chemical Co. v. Dept of Env'tl. Reg., 365 So.2d 759, 763 (Fla. 1st DCA 1978). "An arbitrary decision is one that is not supported by facts or logic[.]" Id. The inquiry to be made in determining whether an agency has acted in an arbitrary or capricious manner involves

consideration of "whether the agency: (1) has considered all relevant factors; (2) has given actual, good faith consideration to those factors; and (3) has used reason rather than whim to progress from consideration of these factors to its final decision." Adam Smith Enterprises v. Dept of Env'tl. Reg., 553 So. 2d 1260, 1273 (Fla. 1st DCA 1989).

13. Florida Housing's actions in terms of scoring are clearly erroneous, contrary to competition, arbitrary and/or capricious, and in violation of the terms of the RFA.

Substantial Interests

14. Coral Bay timely submitted an application in response to RFA 2014-116. Pursuant to Application #2015-214C ("Application"), Petitioner applied for an allocation of \$2,094,000 in annual federal tax credits¹ to help finance the development of its project, a 110-unit mid-rise apartment complex. As reflected in Florida Housing's RFA 2014-116 Applications Submitted Report, Coral Bay was assigned lottery number 5. Coral Bay was scored as having satisfied all mandatory and eligibility requirements for funding. It scored 18 out of 18 proximity points and 23 out of 23 total points (See RFA 2014-116 Scoring Sheets, Pg. 5 attached as Exhibit "C").

15. Seventh Avenue II, Ltd. ("Seventh Avenue II") timely submitted an application in response to RFA 2014-116. Pursuant to Application #2015-171C, Seventh Avenue II applied for

¹ The United States Congress has created a program, governed by Section 42 of the IRC, by which federal income tax credits are allotted annually to each state on a per capita basis to help facilitate private development of affordable low-income housing for families. These tax credits entitle the holder to a dollar-for-dollar reduction in the holder's federal tax liability, which can be taken for up to ten years if the project continues to satisfy IRC requirements. The tax credits allocated annually to each state are awarded by state "housing credit agencies" to single-purpose applicant entities created by real estate developers to construct and operate specific multi-family housing projects. The applicant entity then sells this ten-year stream of tax credits, typically to a syndicator, with the sale proceeds generating much of the funding necessary for development and construction of the project. The equity produced by this sale of tax credits in turn reduces the amount of long-term debt required for the project, making it possible to operate the project at below-market-rate rents that are affordable to low-income and very-low-income tenants. Pursuant to section 420.5099, F.S., Florida Housing is the designated "housing credit agency" for the state of Florida and administers Florida's tax credit program under its Housing Credit (HC) Program. Through the HC Program, Florida Housing allocates Florida's annual fixed pool of federal tax credits to developers of affordable housing.

an allocation of \$2,561,000 in annual federal tax credits to help finance the development of its project, a 100-unit high-rise apartment complex. As reflected in Florida Housing's RFA 2014-116 Applications Submitted Report, Seventh Avenue II was assigned lottery number 1. Seventh Avenue II was scored as having satisfied all mandatory and eligibility requirements for funding. On May 8, 2015, Florida Housing's Board of Directors adopted the scoring committee's recommendations and tentatively authorized the selection of Seventh Avenue II for funding.

16. As discussed below, Florida Housing improperly determined that Seventh Avenue II satisfied RFA mandatory and eligibility requirements and improperly selected Seventh Avenue II for funding.

17. Through this proceeding Coral Bay challenges and is seeking a determination that Florida Housing erred in the scoring and award decision of Seventh Avenue II's Application. But for Florida Housing's error in its scoring and award decision, Coral Bay would have been ranked in the funded range and would have been entitled to an allocation of housing credits from the 2014-116 RFA.

Demographic Commitment

18. Section 4.A.2. of the Application requires that applicants properly disclose which Demographic Commitment an applicant intends to serve; whether Family, Elderly or Homeless. Seventh Avenue II selected "Family" as its Demographic Commitment. As more fully explained, the conditions under which Seventh Avenue II leased the subject property precluded it from selecting this demographic commitment and its application should not have been scored as eligible for funding.

19. The Seventh Avenue II development is subject to a number of lease agreements. As reflected at Attachment 14 to the Application, on March 23, 2011, Miami-Dade County

entered into a Lease Agreement with Carlisle Development Group, LLC (“Carlisle”) (“Ground Lease”). On this same date, Carlisle assigned the Ground Lease to CDG Seventh Avenue Holdings, LLC (“First Assignment”). On October 1, 2013, CDG Seventh Avenue Holdings, LLC assigned the Ground Lease to APC Seventh Avenue Holdings, LLC (“Second Assignment”). Thereafter, on December 5, 2013, APC Seventh Avenue Holdings, LLC subleased the demised premises to Seventh Avenue II, the Applicant (“Sublease”). All assignments and the sublease were encumbered by the terms and conditions of the Ground Lease.

20. Under the terms of the Ground Lease, Carlisle was permitted to construct phased developments, provided that Carlisle designated one phase for Family demographic and the other phase for Elderly demographic (See Section 4.3 of the Ground Lease attached hereto as Exhibit “D”). Failure to comply with the terms of the Ground Lease permitted Miami-Dade to terminate its obligations under the lease.

21. In February 2014, Seventh Avenue II, Ltd. submitted an application to Florida Housing in which it sought non-competitive housing credits. Seventh Avenue II, Ltd. committed to serve the Family demographic in that application (See relevant portion of Non-Competitive Application Form, attached hereto as Exhibit “E”). Accordingly, under the terms of the Ground Lease agreement, Seventh Avenue II was required to serve the Elderly Demographic Commitment with respect to the second phase of any development.

