

MEMORANDUM

Substitute
Agenda Item No. 11(A)(3)

TO: Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners

DATE: October 22, 2013

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

SUBJECT: Resolution approving
Overtown Gateway Partners, LLC and
all Aboard Florida-Stations, LLC
as the developers of blocks 45 and 56

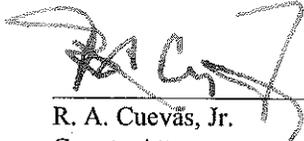
This substitute item differs from the original item in the following manner. The original resolution recommended approval or denial of nine requested variances to a Declaration of Restrictions. Such variance requests were submitted to the County by the CRA on September 17, 2013, pursuant to the terms of a Settlement Agreement between the parties (Exhibit A to Substitute Resolution) Subsequently, on October 15, 2013, the CRA provided a revised request for variances, which supercedes the original variance request. (Exhibit C to Substitute Resolution) The differences between the original item, and this substitute item, are as follows:

1. The original item recommended denial of a variance request for the developers to pay the County \$2,750,000 in an up front payment plus an annual contribution of \$125,000 per year for 10 years to a community benefits program to be established in the Southeast Overtown/Park West Community Redevelopment Area. The substitute item recommends approval of the revised variance request for the developers to pay the County \$5,000,000 in an up front payment and maintains the annual contribution of \$125,000 per year for 10 years to the community benefits program. Additionally, the revised amended variance clarifies that the County shall act as the fiduciary for holding and disbursing the funds into such program.
2. The original item recommended denial of a variance request for a one year extension to complete the construction of the retail and residential components of the project. The substitute item recommends approval of the revised variance request which allows the developers to add any time saved during certain other milestone periods (such as time in which to obtain zoning approvals) to the construction completion timeframe.
3. The original item recommended denial of a request to extend the reverter date by paying \$2,500 per diem for liquidated damages. This request for variance has been withdrawn and is not included in the amended variance request.
4. The original item recommended denial of a request for clarification by the CRA of language in the settlement agreement. This request has been withdrawn and is not included in the amended variance request.
5. The substitute item recommends approval of an additional variance request for the developers to provide an additional 300 parking spaces in excess of code requirements.
6. The substitute item recommends approval of an additional variance request to allow the CRA to negotiate separate development agreements with All Aboard on Block 56 and Overtown Gateway on Block 45. The substitute item recommends disapproval of an additional variance request that would allow the execution of a Development Agreement with one, and not both, developers.
7. The substitute item denies each of the variance requests proposed in the original item.

Pursuant to the terms of the Settlement Agreement approved by Resolution No. R-294-13, Committee review for approvals under the Settlement Agreement has been waived. Accordingly, this item will be presented to the full Board for its consideration absent Committee review.

Additionally, a Mayor's Recommendation has been included herein, which explains the background of this item.

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

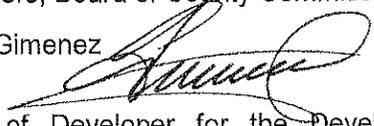
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Memorandum



Date: October 22, 2013

To: Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners

From: Carlos A. Gimenez
Mayor 

Subject: Selection of Developer for the Development of Blocks 45 and 56 and
Consideration of Variance Requests

This substitute differs from the original because a revised letter with amended requested variances to the Declaration of Restrictions on Blocks 45 and 56 was sent to the County on October 15, 2013. As requested by the Southeast Overtown/Park West Community Redevelopment Agency, the revised letter replaces the original letters dated September 17 and 26, 2013. The letters of September 13 and 26, 2013 were the basis for the recommendations under the original item.

Recommendation

Based on the recommendation of the Southeast Overtown/Park West Community Redevelopment Agency (CRA), it is recommended that the Board of County Commissioners (Board) approve this item, which does the following:

- Approves of the CRA's selection of Overtown Gateway Partners, LLC and All Aboard Florida-Stations, LLC for the development of Blocks 45 and 56 (Blocks), respectively;
- Considers variances to the Declaration of Restrictive Covenants (see Declaration of Restrictive Covenants as Attachment 1 to the memorandum); and
- Approves variance request one through five, seven, and a portion of eight (8a) and disapproves all of the other proposed variances set forth in the October 15, 2013 letter attached as Exhibit C to the resolution. Such amended request for variance letter replaces and supercedes the letters from September 17, 2013 (Exhibit A to the resolution) and September 26, 2013 (Exhibit B to the resolution).

According to the Settlement Agreement between the County, the City of Miami, and the CRA, the County must approve or reject the proposed developer for Blocks 45 and 56 and any variances to the Declaration of Restrictions which has been recorded pursuant to the terms of the Settlement Agreement. The Settlement Agreement mandates approval or rejection, but does not provide for revision or amendment of any of the proposed variances.

It is also important to note that in order to record the Amendment to the Declaration of Restrictions encompassing the requested variances, these amended variances must be formally approved by the CRA Board given that these differ in part from the variances approved at their September 12, 2013 meeting. Additionally, the approval of the variance requests in this item are specifically conditioned upon the CRA Board approving all of the variance requests approved by the County. To the extent the CRA Board does not approve each and every variance request approved by the County, all of which must be set forth in an Amended Declaration, then all variance requests shall be deemed denied.

Should the Board approve the developers, the CRA will negotiate development agreements for the Blocks as required by the Settlement Agreement. Any variances approved by the Board through this action must be included as part of the Declaration of Restrictions. The Board does not approve the development agreement between the CRA and the developer.

Scope

The Blocks to be developed are in Commission District 3, represented by Commissioner Audrey M. Edmonson.

Fiscal Impact/Funding Source

Selecting the developers for the two blocks in Overtown does not have an immediate fiscal impact on the County.

However, as noted in the attached Declaration of Restrictions previously approved by the Board through Resolution R-294-13, the selected developer(s) will make separate Project Payments to the County and CRA for Blocks 45 and 56 that are either: \$122,000 per year for five years and a three percent increase thereafter (minimum payment), or 2.5 percent of Gross Rent if it exceeds the minimum payment. One of the proposed variances to the Declaration of Restrictions deals with replacing the Project Payments with a one-time up-front payment. As detailed further below, the Administration recommends approval of the variance proposed by the developers.

Track Record/Monitor

The County's Internal Services Department will monitor the progress of the development, the recording of any additional documents, and all other aspects of the settlement agreement.

Background

On April 16, 2013, the Board adopted Resolution R-294-13 authorizing the County, the City, and the CRA to settle an existing lawsuit regarding Blocks 45 and 56. The Settlement Agreement was entered into by the parties, and as part of the Settlement Agreement, a Declaration of Restrictions was recorded against the Blocks, which restricted the manner in which they could be developed, and provided parameters for such development. The Settlement Agreement requires the CRA to conduct a solicitation for a developer of Blocks 45 and 56, and to provide formal notice of the proposed developer to the County for approval or rejection within 45 days of the notice. Failure to approve or reject such developer is deemed as an approval. Additionally, in the event that the proposed developer submits any requests for variances from the Declaration of Restrictions, such proposed variances must likewise be detailed in the notice. The County must approve or reject such variances within 45 days of the notice, or they are likewise deemed approved. On September 17, 2013, the CRA provided Notice to the County of the proposed developers, Overtown Gateway Partners, LLC and All Aboard Florida-Stations, LLC, as well as a list of seven proposed variances and one request for clarification. The developers and proposed variances were approved by the CRA on September 12, 2013, pursuant to Resolution CRA-R-13-0054 (see attached Attachment 2 to the cover memorandum). The CRA submitted a clarification as to proposed variance 7 on September 26, 2013, attached as Exhibit B to the resolution. On October 15, 2013, the CRA submitted a proposed amended variance request (Exhibit C to the resolution), which superseded and replaced the request and clarification attached as Exhibits A and B to the resolution.