22. Section 4.A.6.d of the RFA contains mandatory distance requirements regarding applications servicing the same Demographic Commitment:

To be eligible to be considered for funding, Applications must qualify for the Mandatory Distance Requirement. Applications may qualify automatically (as outlined in (1) below). Applications that are not eligible for the automatic qualification will only qualify if the distance between the

Development Location Point and other properties identified on the 2014 FHFC Development Proximity List, effective 8-22-14, (the “Proximity List”) serving the same demographic group as the proposed Development meets the Mandatory Distance Requirement of 0.5 miles (as outlined in (2) below).

(RFA 2014-116 at Pg. 24).

23. In this case, Seventh Avenue II’s proposed development site is located within seven hundred feet of Tuscany Cove 1, a development that selected the Elderly Demographic, and is identified on the Florida Housing Development Proximity List. In short, the Ground Lease required Seventh Avenue II to develop the second phase as an Elderly development and the RFA precluded Seventh Avenue II from developing the second phase as an Elderly development.

24. In an attempt to cure this fatal flaw, Seventh Avenue II included within its application Amendment No. 1 to the Ground Lease dated February 6, 2015 between Miami-Dade County and APC Seventh Avenue Holdings, LLC (“Amendment”)(See Amendment, attached hereto as Exhibit “F”). Among other matters, the Amendment purports to allow the development of each phase as a “Family” demographic.

25. In order for the Amendment to satisfy the requirements of the RFA, a resolution authorizing the execution of the Amendment would have needed to have been in effect on or before the Application Deadline. It was not. A resolution authorizing the execution of the Amendment was adopted by the Miami-Dade County Board of County Commissioners at its meeting of February 3, 2015 (“Resolution”) (See copy of Resolution No. R-161-15 and certification by Mr. Harvey Ruvin, Miami-Dade Clerk, attached hereto as Exhibit “G”). However, as reflected in Mr. Ruvin’s certification, the Resolution did not become effective until February 13, 2015. In fact, prior to this deadline, the Mayor could have vetoed the Resolution.

26. Even assuming the Resolution was somehow in effect as of the Application Deadline, the Amendment is still invalid. As previously noted, on December 5, 2013, APC Seventh Avenue Holdings, LLC subleased the demised premises to Seventh Avenue II. Yet despite this, Seventh Avenue II was not a party to the Amendment.

27. As of the Application Deadline, the Ground Lease precluded Seventh Avenue II from developing a second phased development which served the Family Demographic Commitment. Seventh Avenue II improperly claimed in its Application that its development could serve the Family Demographic Commitment.

28. Further, Seventh Avenue II's selection of the Family Demographic category requires it to comply with the "general public use requirement" as defined by applicable Internal Revenue Service regulations and the standard provisions of Florida Housing's Extended Low Income Housing Agreement. Given the "Elderly" requirement contained in the Ground Lease, Seventh Avenue II is not eligible to receive Low Income Housing Tax Credits which require it to serve the Family Demographic Commitment.

Site Control

29. Section 4.A.8. of RFA 2014-116, lists the requirements for Site Control. The instructions provide, in relevant part:

Site Control:

The Applicant must demonstrate site control by providing, as **Attachment 14** to Exhibit A, the documentation required in Items a., b., and/or c., as indicated below. If the proposed Development consists of Scattered Sites, site control must be demonstrated for all of the Scattered Sites.

Lease - The lease must have an unexpired term of at least 50 years from the Application Deadline and the lessee must be the Applicant. If the owner of the subject property is not a party to the lease, all documents evidencing intermediate leases, subleases, assignments, or agreements of any kind between or among the owner, the lessor, or any sublessee, assignor, assignee, and the Applicant, or other

parties, must be provided, and if a lease, must have an unexpired term of at least 50 years from the Application Deadline.

30. As noted above, Seventh Avenue II includes, at Attachment 14, several agreements purporting to demonstrate Site Control. The Application failed to demonstrate Site Control. A condition of the Ground Lease prohibited Seventh Avenue II from constructing the second phase of a development which could serve the Family Demographic Commitment. Failure to comply with the terms of the Ground Lease permitted Miami-Dade to terminate its obligations under the lease.

31. In addition, the Ground Lease contained a contingency which required that Carlisle secure “. . . the necessary Low Income Housing Tax Credits for Phase I within two (2) years following the Commencement Date” (See Section 1.3 of the Ground Lease attached hereto as Exhibit “D”). The Ground Lease Commencement Date was June 16, 2011 (See Commencement Date Confirmation, Exhibit “D”). Therefore, Carlisle was required to secure tax credits for Phase I on or prior to June 15, 2013. As previously noted, the first phase of this development applied for tax credits in February, 2014, well after the condition prescribed in the Ground Lease. Therefore, a condition of the Ground Lease was not met and Seventh Avenue II failed to demonstrate Site Control.

32. During the scoring of this RFA, Florida Housing addressed other applicants’ failure to timely obtain tax credits. With respect to applications submitted by Northside Transit Village II (Application No. 2015-172C) and Northside Transit Village III (Application No. 2015-170C), Florida Housing determined that these applications failed to meet site control because the applicants had not satisfied a condition of “Master Lease” with respect to timely obtaining tax credits (See RFA 2014-116 Developments Located in Miami-Dade County, Attached as Exhibit “H”).

33. Finally, Section 4.3 of the Ground Lease requires that phase 1 construction be completed within 48 months of Commencement Date (See attached Exhibit “D”). Given the Commencement date of June 16, 2011, the Ground Lease requires that phase 1 construction be completed on or before June 15, 2015. Paragraph C of the February 6, 2015 Amendment to the Ground Lease shows that phase 1 construction cannot be completed within the time frames required by the Ground Lease. As previously discussed, the Amendment was not valid, as the resolution authorizing the execution of the Amendment was ineffective. However, given the disclosure of the anticipatory breach and default of the Ground Lease, Seventh Avenue II failed to demonstrate Site Control.

34. Given the forgoing, Seventh Avenue II’s Application failed to satisfy RFA requirements and it was not entitled to be scored as eligible for funding.

35. Florida Housing’s scoring of Seventh Avenue II’s Application is clearly erroneous, contrary to competition, arbitrary or capricious, and is in violation of the terms of the RFA.

Disputed Issues of Material Fact and Law

36. Disputed issues of material fact include those matters pled in this Petition, and include, but are not limited to, the following:

- a) Whether Florida Housing properly scored Seventh Avenue II’s Application with respect to Family Demographic Commitment;
- b) Whether Florida Housing properly scored Seventh Avenue II’s Application with respect to Site Control;
- c) Whether the Application information supplied by Seventh Avenue II was responsive to RFA 2014-116; and

- d) Whether Florida Housing's scoring of the Application submitted by Seventh Avenue II was contrary to the RFA specifications and was clearly erroneous, contrary to competition, arbitrary or capricious.

Statement of Ultimate Facts and Law

37. As a matter of ultimate fact and law, Seventh Avenue II failed to complete its Application in accordance with the competitive solicitation; its Application was not responsive to and failed to comply with RFA 2014-116; therefore, its Application should not have been considered for funding.

38. Florida Housing improperly determined that Seventh Avenue II's Application was completed in accordance with the competitive solicitation; was responsive to RFA 2014-116; and, was eligible for funding under RFA 2014-116;

39. Florida Housing improperly scored Seventh Avenue II's Application and it is not entitled to claim that it could serve the Family Demographic Commitment as of the Application Deadline.

40. Florida Housing improperly scored Seventh Avenue II's Application as having satisfied mandatory Site Control requirements as of the Application Deadline.

41. Florida Housing improperly determined that Seventh Avenue II was eligible for funding and, but for this error, Coral Bay would have been entitled to an allocation of its requested tax credit funding.

Statutes and Rules

Statutes and rules governing this proceeding are sections 120.569 and 120.57(3), and Chapter 420, Florida Statutes, and Chapters 28-106, 67-48 and 67-40, Florida Administrative Code.

WHEREFORE, Coral Bay requests that:

A. Florida Housing refer this Petition to the Division of Administrative Hearings for a formal administrative hearing and the assignment of an Administrative Law Judge pursuant to section 120.57(3), Florida Statutes,;

B. The Administrative Law Judge enter a Recommended Order determining that:

- a) Seventh Avenue II failed to complete its Application in accordance with the competitive solicitation; that its Application was non-responsive to and failed to comply with RFA 2014-116; and that its Application should not have been considered for funding;
- b) Florida Housing improperly determined that Seventh Avenue II's Application was completed in accordance with the competitive solicitation;
- c) Florida Housing improperly determined that Seventh Avenue II's Application was responsive to RFA 2014-116;
- d) Florida Housing improperly determined that Seventh Avenue II's Application was eligible for funding under RFA 2014-116;
- e) Florida Housing's scoring of the Application submitted by Seventh Avenue II was contrary to the RFA specifications, and was clearly erroneous, contrary to competition, arbitrary or capricious.

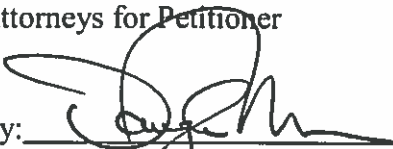
C. The Administrative Law Judge enter a Recommended Order recommending Florida Housing award Coral Bay its requested tax credit funding;

D. Florida Housing enter a Final Order awarding Coral Bay its requested tax credit funding; and,

E. It be granted such other relief as may be deemed appropriate.

Respectfully submitted this 22nd day of May, 2015.

MANSON BOLVES DONALDSON, P.A.
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Tampa, Florida 33606
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CERTIFICATE OF SERVICE

I certify that the foregoing has been filed by electronic mail with the Agency Clerk, with the original sent via U.S. Mail to Florida Housing Finance Corporation, 227 N. Bronough Street, Suite 5000, Tallahassee, Florida 32301, and a copy furnished to Hugh Brown, Esq., Florida Housing Finance Corporation, 227 N. Bronough Street, Suite 5000, Tallahassee, Florida 32301, this 22nd day of May, 2015.



Attorney

**RFA 2014-116
Recommendations**

5/8/15

Application Number	Name of Development	Name of Contact Person	Name of Developers	HC Funding Amount	SAL Funding Amount	Eligible for Funding?	Qualifies for the Family/Elderly Demographic Geographic Goal?	Total Points	SAL RFA 2014-111 Unfunded Preference	Development Category Funding Preference	Leveraging Classification	Florida Job Creation Preference	Lottery Number
Homeless Demographic Goal													
2015-168C5	Kalis Village	Stephanie Berman	Carfour Supportive Housing, Inc; GMAV Dev, LLC	2,180,000.00	4,300,000.00	Y	N	83	Y	Y	A	Y	3
Family/Elderly Demographic Geographic Goal													
2015-171C	Seventh Avenue Transit Village II	Elizabeth Wong	APC Seventh Avenue II Development, LLC, 8AMC Development Corporation of South Florida, Inc.	2,561,000.00		Y	Y	23	Y	Y	A	Y	1
Other Family/Elderly Demographic Application													
2015-217C*	Rio at Flagler	Kim Murphy	Royal American Development, Inc.	1,806,107.00		Y	Y	23	Y	Y	A	Y	4

*#2015-217C is entitled to a Binding Commitment of \$133,893.