Additionally, the attached resolution authorizes the County Mayor or Mayor's designee be delegated the authority to issue an estoppel letter should it be required in the sole and absolute discretion of the Mayor or the Mayor's designee, as such letter is sometimes requested by a lender. Further, the attached resolution authorizes the County Mayor or Mayor's designee be delegated the authority, to accept unlimited indemnification from the City and the CRA in lieu of the required indemnification from the developers, if requested by the CRA, and in the sole and absolute discretion of the Mayor or the Mayor's designee.

Staff recommends approval of the two proposed developers, Overtown Gateway Partners, LLC and All Aboard Florida-Stations, LLC.

A summary of the variances to the Declaration of Restrictions requested by the developers and approved by the CRA, as further detailed in Exhibit C, as well as staff's recommendations regarding such variance requests, are as follows:

1. The developers are requesting that a default on Block 45 not constitute a default on Block 56, and a default on Block 56 not constitute a default on Block 45.

Staff is recommending approval of variance number 1 proposed by the developers.

2. In lieu of project payments described in the fiscal impact section, developers propose to make each a \$2.5 million one-time payment at the time of closing to the County, a \$1.375 million one-time payment at the time of closing to the CRA, and an annual \$125,000 payment for 10 years commencing at the time of closing to a community benefits program (Program) to be established within the CRA. Such Program will be administered by a committee appointed by community stakeholders from the Southeast Overtown/Park West community redevelopment area and the County will act as the fiduciary agent for holding and disbursing funds from the Program.

Staff recommends approval of variance number 2 proposed by the developers as the combined figures to the County, CRA and community are estimated to be greater than or equal to what was stipulated in the Declaration of Restrictions, and such payment would be made up front.

3. The developers are requesting that the minimum of 150,000 square feet for the Retail Component as defined in the Declaration of Restrictions for Blocks 45 and 56 be split to allow for 75,000 square feet of retail on Block 45 and 75,000 square feet of retail on Block 56, with the residential component to be constructed on Block 45.

Staff is recommending approval of variance number 3 proposed by the developers. Approval of this variance does not affect the minimum development of the Blocks as originally proposed.

4. Overtown Gateway is requesting that all units over the 60 affordable housing units contemplated in the Declaration of Restrictions will be market rate units.

The Declaration of Restrictions requires that a minimum of 60 affordable housing units (Residential Component) be constructed, of which ten percent will be available for families earning 30 percent or less of the area median income (AMI), 70 percent will be made available for families earning between 30 and 80 percent of AMI, and the remaining 20 percent will be made available for families earning between 80 and 140 percent of AMI. The CRA will be responsible for development of an additional 100 affordable housing units in the area.

Staff recommends approving this variance as it comports with the intent of the Declaration of Restrictions, and maintains the minimum of 60 affordable housing units as set forth in the Settlement Agreement.

5. The Declaration of Restrictions requires the Developer to obtain the Approvals by May 15, 2015 and to commence construction of the vertical improvements of the Residential Component and the Retail Component by May 15, 2016. The Residential Component must be completed within 24 months after commencement of vertical construction for the Residential Component and complete the Retail Component within 24 months after commencement of vertical construction of the Retail Component.

Overtown Gateway is requesting that if the extension of the time to obtain the Approvals is not used, or used entirely, the unused time allotment can be utilized to extend the Residential Completion Date and the Retail Completion Date. Overtown Gateway is requesting that if the construction of the Retail and Residential Components commence prior to the May 15, 2016 date, the number of days between the commencement date and the May 15, 2016 milestone be added to the 24 month construction timeframe. Because Overtown Gateway is requesting to build the Retail and Residential Components as one structure, the Completion Dates for both shall be the same, and may be extended by six months by a payment of \$250,000.

All Aboard is requesting that if the extension of the time to obtain the Approvals is not used, or used entirely, the unused time allotment can be utilized to extend the Retail Completion Date. All Aboard is requesting that if the construction of the Retail Component commences prior to the May 15, 2016 date, the number of days between the commencement date and the May 15, 2016 milestone date be added to the 24 month construction timeframe. Additionally, as provided for in the Declaration of Restrictions, All Aboard is requesting that the extension provision for the Retail Component may be extended by six months with a payment of \$250,000, but that extension will be limited to a total of 6 months.

Staff recommends approval of this variance. By approving the variance, the developers have the flexibility of providing additional time for construction without moving the completion date of May 15, 2018 if construction starts prior to the May 15, 2016 requirement, and without moving the date for commencement of the vertical construction, or any dates of reversion to the County. Should the developers need additional time, they may purchase a total of two, six-month extensions for \$250,000 each. Should the developer purchase an extension for the Approvals, and only use three months, they may use the remaining three months for the construction period.

6. Overtown Gateway and All Aboard Florida are requesting that Section 7f of the agreement requiring indemnification by the developers be modified to allow a risk management solution by All Aboard and Overtown Gateway, acceptable to the County Mayor, in lieu of requiring Board approval.

Staff recommends denial of this variance. The Declaration of Restrictions provides for the indemnification of the County. However, this resolution delegates to the Mayor or the Mayor's designee, based on their discretion, to accept a full and complete unlimited indemnification from the City and the CRA in substantially the form attached as Exhibit J-1 to the Settlement Agreement in lieu of the indemnification from the Developer.

7. Overtown Gateway and All Aboard agree to provide 150 parking spaces on Block 45 and 150 parking spaces on Block 56, for a total of 300 spaces, in addition to the zoning-required parking for the development projects.

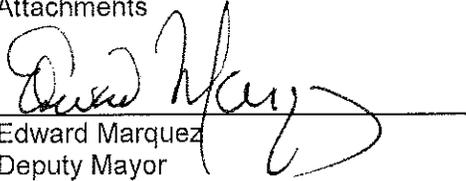
Staff recommends approval of this variance.

8. A variance is requested to allow the CRA to negotiate two separate Development Agreements, one with Overtown Gateway for Block 45 and one with All Aboard for Block 56 (Variance 8a). The CRA is also requesting that if negotiations are terminated with one developer that a new Developer Opportunity be issued for that Block (Variance 8b).

Staff recommends approval of the variance request that two separate development agreements shall be negotiated with the CRA, one with All Aboard for Block 56 and one with Overtown Gateway for Block 45.

Staff does not recommend the that "failure to execute a Development Agreement with respect to one block shall only require the CRA to terminate negotiations with that Developer and issue a new Developer Opportunity for that block." Staff recommends that both Development Agreements be fully executed within the required timeframes.