On May 6, 2015, the Board of Directors of Florida Housing Finance Corporation approved the Review Committee's motion and staff recommendation to select the above Applications for funding and invite the Applicants to enter credit underwriting.

Any unsuccessful Applicant may file a notice of protest and a formal written protest in accordance with Section 120.57(3), Fla. Stat., Rule Chapter 28-110, F.A.C., and Rule 67-60.009, F.A.C. Failure to file a protest within the time prescribed in Section 120.57(3), Fla. Stat., shall constitute a waiver of proceedings under Chapter 120, Fla. Stat.



Michael G. Maida, P.A.

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May 12, 2015

Via Electronic Mail: Kate.flemming@floridahousing.org
Via Hand Delivery

Ms. Kate Flemming
Corporation Clerk
Florida Housing Finance Corporation
227 N. Bronough St., Ste. 5000
Tallahassee, FL 32301

RECEIVED
15 MAY 12 PM 1:29
FLORIDA HOUSING
FINANCE CORPORATION

RE: RFA 2014-116 Housing Credit Financing for Affordable Housing
Developments Located in Miami-Dade County ("the RFA") - Notice of Protest

Dear Ms. Flemming:

On behalf of applicant Coral Bay Cove, LLC, Application No 2015-214C ("Coral Bay") and developer Landmark Development Corp., ("Landmark"), this letter constitutes a Notice of Protest ("Notice") filed pursuant to sections 120.569 and 120.57(3), Florida Statutes, Rules 28-110 and 67-60.009, Florida Administrative Code and the RFA. Coral Bay and Landmark protest Florida Housing Finance Corporation's ("Corporation") intended decision with respect to the scoring, ranking and selection of applications for funding as identified in the notice of intended decision attached as Exhibit "A."

This Notice is being filed within 72 hours (not including weekends) of the posting the notice of intended decision on the Corporation's website on Friday, May 8, 2015 at 11:03 a.m. on that date. Coral Bay and Landmark reserve the right to file a formal written protest within (10) days of the filing of this Notice pursuant to section 120.57(3), Florida Statutes.

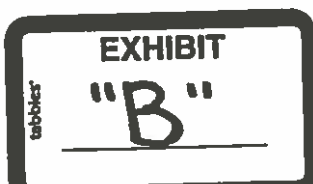
Please acknowledge receipt of this filing by stamping the date and time on the enclosed copy of this letter.

Sincerely,



Michael G. Maida

MGM/sem
Attachment



RFA 2014-116
Recommendations

5/8/15

Application Number	Name of Development	Number of Units/Phase	Name of Developer	Proposed Phase	Site Funding Amount	Eligible for Funding?	Qualified for the Family Housing Geographic Grant?	Local Public	State (941.004) 2014-2015 Funded Preference	Development Charge/Transit Preference	Integrating Communities	Florida Job Creation Preference	Priority Project
Homeless Demographic Grant													
2015-160CS	East Village	Stephane Bernini	Carlow Supportive Housing, Inc. (CARV Dev, LLC)	218,000.00	4,390,000.00	Y	N	23	Y	Y	A	Y	3
Family/Hobby Demographic Geographic Grant													
2015-171C	South Avenue Transit Village II	Flurbeth Wood	ADG South Avenue II Development, LLC (DAIE Development Corporation of South Florida, Inc.)	2,561,000.00		Y	Y	23	Y	Y	A	Y	1
Other Family/Hobby Demographic Application													
2015-217C*	Bay at Flagler	Tom Murphy	Royal American Development, Inc.	1,906,107.00		Y	Y	23	Y	Y	A	Y	4

*2015-217C is certified for a Building Commitment of \$133,893.

On May 8, 2015, the Board of Directors of Florida Housing Finance Corporation approved the Review Committee's motion and staff recommendation to select the above Applicants for funding and issue the Applicants to enter credit underwriting.

Any unsuccessful Applicant may file a notice of protest and a formal written protest in accordance with Section 120.37(1), Fla. Stat., Rule Chapter 28 116, F.A.C., and Rule 67 60.009, F.A.C. Failure to file a protest within the time prescribed in Section 120.37(1), Fla. Stat., shall constitute a waiver of proceedings under Chapter 120, Fla. Stat.

RFA 2014-116 Scoring Sheets

4/29/15

Miami-Dade Geo RFA Scoring Items	2015-211C	2015-212C	2015-213C	2015-214C	2015-215C	2015-216CS	2015-217C	2015-218C	2015-219C	2015-220C	
Development Name	Parade Heights	Galleria Commons II	Courtside Apartments, Phase III	Coral Bay Cove	Francis Tower	Mer Soleil	Rio at Flagler	La Joya Estates	Superior Manor Apartments, Phase I	Superior Manor Apartments, Phase II	
Submission Requirements Met (Section Three A and Five)	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	0
Points Items											
6. Proximity Points (up to 18 points)	18	18	18	18	18	18	18	18	18	18	0
10.a. If Homeless Demographic, Outreach, Marketing and Tenant Selection (maximum of 10 points)						8					
10.b. If Homeless Demographic, Management Company Experience with Permanent Supportive Housing (maximum of 20 points)						9					
10.c.(1) If Homeless Demographic, Accessibility to Community-Based General Services and Amenities (maximum of 10 points)						7					
10.c.(2) If Homeless Demographic, Access to Community-Based Resources and Services (maximum of 15 points)						11					
10.d. If Homeless Demographic, Approach toward Income and Credit Status (maximum of 10 points)						7					
11. Local Government Contribution points (up to 5 points)	5	5	5	5	5	5	5	5	5	5	0
Total Points -	23	23	23	23	23	65	23	23	23	23	
Maximum if Elderly or Family - 23											
Maximum if Homeless Demographic - 88											
Mandatory and Eligibility Requirements											
2. Demographic Commitment selected	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	0
2.c. If Homeless demographic commitment, description provided	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	0



LEASE AGREEMENT

~~THIS LEASE AGREEMENT (the "Lease"), entered into this 1st day of~~
("Execution Date"), is made by and between MIAMI-DADE COUNTY, a political subdivision of the State of Florida, through the Department of Housing and Community Development (hereinafter called "DHCD"), having its principal office and place of business at 701 N.W. 1st Court, Suite 1400, Miami, Florida 33136, and Miami-Dade Transit (hereinafter called "MDT"), having its principal office and place of business at 701 N.W. 1st Court, Suite 1700, Miami, Florida 33136 (together hereinafter called "Landlord"), and CARLSLE DEVELOPMENT GROUP, 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. Landlord owns certain real property located in Miami-Dade County, Florida, as more particularly described in Exhibit "A" attached hereto and made a part hereof (the "Demised Property").

B. Landlord has recognized the potential for public and private benefits through the creation of an overall unified development including retail, commercial and residential uses, and a community theater and arts center within the Demised Property, and a transit component including:

- (i) four (4) covered bus bays with open-air pedestrian waiting areas;
- (ii) twenty-five (25) parking spaces for use by MDT employees and customers; and
- (iii) approximately 3,000 square feet of ~~additional~~ space near the bus bays for use by MDT employees or customers, such use to be designed for, as a minimum, waiting areas, offices and restrooms for MDT employees and customers.

Additionally, Tenant shall provide (a) electrical or data conduits for the MDT's future installation of four (4) "Easy Card Vending Machines" or other kiosks and closed captioned ~~display~~, and (b) electrical or data conduits for the MDT's future installation of four (4) hybrid bus charging stations at each proposed bus bay (together with items (i), (ii) and (iii) above, collectively called the "Transit Hub").

C. Tenant submitted to Landlord a response to a Request for Qualifications No. 743, NW 7th Avenue Transit Village Development Project (the "RFQ") for the Demised Property, which response was selected by the Landlord, over and above responses from other entities, as being the most appropriate use for the Demised Property. The Tenant's response is referred to herein as the "Development Concept".

D. Landlord considers that the Development Concept submitted by Tenant reflects the kind of transit-oriented development that Landlord wishes to see implemented, and that

121877 v3
3/7/16-0284

Lease Agreement for 7th Avenue 1



cost, provide (set aside) and maintain not less than twenty five contiguous parking spaces for the Landlord and the patrons utilizing the Transit Hub adjacent to the Demised Property.

(c) **Sublease of Transit Hub.** Upon completion of construction of the Transit Hub, that portion of the Demised Property comprising the Transit Hub (as outlined on the Concept Plan attached hereto as Exhibit "B" (the "Concept Plan"), subject to modification as provided herein) shall be subleased back to Landlord, in consideration of the payment of \$10.00, and Landlord shall thereafter be responsible for the operation and maintenance of the Transit Hub.

1.3 Condition Precedent to Effectiveness of Lease. This Lease shall become effective ten (10) days after the date of its adoption by the Board of County Commissioners, unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by Miami Dade Board of County Commissioners. Additionally, this Lease shall not become effective until approved by the Federal Transit Administration. The date on which this Lease becomes effective as provided herein is called the "Commencement Date". The Commencement Date will be confirmed in the Confirmation of Commencement Date to be executed by the parties in the form attached as Schedule 1.3 hereto. Further, and irrespective of the foregoing, the Tenant hereby agrees that this Lease is contingent upon the Tenant securing the necessary Low Income Housing Tax Credits for Phase I within two (2) years following the Commencement Date. Should the Tenant fail for any reason to secure the necessary tax credits for Phase I of the Project within two (2) years following the Commencement Date, the Landlord shall have the right, within its sole discretion, to terminate this Lease without any compensation, whatsoever, to the Tenant. After Phase I, should the Tenant fail to secure the necessary tax credits for Phase II of the Project by the date which is two (2) years following the date of the closing of the construction financing for Phase I, then the Landlord shall have the sole right to terminate this Lease without any compensation, whatsoever, to the Tenant as to Phase II only.

1.4 Conditions Precedent to Commencement of Construction of any Phase. Before Commencement of Construction of any Phase, and in addition to the submission and approval process specified in Article 4 for construction generally, Tenant shall comply with the MIT submittal and review processes by submitting (a) the site plan to BHCD, and (b) the Plans and Specifications for each Phase of the Project to MIT, and all applicable hearing processes. In addition, the Tenant shall also supply the Landlord with a courtesy copy of such Plans and Specifications before Commencement of Construction of any Phase of the Project.