Attachments



Edward Marquez
Deputy Mayor

CFN 2013R0384020
OR Bk 28631 Pgs 1264 - 12767 (13pgs)
RECORDED 05/15/2013 14:44:46
HARVEY RUVIN, CLERK OF COURT
MIAMI-DADE COUNTY, FLORIDA

This Instrument was prepared by:

Debra Herman, Esq.
Miami-Dade County Attorney Office
Stephen P. Clark Center
111 N.W. 1st Street
Suite 2800
Miami, Florida 33128

DECLARATION OF RESTRICTIONS

THIS DECLARATION OF RESTRICTIONS (the "Declaration") is made as of May 8, 2013 by and between Miami-Dade County, Florida, a political subdivision of the State of Florida (the "County") and the Southeast Overtown/Park West Community Redevelopment Agency, a public agency and body corporate to Section 163.356, Florida Statutes (the "CRA").

RECITALS

A. The County and the CRA hold or claim fee simple title interest in and to the land in Miami-Dade County, Florida, legally described in Exhibit "A" attached hereto and made a part hereof (the "Property").

B. In accordance with the terms of the settlement agreement dated as of May 9, 2013 by and between the City of Miami, a municipal corporation (the "City"), the County and the CRA (the "Settlement Agreement"), the County has agreed to quit claim its interest in the Property to the CRA after the recordation of this Declaration.

C. The City has quit claimed its interest in the Property to the CRA.

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the County and the CRA, as the current owners of the Property, agree as follows:

1. Recitals. The recitals to the Declaration are true and correct and incorporated herein by reference.

2. Development Restrictions. The CRA and the County agree that the project (the "Project") to be developed on the Property shall consist of: (a) a retail, office, hotel and/or permitted institutional component containing a minimum of 150,000 square feet and a minimum of structural parking spaces no less than as required by the applicable building codes (the "Retail Component") and (b) residential housing, consisting of a minimum of sixty (60) units and at least the minimum number of parking spaces required to comply with the applicable building codes (the "Residential Component"). The Developer Opportunity, as hereinafter defined, shall require the Developer to indicate the location on the Property of the Retail Component and the Residential Component.

3. Residential Restrictions.

(a) The CRA and the County agree that, with respect to the Residential Component: (i) ten percent (10%) of such units comprising the Residential Component shall be made available for individuals and/or families earning thirty percent (30%) or less of the AMI; (ii) seventy percent (70%) of such units comprising the Residential Component shall be made available for individuals and/or families earning more than thirty percent (30%) of AMI up to eighty percent (80%) of AMI; and (iii) twenty percent (20%) of such units comprising the Residential Component shall be made available for individuals and/or families earning more than eighty percent (80%) of AMI and less than one hundred forty percent (140%) of AMI.

(b) "AMI" shall mean the median family income for Miami-Dade County as published annually by the U.S. Department of Housing and Urban Development.

(c) In the event that Developer, as hereinafter defined, exceeds the requirements in Section 3(A)(i) same will reduce the requirement with respect to Section 3(A)(ii).

(d) In the event Developer exceeds the requirements in Section 3(A)(i) and 3(A)(ii), in the aggregate, same will reduce the requirements in Section 3(A)(iii) (i.e., if the percentage of units comprising the Residential Component meeting the requirement of Sections 3(A)(i) and 3(A)(ii) exceeds eighty percent (80%), the percentage of units comprising the Residential Component which meet the requirements of Section 3(A)(iii) shall be reduced accordingly.

(e) The CRA shall endeavor to select a Developer, who will attempt to exceed the minimum standards set forth in Sections 3(A)(i) and 3(A)(ii) above (i.e. maximize the percentage of the units comprising Residential Component made available to individuals and/or families earning less than eighty percent (80%) of AMI).

4. Selection of Developer. The CRA shall conduct a solicitation, in accordance with Section 163.380, Florida Statutes, (the "Development Opportunity") to select a developer for the Project (the "Developer") in accordance with the terms of the Settlement Agreement. The CRA shall, within five days of the selection of the Developer by the Board of Commissioners of the CRA, advise the County by hand delivery or by certified mail, return receipt requested, addressed to the County Mayor or its designee (the "Notice") of the Developer selected by the Board of Commissioners of the CRA pursuant to the Developer Opportunity. The Notice shall be deemed delivered to the County on the day hand delivered or the date the return receipt is executed. The Board of County Commissioners shall have forty five (45) days from the date of delivery of the Notice (unless the Commission is in recess during such period in which instance an additional day will be added for each day of recess), to approve or reject the Developer selected by the Board of Commissioners of the CRA and consider any proposed variances to this Declaration as provided in Section 23 herein, and if the Board of County Commissioners does not approve or reject, within forty five (45) days from the date of delivery of the Notice (unless the Commission is in recess during such period in which instance an additional day will be added for each day of recess) the selection by the CRA and any proposed variances to this Declaration shall be deemed approved by the County. Such deemed approval shall only occur if the Board of

County Commissioners fails to approve or reject the Developer and any such proposed variances. In accordance with the County Charter, in the event that the Board of County Commissioners does approve or reject the Developer (including the consideration of any proposed variances to this Declaration as set forth in Section 23 herein), within such period, then 1) the Mayor shall have the right to veto such action, and 2) the Board of County Commissioners shall have the right to override such veto at the next regularly scheduled County Commission meeting. The veto and override set forth in this paragraph are separate from the referenced Board of County Commissioner approval and rejection and attendant 45 day period limitation, and if the Board of County Commissioners does approve or reject the Developer within the required time period, the total period after the veto and override may exceed 45 days. In the event the County rejects the Developer selected by the CRA, the CRA shall issue a new Developer Opportunity within thirty (30) days from the date of such rejection. The process shall continue until the Developer is approved or deemed approved by the Board of County Commissioners. The Development Opportunity will require the Developer to diligently pursue the simultaneous development of the Residential Component and the Retail Component, with a preference on completion of the Retail Component first. The Development Opportunity shall not require that any component or phase of the Project be completed before construction on another component or phase can commence. All parties hereto understand that the veto and override set forth in this paragraph are separate from the referenced Board of County Commissioner approval and rejection and attendant 45 day period limitation, and if the Board of County Commissioners does approve or reject the Developer within the required time period, the total period after the veto and override may exceed 45 days.

5. Development Agreement. The CRA shall enter into a development agreement (the "Development Agreement") with the Developer, approved or deemed approved by the Board of County Commissioners within ninety (90) days from the date the Developer is approved or deemed approved by the Board of County Commissioners. If the CRA does not enter into the Development Agreement with the Developer approved or deemed approved by the Board of County Commissioners within the ninety (90) day period, the CRA shall terminate negotiations with such Developer and issue a new Developer Opportunity within thirty (30) days from the end of such ninety (90) day period.

6. Land Use and Zoning Approvals. The Developer shall obtain all applicable land use and zoning approvals for the Project (the "Approvals") within two years from the recordation of this Declaration. The CRA shall convey the Property by deed to the Developer prior to the Developer commencing construction.

7. Construction. The Developer must commence vertical construction (defined as physical structures of the Retail Component actually being constructed on the Property pursuant to applicable permits) within three years from the recordation of this Declaration. The Developer must substantially complete construction of the Retail Component within twenty-four (24) months after commencement of vertical construction of the Retail Component (the "Retail Completion Date"). The Developer shall commence vertical construction (defined as physical structures of the Residential Component actually being constructed on the Property pursuant to applicable permits) of the Residential Component within three years from the recordation of this Declaration and must substantially complete construction of the Residential Component within twenty four (24) months after commencement of vertical construction of the Residential

Component (the "Residential Completion Date"). The Retail Completion Date and the Residential Completion Date shall be evidenced by one or more temporary or permanent certificates of occupancy (or their equivalent) for all buildings comprising the particular component. Both the Retail Completion Date and Residential Completion Date shall automatically be extended one day for each day of Unavoidable Delay provided the Executive Director of the CRA concurs with the Developer that an Unavoidable Delay has occurred and the County (by its Major or Mayor's designee) agree that an Unavoidable Delay has occurred, which approval by the County shall not be unreasonably withheld. The term "Unavoidable Delay" means delays due to area wide strikes, acts of God, floods, hurricanes, casualties, fires, acts of the public enemy and governmental moratoriums. The term Unavoidable Delay shall not include delays caused by any other source, including but not limited to a governmental entity acting in its proprietary or regulatory capacity or delays caused by lack of funds.

8. Compensation.

A. Beginning thirty (30) days from the issuance of a temporary certificate of occupancy, or its equivalent for the Retail Component, but in no event later than five years from the recordation of this Declaration, the Developer shall separately pay to each of the County and the CRA each year for twenty-five (25) years the greater of (i) a sum of money, commencing at One Hundred Twenty-Two Thousand and No/100 Dollars (\$122,000.00) per year on an annual basis for the first five years, and increasing by 3% per year for each year thereafter over the amount for the previous year, or (ii) 2.5% of Gross Rent (the "Project Payment"). The term "Gross Rent" means all monies paid for the occupancy of space within the Retail Component (but also including, but not limited to, any money-generating operations on any portions of the Property whatsoever, such as parking), and including but not limited to flat rent or rent based on a percentage of sales, but shall not include utilities, taxes, or security deposits. Within 90 days from the commencement of the first anniversary of the Project Payment, and every year thereafter for the next twenty four (24) years, the owner of the Retail Component shall submit a "full accounting" of Gross Rent, from the business or businesses located on the Retail Component for the previous year. Full Accounting means an Annual Written Statement, signed by Owner, CEO, or Financial officer of the owner of the Retail Component and certified by it to be true and correct, setting forth the amount of Gross Rent during the preceding year, which statement shall also be duly certified by an independent Certified Public Accountant. The statement referred to herein shall be in such form and style and contain such details and breakdowns as County and CRA may reasonably determine or require. If this Annual Written Statement when multiplied by two and one half percent (2.5%) exceeds the amount of the previous year's Project Payment paid for the period, the difference ("Annual Adjustment") shall be paid immediately by the owner of the Retail Component to the County and the CRA. There shall be no adjustment if the Statement when multiplied by two and one half percent (2.5%) is less than the amount paid as the previous year's Project Payment. County and CRA shall have the right to cause, upon five (5) days' written notice to the owner of the Retail Component, a complete audit to be made by a designated external auditing firm or other certified public accounting firm selected by the County and/or CRA. If the owner of the Retail Component fails to record, maintain, or make available sales supporting documentation as specified above, which failure is not cured within thirty (30) days of receipt of written notice, then the owner of the Retail Component shall be deemed to be in default of this Declaration.

B. The term "Project Payment" shall mean the then current annual payment due from the Developer to the County and the CRA pursuant to this paragraph. All subsequent Project Payments shall be due on the anniversary of the first payment.

C. In the event Developer fails to make any Project Payment within ten (10) days of when due Developer shall pay to each of the County and the CRA a late fee equal to five percent (5%) of the Project Payment then due.

D. In the event that Developer fails to make any Project Payment within thirty (30) days of when due such Project Payment shall bear interest at twelve percent (12%) per annum from the date due until paid.

E. Nothing contained herein shall prevent or otherwise prohibit either the CRA or the County (through their Boards), upon application by the Developer, from waiving their rights to one or more Project Payments, including portions of Project Payments, or penalties thereon. In such event, the approval of the CRA shall not be required if the County chooses to waive its rights, nor shall the approval of the County be required in the event the CRA elects to waive its rights.

9. Developer Default.

A. In the event the Developer (i) does not obtain the Approvals in the timeframe provided in Section 6 of this Declaration, (ii) fails to achieve substantial completion of the Retail Component by the Retail Completion Date, as same may be extended as a result of Unavoidable Delays, (iii) fails to achieve substantial completion of the Residential Component by the Residential Completion Date, as same may be extended as a result of Unavoidable Delays, or (iv) fails to make any Project Payment when due, the CRA and/or the County (as applicable) may declare the Developer in default by sending a Notice of Default (the "Default Notice"). The Default Notice shall be hand delivered to the Developer or mailed to the Developer by certified mail, return receipt requested. The Default Notice shall be deemed delivered upon the date received if hand delivered, or if mailed, on the date the return receipt is executed or the date delivery is refused. Upon receipt, or deemed receipt, of the Default Notice, the Developer shall have ninety (90) days to cure (the "Default Cure Period"). Extensions of the Default Cure Period shall not be unreasonably withheld, conditioned or delayed for good cause shown, in the sole discretion of the Executive Director of the CRA if the CRA has issued the Default Notice, or in the sole discretion of the Mayor or the Mayor's designee if the County has issued the Default Notice.

B. In the event the Default Notice is issued pursuant to Section 9(A)(i), the Developer may extend the timeframe in which to obtain the Approvals for six (6) months by paying to each of the County and the CRA Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00) on or before the end of the Default Cure Period, as same may have been extended in accordance with the last sentence of Section 9(A). The extension of the Approval Period pursuant to this Section 9(B) to cure a default pursuant to Section 9(A)(i) is a one time right of the Developer and may not be utilized in connection with any subsequent default pursuant to Section 9(A)(i).

C. In the event the Default Notice is issued pursuant to Section 9(A)(ii), the Developer may extend the Retail Completion Date, as same may have been extended as a result of Unavoidable Delays, for an additional six (6) months by paying to each of the County and the CRA Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00) on or before the end of the Default Cure Period, as same may have been extended in accordance with the last sentence of Section 9(A). The extension of the Retail Completion Date pursuant to this Section 9(C) to cure a default pursuant to Section 9(A)(ii) is a one time right of the Developer and may not be utilized in connection with any subsequent default pursuant to Section 9(A)(ii).

D. In the event the Default Notice is issued pursuant to Section 9(A)(iii), the Developer may extend the Residential Completion Date, as same may have been extended as a result of Unavoidable Delays, for an additional six (6) months by paying to each of the County and the CRA Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00) on or before the end of the Default Cure Period, as same may have been extended in accordance with the last sentence of Section 9(A). The extension of the Residential Completion Date pursuant to this Section 9(D) to cure a default pursuant to Section 9(A)(iii) is a one time right of the Developer and may not be utilized in connection with any subsequent default pursuant to Section 9(A)(iii).

E. In the event the Default Notice is issued pursuant to 9(A)(i) (ii) or (iii) of this Declaration, and is not cured prior to the end of the Default Cure Period, as same may be extended, in accordance with the last sentence of Section 9(A), title to any portion(s) of the Property which have not been improved with buildings shall automatically revert back to the CRA, subject to the rights of the County set forth in the Declaration and Settlement Agreement and pending the selection of another Developer as set forth therein (the "Reverter Property").

F. If the Default Notice is issued pursuant to Section 9(A)(iv) and same is not cured within the Default Cure Period, then all remaining Project Payments together with a fifteen percent (15%) penalty shall be automatically accelerated and shall be deemed immediately due and payable to the County and the CRA. In such event, the County and the CRA shall have the right to pursue any and all remedies against the Developer for the outstanding amounts.