1.5 Conditions Precedent to Construction of the Theater. Tenant shall have no duty to construct the community theater and arts center contemplated to be located on the Demised Property (the "Theater") unless and until the non-profit general partner (the "Non-Profit GP") of Tenant's Sublessee that is developing Phase I (the "Phase I Sublessee") shall have obtained an award of funding from the allocation of general obligation bonds issued by Miami-Dade County, subject to standard underwriting guidelines, for construction of the Theater to be loaned by the Non-Profit GP to the Phase I Sublessee on terms and conditions acceptable to Tenant and the Phase I Sublessee in their reasonable discretion, in an amount which is not less than Five Million Dollars (\$5,000,000). Further, Tenant shall have no duty to construct the Transit Hub unless and until the Non-Profit GP of the Phase I Sublessee shall have obtained an award of funding from the allocation of funds sourced from the Federal Transit

Affordable Housing financing, and is unable to obtain such financing) or (iii) Tenant is restricted by applicable Laws and Ordinances.

4.3 Phased Development

(a) Tenant has proposed a phased construction approach and contemplates developing the Demised Property in Phases as set forth below, and as further illustrated in the Concept Plan (see Exhibit "B"). Each of the phases described below is referred to as a "Phase" and when more than one Phase is referred to herein they are referred to as the "Phases". Collectively, both Phases together constitute the "Project". Each Phase may be constructed and developed independently of the other Phases and in any sequence. 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. The following is an approximation of the unit count for each Phase:

1.) Phase I -- a multifamily high rise rental Building including (a) a minimum of one hundred two (102) residential units on the Demised Property, if Lot 7 is acquired by Tenant, or (b) a minimum of sixty one (61) residential units on the Demised Property, if Lot 7 is not acquired by Tenant, with one hundred (100%) percent of units allocated for Low-Income tenants; and a structured parking garage which will accommodate all of the required parking for the residential units in Phases I and II of the Project as prescribed by the building code, all retail and commercial space and, subject to the provisions of Section 1.3, the Theater, plus a minimum of twenty five (25) parking spaces which will be allocated toward the required parking for the Landlord. The residential unit count may be further adjusted as provided in Section 5.1, above. Phase I shall also include the Transit Hub, which, upon completion of the improvements comprising the Transit Hub, will be subleased back to Landlord as provided in Section 1.2 hereof. 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.

2.) Phase II -- a multifamily high rise rental Building including a minimum of one hundred (100) residential units on the Demised Property, with one hundred (100%) percent of units allocated for Low-Income residents.

(b) Upon completion of construction of the parking garage, the Tenant shall always make available to the Landlord and the patrons utilizing the Transit Hub, the 25 contiguous parking spaces, and all such parking spaces for the Landlord and its patrons shall be without any rent to the Landlord. The parking spaces allocated to the Landlord shall be separate and distinct from any parking spaces needed or otherwise utilized by the Tenant, and any of its Subtenant(s), and/or invitees. Also during construction, Tenant shall endeavor to keep all of the Landlord's parking located somewhere on the Demised Property. However, should the Tenant reasonably determine that due to staging, the presence of construction equipment, and/or for the

Schedule 1.3
(form)

COMMENCEMENT DATE CONFIRMATION

Reference is made to the Lease Agreement dated ~~2011~~ 2011 (the "Lease"), by and between Miami-Dade County, acting by and through its Department of Transportation and Community Development, including Miami-Dade Transit (hereinafter "MDT") (together hereinafter "Landlord"), and Carlisle Development Group, LLC ("Tenant"). This Commencement Date Confirmation ("Confirmation") is attached to the Lease as Schedule 1.3 thereof, and, when executed and delivered by Landlord and Tenant, shall be incorporated within and made a part of the Lease. Capitalized terms used in this Confirmation without otherwise being defined herein will have the meanings given to them in the Lease. The Commencement Date of the Lease is JUNE 16, 2011. To confirm the Commencement Date, the parties have signed this instrument to be executed and delivered, effective on the Commencement Date.

~~AGENTS~~
HARVEY RIVIN, CLERK



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

BY ~~THE~~ CLERK


TENANT:
CARLISLE DEVELOPMENT GROUP,
LLC, a Florida Limited Liability Company.



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Non-Competitive Application Form

1. Funding Requested:

- Corporation-Issued Multifamily Mortgage Revenue Bonds (MMRB) only
- Corporation-Issued MMRB and 4 Percent Housing Credits (HC)
- 4 Percent HC only (Non-Competitive HC to be used for Tax-Exempt Bond-Financed Developments where the bonds are issued by a County Housing Finance Authority (HFA) established pursuant to Section 159.604, F.S.)
- 4 Percent HC only (Non-Competitive HC to be used for Tax-Exempt Bond Financed Developments where the bonds are issued by an entity other than the Corporation or a County HFA)

2. Applicant:

a. Name of Applicant: Seventh Avenue I, Ltd.

b. Provide a listing of the Principals for the Applicant, including the percentage of ownership interest of each Principal, as "Exhibit 1".

c. Federal Employer Identification Number: 27-4173262

If not yet obtained, provide a copy of the completed, submitted application for the Federal Employer Identification Number as "Exhibit 2".

d. Is the Applicant applying as a Non-Profit organization?

- Yes
- No

If "Yes", the Applicant must respond to questions (1) and (2) below and provide the required information as "Exhibit 3". If "No", skip Non-Profit status questions and proceed to question 3. below.

(1) Provide the following documentation for each Non-Profit entity:

- (a) attorney opinion letter; and
- (b) IRS determination letter

(2) Answer the following questions:

(a) Is the Applicant or one of its general partners or managing members incorporated as a Non-Profit entity pursuant to Chapter 617, Florida Statutes, or similar state statute if incorporated outside Florida?