G. The Developer shall be liable to the County and the CRA for all reasonable attorneys fees and costs incurred by the County and the CRA as a result of a Developer Default.

H. Any payments made to the County and the CRA pursuant to Section 9(B), 9(C) and 9(D) shall not constitute a Project Payment and shall not be credited against any Project Payment.

10. Reverter RFP. In the event any portion of the Property reverts to the CRA, the CRA shall issue a new Developer Opportunity with respect to the Reverter Property, in accordance with Section 4 of the Declaration, within ninety (90) days from the date the CRA acquires the Reverter Property, and shall provide Notice to the County of the Developer selected for its Approval as set forth herein and in the Settlement Agreement. In the event the Board of County Commissioners rejects the Developer selected by the CRA within the new Approval Period, the CRA shall issue a new Developer Opportunity within thirty (30) days from the date of such rejection. The process shall continue until the Developer is approved or deemed

approved by the Board of County Commissioners. The CRA shall enter into a Development Agreement with the Developer approved or deemed approved by the Board of County Commissioners within ninety (90) days of the date the Developer is approved or deemed approved by the Board of County Commissioners. If the CRA does not enter into the Development Agreement with the Developer approved or deemed approved by the Board of County Commissioners within the ninety (90) day period, the CRA shall terminate negotiations with such Developer and issue a New Developer Opportunity within thirty (30) days of the end of such ninety (90) day period. The new Developer shall be bound by the terms of this Declaration. To the extent that any portion of the Property reverts to the CRA after six (6) years from the date of the recordation of this Declaration, then, in such event, same shall revert from the CRA to the County upon written notice from the County to the Executive Director of the CRA, free and clear of all claims by the CRA and any Developer and free and clear of this Declaration. If requested by the County, the CRA shall convey such portion of the Property to the County by quit claim deed. In the event of such reversion, this Declaration shall then automatically terminate.

11. Notwithstanding any other provision set forth herein, in the event that vertical construction (defined as physical structures actually being constructed on the Property pursuant to the applicable permits) has not commenced on the Property within three years from the date of the recording of this Declaration, then the Property shall revert to the County upon written notice by the County to the Executive Director of the CRA at any time prior to the commencement of the vertical construction. If requested by the County, the CRA shall provide the County with a special warranty deed transferring all title and interest in and to the Property to the County, free and clear of all claims and encumbrances and free and clear of this Declaration, which the County shall record. However, such reverter shall become effective upon receipt by the CRA of the written notice of the exercise of the reverter, regardless of the special warranty deed. In the event of such reversion, this Declaration shall then automatically terminate, and notice of same may be recorded by the County.

12. No Limitation of Remedies. Nothing contained herein shall be construed as limiting the rights and remedies of the County, the City or the CRA set forth in the Settlement Agreement.

13. County Inspection. Prior to completion of construction of the Project, the County and the CRA shall have the right, but not the obligation, at any time during normal business hours, to enter and inspect the Property to determine whether the requirements of this Declaration are being complied to by the Developer.

14. Covenant Running with the Land. This Declaration shall constitute a covenant running with the land and shall be binding on the CRA and its successors and assigns having an interest in the Property. This Declaration is for the benefit of, and limitation upon, all present and future owners of the Property and for the benefit of the County and the CRA.

15. Term. This Declaration is to run with the land for a period of thirty (30) years and shall be automatically extended for additional ten (10) year periods until thirty (30) years from the issuance of the last temporary certificate of occupancy (or its equivalent) for the last building comprising the Project.

16. Modification. Provided that the Developer is not in default beyond the applicable grace periods and is current with all of its payment obligations to the CRA and the County, this Declaration may be modified, amended or released with respect to the Property, or any portion thereof, by written instrument executed and recorded by the then owner(s) of the fee simple title to the Property, the CRA and the County with the approval of the respective Boards of the CRA and the County. Notwithstanding the foregoing, the Executive Director of the CRA (the "Executive Director") may unilaterally, without the consent of the County being required, modify this Declaration with respect to the following quantifiable requirements, by an amount not to exceed 10 percent of such number or 10 percent of such percentages, as follows: (a) the number of square feet, and number of residential units in Section 2 and (b) the time frame set forth in Section 6 and 7. Additionally, the Executive Director may modify this Declaration in any other non-substantive manner without the consent of the County, provided such modifications are in writing. Any modifications, amendments, or releases shall be evidenced by a recorded amendment to this Declaration executed by all required parties thereto.

17. Successor to the CRA. In the event of a termination of the CRA, the City shall be successor to CRA for all purposes under this Declaration. In such event, all references in this Declaration to the CRA shall be deemed references to the City, all references in this Declaration to the approval by the Board of the CRA shall be deemed references to the Board of the City and all references in this Declaration to the Executive Director of the CRA shall be deemed references to the Mayor of the City for all purposes under the Declaration. Any Developer, other than the City, the County, and the CRA, may not assign, convey, or transfer the right to develop the Property, or any portion thereof, without written approval by the respective Boards of the County and the CRA, which may be withheld in their sole and absolute discretion, unless such consent is not required under the Settlement Agreement. To the extent that such entity is controlled by the Developer, in lieu of the foregoing, the County Mayor or County Mayor's designee together with the Executive Director may approve same in writing. Notwithstanding the foregoing, upon the issuance of a Certificate of Occupancy (CO) (or its equivalent) for the Retail Component or any portion thereof or the Residential Component, or any portion thereof, the Developer is permitted to transfer any interest in that completed Component of the Property subject to any remaining financial obligation to the CRA or County.

18. Enforcement. The County and the CRA shall be entitled to enforce this Declaration against any person violating or attempting to violate, any of the terms and provisions contained in this Declaration by appropriate action at law or in equity. The prevailing party in any action or suit pertaining to or arising out of this Declaration shall be entitled to recover, in addition to costs and disbursements allowed by law, such sum as the court may adjudge to be reasonable for the services of an attorney. This Section shall be in addition to any other remedies available at law, in equity, or both, and including the enforcement rights set forth in the Settlement Agreement.

19. Election of Remedies. All rights, remedies and privileges granted herein shall be deemed to be cumulative and the exercise of any one or more shall neither be deemed to constitute an election of remedies, nor shall it preclude the party exercising the same from exercising such other additional rights, remedies or privileges.

20. Severability. Invalidation of any one of these covenants, by judgment of Court, shall not affect any of the other provisions which shall remain in full force and effect.

21. Sovereign Rights. The Developer and its successors, and assigns acknowledge that this Declaration does not obligate the County, the City and the CRA in any manner other than as specifically set forth herein. The County, the City, and the CRA shall not be liable to any other person for the exercise of its governmental authority, regulatory powers, and/or police powers. The County, the City and the CRA retain all of their sovereign prerogatives and rights under Florida laws, and shall in no way be estopped or otherwise prevented from withholding or refusing to issue any approvals of applications, or be liable for same, or to grant any approvals of applications for building, zoning, planning or development under present or future laws and ordinances of whatever nature.

22. Governing Law. This Declaration shall be construed and governed in accordance with the laws of the State of Florida, without application of conflict of laws principles. Venue shall be in the Circuit Court in and for Miami-Dade County, Florida or the Federal District Court of the Southern District of Florida.

23. Variance. In the event the Developer selected by the CRA in response to the Developer Opportunity proposed variance from the requirements of the Declaration, which variances have been approved by the Board of Commissioners of the CRA in light of market conditions and information provided by the Developer, the Board of County Commissioners shall consider such variances at the time the Board of County Commissioners is requested by the CRA to approve the Developer and such variances shall be outlined to the County in the Notice to the County. The County agrees to consider such variances at the time it acts on the approval of the Developer, with no obligation on the part of the Board of County Commissioners to approve any such variances from the Declaration, which shall be in the sole discretion of the Board of County Commissioners. The variances shall be deemed considered, if they are included in the documentation submitted for the Board of County Commissioner's consideration by the CRA. If the Board of County Commissioners approves, or is deemed to approve, the Developer and some or all of the variances requested by the Developer, the County and the CRA shall execute and record an amendment to the Declaration to reflect the variances approved, or deemed approved, by the Board of County Commissioners.

24. To the extent that this Declaration requires construction, and regardless of the notation of the "preparer" contained upon same, both the CRA and the County equally participated in the drafting of this Declaration, and accordingly, such document shall not be construed in favor of, or against, either party.

[SIGNATURE PAGES TO FOLLOW]

IN WITNESS THEREOF the County and the CRA have executed this Declaration as of the date first above written.

Witnesses:

Printed Name: _____

Printed Name: _____

CRA:

Southeast Overtown/Park West Community
Redevelopment Agency, a public agency and
body corporate created pursuant to Section
163.356, Florida Statutes

By: _____
Clarence E. Woods, III
Executive Director

ATTEST:

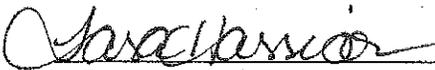
Clerk of the Board

By: _____

Approved for legal sufficiency

By: _____
William R. Bloom, Esq.
Holland & Knight LLP
Special Counsel

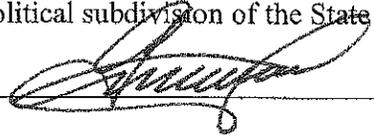
Witnesses:


Printed Name: Tara Hinson


Printed Name: Gladys Fernandez

COUNTY:

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

By: 

ATTEST:

Harvey Ruvin, Clerk

By: _____
Deputy Clerk



Approved for legal sufficiency
County Attorney

By: 

IN WITNESS THEREOF the County and the CRA have executed this Declaration as of the date first above written.

Witnesses:

William R Bloom
Printed Name: William R Bloom
Miguel Valentin
Printed Name: Miguel Valentin

Witnesses:

Printed Name: _____

Printed Name: _____

CRA:

Southeast Overtown/Park West Community
Redevelopment Agency, a public agency and
body corporate created pursuant to Section
163.356, Florida Statutes

By: Clarence E. Woods, III
Clarence E. Woods, III
Executive Director

ATTEST:

Clerk of the Board

By: N. Swan 5-8-2013

Approved for legal sufficiency

By: William R Bloom
William R. Bloom, Esq.
Holland & Knight LLP
Special Counsel

COUNTY:

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

By: _____

ATTEST:

Harvey Ruvin, Clerk

By: _____
Deputy Clerk

Approved for legal sufficiency
County Attorney

By: _____

STATE OF FLORIDA)
) ss.
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this 7 day of May, 2013, by Clarence E. Woods, III, Executive Director of the Southeast Overtown/Park West Community Redevelopment Agency, on behalf of the Agency. He is personally known to me or has produced _____ as identification.

(SEAL)

William R Bloom

Notary Public-State of _____

Comm _____

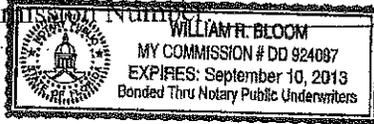


Exhibit A

Legal Description

Lots 1 through 12 inclusive, Block 45, NORTH, CITY OF MIAMI, according to the Plat thereof as recorded in Plat Book "B" at Page 41 of the Public Records of Miami-Dade County, Florida.

Lots 1 through 12 inclusive, Block 56, NORTH, CITY OF MIAMI, according to the Plat thereof, as recorded in Plat Book "B" at Page 41 of the Public Records of Miami-Dade County, Florida.



City of Miami

Legislation

CRA Resolution: CRA-R-13-0054

City Hall
3500 Pan American
Drive
Miami, FL 33133
www.miamigov.com

File Number: 13-00988

Final Action Date: 9/12/2013

A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE SOUTHEAST OVERTOWN/PARK WEST COMMUNITY REDEVELOPMENT AGENCY ("CRA"), WITH ATTACHMENT(S); APPROVING OVERTOWN GATEWAY PARTNERS, LLC ("OVERTOWN GATEWAY") AS THE DEVELOPER FOR BLOCK 45 AND ALL ABOARD FLORIDA-STATION, LLC ("ALL ABOARD") AS THE DEVELOPER FOR BLOCK 56 AND APPROVING THE PROPOSED VARIANCES; DIRECTING THE EXECUTIVE DIRECTOR TO ATTEMPT TO NEGOTIATE A DEVELOPMENT AGREEMENT WITH OVERTOWN GATEWAY WITH RESPECT TO BLOCK 45 AND NEGOTIATE A DEVELOPMENT AGREEMENT WITH ALL ABOARD FOR BLOCK 56 IF OVERTOWN GATEWAY AND ALL ABOARD ARE APPROVED BY MIAMI-DADE COUNTY; AND CLARIFYING THAT THIS RESOLUTION IS NOT INTENDED TO BE AN AWARD OF DEVELOPMENT RIGHTS OR TO OTHERWISE CREATE ANY RIGHTS WHATSOEVER IN OVERTOWN GATEWAY OR ALL ABOARD.

WHEREAS, the Southeast Overtown/Park West Community Redevelopment Agency ("CRA") is responsible for carrying out community redevelopment activities and projects within its Redevelopment Area in accordance with its approved 2009 Southeast Overtown/Park West Redevelopment Plan ("Plan"); and

WHEREAS, Section 2, Goal 3/Principles 2 and 3, at pages 12 and 14, of the Plan lists creating infill housing, and developing a variety of housing options as stated redevelopment goals; and

WHEREAS, Section 2, Goal 3/Principle 4, at pages 12 and 14, of the Plan also include the creation of jobs within the community as a stated redevelopment goal; and

WHEREAS, on June 17, 2013, the CRA issued Request for Proposals No. 13-002 ("RFP") for the development of the Blocks 45 and 56 (the "Blocks"); and

WHEREAS, on July 22, 2013, three (3) proposals were received by the Clerk of the Board, and forwarded to the CRA for consideration; and

WHEREAS, a committee consisting of Mr. Greg Gay (City Planner, City of Miami), Mr. Brian Zeltsman (Director of Architecture and Development, CRA), and Ms. Patricia Braynon, (Director, Housing Finance Authority of Miami-Dade County) was formed to evaluate the responses and make a recommendation to the Board of Commissioners; and

WHEREAS, the Board of Commissioners has considered the proposals and the recommendation of the committee; and

WHEREAS, in accordance with the Settlement Agreement between the City of Miami, Miami-Dade County, and the CRA, dated May 9, 2013 (the "Settlement Agreement"), Miami-Dade County must approve the developer selected by the CRA for the development of the Blocks and any

proposed variances from the terms of the Settlement Agreement; and

WHEREAS, the Board of Commissioners wishes to approve Overtown Gateway Partners, LLC ("Overtown Gateway"), or its affiliate, as the developer of Block 45 and All Aboard Florida-Stations, LLC ("All Aboard"), or its affiliate, as the developer of Block 56, and to direct the Executive Director to attempt to negotiate development agreements with Overtown Gateway and All Aboard, respectively, for the development of Blocks 45 and 56, respectively, and wishes to approve the proposed variances set forth on Exhibit "A".