- Yes
- No

If "No", is the Applicant or one of its general partners or managing members a wholly-owned subsidiary of a Non-Profit entity formed pursuant to Chapter 617, Florida Statutes, or similar state statute if incorporated outside Florida?

- Yes
- No

(b) Is the Applicant or one of its general partners or managing members a 501(c)(3) or 501(c)(4) Non-Profit entity or is the Applicant or one of its general partners or managing members a wholly-owned subsidiary of a 501(c)(3) or 501(c)(4) Non-Profit entity?

- Yes
- No

(c) Does the Non-Profit entity have an ownership interest, either directly or indirectly, in the general partner or general partnership interest or in the managing member or the managing member's interest in the Applicant?

- Yes
- No

If "Yes", state the percentage owned in the general partnership or managing member interest: %

(d) Percentage of Developer's fee that will go to the Non-Profit entity: %



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- (e) Provide the description/explanation of the role of the Non-Profit entity.
- (f) Provide the names and addresses of the members of the governing board of the Non-Profit entity.
- (g) For each Non-Profit entity, provide the articles of incorporation demonstrating that one of the purposes of the Non-Profit entity is to foster low-income housing.
- (h) Year Non-Profit entity was incorporated: (yyyy)
- (i) Is the Non-Profit entity affiliated with or controlled by a for-profit entity within the meaning of Section 42(h), Internal Revenue Code?
- Yes
- No

If "Yes", state name of the for-profit entity:

3. Contact Person:

First Name: Liz

Middle Initial:

Last Name: Wong

Street Address: 2850 SW 27th Ave, Suite 200

City: Miami

State: FL

Zip: 33133

Telephone: 305-357-4700

Facsimile: 305-478-8118

E-Mail Address: lwong@apcommunities.com

Relationship to Applicant: APC Seventh Avenue I Development, LLC, Secretary/Staff of the Developer

4. Developer:

- a. Name of each Developer (include all co-Developers):
- APC Seventh Avenue I Development, LLC

b. Provide a listing of the Principals for each Developer as "Exhibit 4".

5. Proposed Development Information:

- a. Name of Development: Seventh Avenue Transit Village I
- b. Location of Development Site:
- (1) County: Miami-Dade
- (2) Address of Development Site:
- Indicate (i) the address number, street name, and name of city and/or (ii) the street name, closest designated intersection, and either name of city or unincorporated area of county:
- On NW 6th Court +/- 350 ft. north of the intersection of NW 60th Street and NW 8th Court, Miami, FL
- (3) Local Jurisdiction:
- (a) Name of local jurisdiction where Development is located: City of Miami
- If Development is located within a municipality (incorporated city, town, or village) the municipality must be specified.
- (b) Name of Chief elected official:
- First: Tomás
- Middle Initial:
- Last: Recalado

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Title: Mayor of City of Miami
 Street Address: 3500 Pan American Drive
 City: Miami
 State: FL
 Zip: 33133
 Telephone No. (including area code): (305) 250-5300

c. Number of units:

- (1) Total number of units in proposed Development: 78
- (2) Total number of new construction units: 78
- (3) Total number of rehabilitation units: 0
- (4) Indicate the total number of units that will have the following types of rental assistance:
 - (a) PBRA: 0
 - (b) ACC: 0
 - (c) Other federal assistance: 0

d. Total number of buildings in proposed Development: 1

e. Indicate which of the following questions apply to the proposed Development and provide the required information:

- (1) **DDA -**

The proposed Development is located in the following HUD-designated DDA: Miami-Dade

- (2) **QCT -**

The proposed Development is located in the following QCT: 19.01. A copy of a letter from the local planning office or census bureau which verifies that the proposed Development is located in the referenced QCT is provided as "Exhibit 5".

- (3) **Multi-phase Development (select (a), (b), (c) or (d) below) -**

- (a) **The proposed Development is located in a HUD-designated DDA and/or QCT as indicated at questions (1) and/or (2) above and the proposed Development is a phase of a multiphase Development as defined in Section 5.a.(3) of the Instructions to this Application form, where no phase has previously been funded.**
- (b) The proposed Development is located in a HUD-designated DDA and/or QCT as indicated at questions (1) and/or (2) above and the proposed Development is an additional phase of a multi-phase Development where a phase was previously funded. Provide the required information regarding the previously funded phase(s) as "Exhibit 5".
- (c) The proposed Development is not located in a HUD-designated DDA or QCT, but it is an additional phase of a multi-phase Development where a phase was previously funded. Provide the required information regarding the previously funded phase(s) as "Exhibit 5".
- (d) Neither (a), (b), nor (c) above applies to the proposed Development.

- (4) **The Applicant is applying for Housing Credits for eligible acquisition expenses. If this applies to the proposed Development, answer the following questions:**

(a) Is/are the building(s) acquired or to be acquired from a related party?

- Yes
- No

(b) Name of previous owner:

(c) Relationship to Applicant:

(d) Date Development originally placed in service: (mm/dd/yyyy)

(e) Date (mm/dd/yyyy) and cost of last rehabilitation:

(f) Describe acquisition facts and circumstances relative to Section 42(d), IRC ("10-year rule"):

(g) Is a waiver of the 10-year rule being sought by the Applicant?

- Yes
- No

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Explain why or why not:

- (5) The proposed Development will receive historic Housing Credits in the amount of \$.
- (8) The Applicant is applying for Housing Credits for eligible Rehabilitation expenses. The estimated qualified basis in Rehabilitation expenses per set-aside unit within one 24-month period for the building(s) being Rehabilitated is \$.

f. Development Category: New Construction

If Redevelopment, Acquisition and Redevelopment, Preservation or Acquisition and Preservation is selected, provide the required documentation as "Exhibit 6".

g. Development Type: High Rise

h. Demographic Commitment: Family

i. Provide the Surveyor Certification of Development Location Point for MMRB and Non-Competitive HC Applications form as "Exhibit 7".

j. Set-Aside Commitment:

(1) Indicate the minimum set-aside:

- 20% of units at 50% AMI or less
- 40% of units at 60% AMI or less
- Deep rent skewing option as defined in Section 42, IRC, as amended

(2) Complete the applicable column(s) of the Set-Aside Breakdown Chart:

Percentage of Residential Units		
Commitment for MMRB	Commitment for Non-Competitive HC	AMI Level
%	%	At or Below 25%
%	%	At or Below 28%
%	%	At or Below 30%
%	%	At or Below 33%
%	%	At or Below 35%
%	%	At or Below 40%
%	%	At or Below 45%
%	%	At or Below 50%
%	100%	At or Below 60%
Total Set-Aside Percentage: %	100%	

(3) Indicate the total number of years the Applicant commits to set aside units in the proposed Development (minimum is 30 years):

30

k. If the work proposed in this Application is not yet complete, what is the anticipated placed-in service date? 12/31/2018 (mm/dd/yyyy)

l. Features and Amenities:

(1) If requesting Corporation-issued MMRB, with or without 4 percent HC, does the Applicant commit to provide features and amenities as outlined in Section 5.1.(1) of the instructions?

- Yes
- No

(2) If requesting 4 percent HC only to be used with bonds issued by an entity other than the Corporation or a County HFA, does the Applicant commit to provide features and amenities as outlined in Section 5.1.(2) of the instructions?

**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 6th day of ~~January~~ FEBRUARY, 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:

Sonia Arice
Print Name: Sonia Arice

Ingrid Bellune
Print Name: Ingrid Bellune


LANDLORD:

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

By: *[Signature]*
Name: Russell Benford
Title: Deputy Mayor

ATTEST:

HARVEY RUVIN, CLERK

By: *[Signature]*


[Signature]
Approved as to form and legal sufficiency

Signed in the presence of:

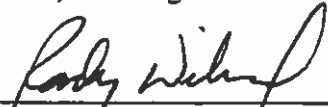

Print Name: WZ WONG


Print Name: Marka Santa

TENANT:

APC SEVENTH AVENUE HOLDINGS, LLC,
a Florida limited liability company

By: APCHD MM, Inc., a Delaware
corporation, its manager

By: 
Name: Randy Weisburd, President

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.

A handwritten signature in black ink, appearing to read "B. Libhaber", is written over a horizontal line.

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:

LANDLORD:

Print Name: _____

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

Print Name: _____

By: _____
Name: _____
Title: _____

ATTEST:

HARVEY RUVIN, CLERK

By: _____



STATE OF FLORIDA)
)
COUNTY OF MIAMI-DADE)

SS:

I, **HARVEY RUVIN**, Clerk of the Circuit and County Courts, in and for Miami-Dade County, Florida, and Ex-Officio Clerk of the Board of County Commissioners of said county, **DO HEREBY CERTIFY** that the above and foregoing is a true and correct copy of Resolution No. R-161-15, adopted by the Miami-Dade County Board of County Commissioners, at its meeting of February 3, 2015, as appears of record. The Mayor did not exercise his veto authority with regards to Resolution No. R-161-15. Therefore, this resolution became effective ten (10) days after the date of its adoption by the Miami-Dade County Board of County Commissioners.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal on this 14th day of May, A.D., 2015.



HARVEY RUVIN, Clerk
Board of County Commissioners
Miami-Dade County, Florida

By: _____

Deputy Clerk

Board of County Commissioners
Miami-Dade County, Florida

RFA 2014-116 DEVELOPMENTS LOCATED IN MIAMI-DADE COUNTY

App. Number	Development Name	Scoring Issue
2015-170C	Northside Transit Village III	Conditions indicated at Section 1.3 of the Master Lease cannot be met because of the August16, 2011 Commencement Date provided in the Lease.
2015-172C	Northside Transit Village II	Conditions indicated at Section 1.3 of the Master Lease cannot be met because of the August16, 2011 Commencement Date provided in the Lease.
2015-174C	Bella Vida	The Purchase and Sale Contract provided as evidence of site control references the legal description as "more particularly described on Exhibit A, attached hereto....". Exhibit A is blank therefore the contract is nonresponsive.
2015-175C	Silver Oaks	The Purchase and Sale Contract provided as evidence of site control references the legal description as "more particularly described on Exhibit A, attached hereto....". Exhibit A is blank therefore the contract is nonresponsive.
2015-176C	Golden Oaks	Both the 2/3/15 and 2/4/15 Purchase and Sale Contract, provided as evidence of site control, reference the legal description as "...more particularly described on Exhibit A, attached hereto....". However, the Exhibit A is blank in both contracts therefore the contracts are nonresponsive.
2015-203C	Highland Creek	The 10/20/14 First Amendment to the Agreement includes an auto termination of the Agreement if the Application is not ranked by 3/21/15. As that date has passed and ranking has not occurred it cannot be determined whether the Agreement is still in effect.

Amy Stumm