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE SOUTHEAST OVERTOWN/PARK WEST COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF MIAMI, FLORIDA:

Section 1. The recitals and findings contained in the Preamble to this Resolution are adopted by reference and incorporated herein as if fully set forth in this Section.

Section 2. The Board of Commissioners hereby approves Overtown Gateway Partners, LLC ("Overtown Gateway"), or its affiliate, for the development of Block 45 and All Aboard Florida-Stations, LLC ("All Aboard"), or its affiliate, for the development of Block 56 and approves the variance set forth on Exhibit "A", subject to Miami-Dade County approval and the Executive Director being able to finalize an acceptable Development Agreement with Overtown Gateway with respect to Block 45 and finalize an acceptable Development Agreement with All Aboard with respect to Block 56 within the time frame required by the Settlement Agreement.

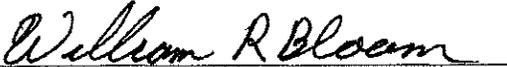
Section 3. The Executive Director is hereby directed to attempt to negotiate development agreements with Overtown Gateway and All Aboard after approval of Overtown Gateway and All Aboard by Miami-Dade County.

Section 4. In the event Miami-Dade County does not approve Overtown Gateway and All Aboard, the Board of Commissioners hereby directs the Executive Director to issue a new request for proposals with respect to the Blocks as required by the Settlement Agreement.

Section 5. This Resolution shall not be deemed or construed to be an award of development rights or to otherwise create any rights whatsoever in Overtown Gateway or All Aboard, any such rights only to be created upon the execution of a definitive Development Agreement with Overtown Gateway with respect to Block 45 and All Aboard with respect to Block 56 within the time frame required by the Settlement Agreement after approval by Miami-Dade County and after approval of each respective Development Agreement by the Board of Commissioners of the CRA.

Section 6. This Resolution shall become effective immediately upon its adoption.

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:



WILLIAM R. BLOOM, ESQ.
SPECIAL COUNSEL

Exhibit "A"

Proposed Variances

The Developer proposes the following variances to the Declaration:

1. Project Payments. In lieu of making the Project Payments as defined in the Declaration, which requires payment over time, each Developer shall pay on the respective closing date, Two Million Seven Hundred Fifty Thousand and No/100 Dollars (\$2,750,000.00) to be shared equally by the County and the CRA and each Developer will make contributions of \$125,000.00 each year for 10 years to a community benefits fund.
2. Completion Date. 36 months from commencement of vertical construction for each Block.
3. Estoppel. Developer proposes the addition of a provision to the Declaration authorizing the County Mayor or its designee, on behalf of the County, and the Executive Director, on behalf of the CRA, to execute an estoppel certificate or similar instrument, upon the request of the Developer and in form and substance reasonably acceptable to the County or the CRA, as appropriate, affirming compliance with the conditions set forth in the Declaration and the termination of the possibility of reverter.
4. Residential Restrictions. Developer proposes providing 60 residential units in compliance with the provisions of Section 3 of the Declaration with all residential units in excess of 60 residential units being market rate units.
5. Indemnification Agreement. In lieu of providing the Indemnification Agreement the Developers are proposing an alternative risk management solution in the form of a payment of One Million and No/100 Dollars (\$1,000,000.00) in the aggregate (the "Indemnity Payment") for the benefit of the City, the County and the CRA. Within one (1) business day following the end of the Inspection Period if the respective Developer does not elect to terminate this Agreement, Developer shall deposit \$500,000.00 with an escrow agent, which shall be disbursed (i) at Closing pursuant to disbursement instructions signed by the City, County and the CRA or (ii) disbursed to the respective Developer if the respective Development Agreement is terminated prior to Closing.
6. Clarification on Reversion Rights. Section 9(E) of the Declaration provides as follows: "In the event a default notice is issued pursuant to Section 9(A)(i), (ii), or (iii) of this Declaration, and is not cured in the Default Cure Period, as same may be extended, in accordance with the last sentence of Section 9(A), title to any portion(s) of the Property which have not been improved with buildings shall automatically revert to the CRA, subject to the right of the County set forth in the Declaration and in the Settlement Agreement . . ." It is the Developer's understanding that the foregoing reversion shall not apply if improvements to the Property have been commenced, even if such improvements have not been substantially completed. Each Developer has agreed to pay the following in lieu of any such possible reversion rights: payment to each of the County and the CRA, as liquidated damages, Two Thousand Five Hundred and No/100 Dollars (\$2,500.00) per day for each day between the Outside Date until substantial completion of the respective project. The Outside Date shall mean the later of the date (i) the Developer should have achieved substantial completion of the respective project, as may be extended as provided in the Declaration, or (ii) May 15, 2018.
7. Cross Default. Default with respect to Block 45 not a default with respect to Block 56 and default with respect to Block 56 is not a default with respect to Block 45.
8. Affordable Housing. Block 45 Developer shall be responsible for providing the 60 affordable units.
9. The CRA Requested Variance Termination based upon Inspection. If the Development Agreement is executed between the

Developer and the CRA and the Developer terminates the Development Agreement during the Inspection Period, the CRA shall be required to issue another Development Opportunity within thirty (30) days of the date of termination.



MEMORANDUM
(Revised)

TO: Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners

DATE: October 22, 2013

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

SUBJECT: Substitute
Agenda Item No. 11(A)(3)

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 _____

Substitute
Agenda Item No. 11(A)(3)
10-22-13

RESOLUTION NO. _____

RESOLUTION APPROVING OVERTOWN GATEWAY PARTNERS, LLC AND ALL ABOARD FLORIDA-STATIONS, LLC AS THE DEVELOPERS OF BLOCKS 45 AND 56, AND DETERMINING WHETHER TO ACCEPT OR REJECT PROPOSED VARIANCES AS TO THE DECLARATION OF RESTRICTIONS FOR SUCH BLOCKS PURSUANT TO THE SETTLEMENT AGREEMENT BETWEEN THE CITY OF MIAMI, THE SOUTHEAST OVERTOWN/PARK WEST COMMUNITY REDEVELOPMENT AGENCY AND MIAMI-DADE COUNTY

WHEREAS, pursuant to Resolution No. R-294-13, the Board authorized settlement of the lawsuit between the City of Miami, the Southeast Overtown/Park West Community Redevelopment Agency (the "CRA") and the County; and

WHEREAS, the City of Miami, the CRA and the County entered into the settlement agreement and recorded a Declaration of Restrictions against Blocks 45 and 56 in accordance therewith, which set forth requirements for development on such Blocks; and

WHEREAS, pursuant to the terms of the settlement agreement, the CRA was required to conduct a solicitation and to select a developer for development of Blocks 45 and 56 (the "Property") in accordance with the provisions and restrictions set forth in a Declaration of Restrictions (the "Declaration"); and

WHEREAS, the CRA was required to provide notice of the selected Developer to the County, along with any proposed variances to the Declaration, and the Board would then have 45 days in which to approve or reject the Developer and to consider any proposed variances to the Declaration; and

WHEREAS, the CRA is required to enter into a Development Agreement with the proposed Developer within 90 days of the date of approval of the Developer by the County, or to terminate negotiations and issue a new solicitation; and

WHEREAS, the CRA submitted notice of the Developers and proposed variances to the County on September 17, 2013, which is attached as Exhibit A; and

WHEREAS, the CRA submitted a clarification as to proposed variance 7 on September 26, 2013, attached as Exhibit B; and

>>WHEREAS, the CRA submitted a proposed amended variance request on October 15, 2013, attached as Exhibit C, which superceded and replaced the request and clarification attached as Exhibits A and B (referred to herein as amended variance requests 1 through 7); and<<¹

WHEREAS, the Board has considered the proposed Developers, >>Overtown Gateway Partners, LLC and <<All Aboard Florida-Stations, LLC~~[[and Overtown Gateway Partners, LLC]]~~, as well as each of the proposed variances set forth in Exhibit A>>, << [[and]] clarified by Exhibit B>>, and superceded by Exhibit C<<; and

WHEREAS, this Board has considered the Mayor's Memorandum which is attached hereto and incorporated herein,

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

Section 1. This Board ratifies and adopts those matters set forth in the foregoing recitals.

¹ The differences between the substitute and the original item are indicated as follows: Words stricken through and/or [[double bracketed]] shall be deleted, words underscored and/or >>double arrowed<< are added.

Section 2. This Board approves the developers selected by the CRA, Overtown Gateway Partners, LLC and All Aboard Florida-Stations, LLC in accordance with the settlement agreement and the CRA's recommendation.

Section 3. >>This Board approves amended variance request number 1 in full, "Default and Reversion," which provides that default<<[[~~This Board approves variance number 4, wherein "Overtown Gateway proposes providing 60 residential units in compliance with the provisions of Section 3 of the Declaration with all residential units in excess of 60 residential units being market rate units. The Residential Component shall be constructed on Block 45".~~Section 4. This Board approves variance number 7 which provides "Default]]with respect to Block 45 under the Declaration shall not constitute a default with respect to Block 56 and default with respect to Block 56 under the Declaration shall not constitute a default with respect to Block 45>>. This provision shall apply only after the development agreements are entered into by both developers and the CRA.

Section 4. This Board approves amended variance request number 2 in full, "Project Payments," providing for a lump sum cash payment to the County of \$5,000,000.00 upon the Closing Date, including \$2,500,000.00 to be<<[[~~under the Declaration,"~~]] provided >>by each developer, in lieu of annual project payments, which payment shall be used for projects <<that >>support Overtown redevelopment efforts and shall be held in a County account or separated to be utilized solely for that purpose; and additionally, providing for annual donations of \$250,000.00 to a community benefits program to be established within the Southeast Overtown/Park West Community Redevelopment Area, the composition and structure of which shall be formalized by future Board action. Additionally, the County shall act as the fiduciary for holding and disbursing funds contributed to such program.

Section 5. This Board approves amended variance request number 3 in full, “Project Components,” which provides that a minimum of 75,000 square feet of ~~<<[[set forth in Exhibit B, the Residential Component is allocated to Parcel 45 and -]]~~the Retail Component ~~>>~~shall be constructed on Block 56, a minimum of 75,000 square feet of the Retail Component shall be constructed on Block 45, and the construction of the Residential Component on Block 45~~<<[[is allocated equally between Blocks 45 and 56]]~~.

~~Section >>6.~~ This Board approves amended variance request number 4 in full, “Residential Restrictions,” which provides that residential units in excess of the 60 required affordable housing units on Block 45, currently required by the Declaration, can be market rate units~~<<[[5. — This Board rejects all other variance requests, including numbers 1, 2, 3, 5, 6, and the CRA Requested Clarification]]~~.

~~>>Section 7.~~ This Board approves amended variance request number 5 in full, “Completion Date,” regarding revisions to timeframes during which certain acts must be performed.

~~Section 8.<<[[Section 6. — This Board delegates the authority to the Mayor or the Mayor’s designee to issue estoppel certificates or similar instruments affirming compliance with the Declaration, in connection with the Settlement Agreement and construction on Blocks 45 and 56, as deemed necessary and appropriate in the sole and absolute discretion of the Mayor or the Mayor’s designee.~~

~~Section 7.]~~ This Board ~~>>~~disapproves of amended variance request number 6 in full, “Indemnification Agreement,” proposing modification of the indemnification agreement requirements. However, this Board ~~<<~~delegates the authority to the Mayor or the Mayor’s designee to accept a full and complete unlimited indemnification from the City and the CRA in

substantially the form attached as Exhibit J-1 to the Settlement Agreement in lieu of the Indemnification from the Developer set forth in the Settlement Agreement, as determined in the sole and absolute discretion of the Mayor or the Mayor's designee, and to perform all acts necessary to effectuate same.

>>Section 9. This Board approves amended variance request number 7 in full, "Parking," requiring the developers to provide 300 parking spaces in excess of code requirements.

Section 10. This Board approves amended variance request number 8 in part, "Development Agreements," as follows. This Board approves amended variance request 8(a) that the CRA shall negotiate two separate development agreements, one with All Aboard for Block 56 and one with Overtown Gateway for Block 45. This Board disapproves amended variance request 8(b) that "failure to execute a Development Agreement with respect to one block shall only require the CRA to terminate negotiations with that Developer and issue a new Developer Opportunity for that block." This Board requires both Development Agreements to be fully executed within the required timeframes.

Section 11. This Board delegates the authority to the Mayor or the Mayor's designee to issue estoppel certificates or similar instruments affirming compliance with the Declaration, in connection with the Settlement Agreement and construction on Blocks 45 and 56, as deemed necessary and appropriate in the sole and absolute discretion of the Mayor or the Mayor's designee.

Section 12. Any other request for variance not specifically granted herein should be deemed to be denied, including but not limited to each of the variance requests set forth in the September 17, 2013 letter attached hereto as Exhibit A, each of which is hereby denied. The

remaining terms of the Declaration remain in full force, including but not limited to all reverter provisions related to the County.

Section 13. The approval of such variance requests are conditioned upon the amendment and recording in the public records of an Amended Declaration setting forth all of these amendments, approved by the County and with full and binding approval by the CRA Board. Additionally, the approval of the variance requests herein are specifically conditioned upon the CRA Board approving all of the variance requests approved by the County herein. To the extent the CRA Board does not approve each and every variance request approved by the County herein, all of which must be set forth in an Amended Declaration, then all variance requests shall be deemed denied.

Section 14.<<Pursuant to Resolution No. R-974-09, the Board directs the County Mayor or the County Mayor's designee to record any revisions to the Declaration required by the approvals set forth herein in the Public Records of Miami-Dade County, Florida; and to provide a recorded copy of any such instrument to the Clerk of the Board within thirty (30) days of execution of said instrument; and directs the Clerk of the Board to attach and permanently store a recorded copy together with this resolution, and to perform all acts necessary to effectuate the required actions set forth in this Resolution.

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

Rebeca Sosa, Chairwoman
Lynda Bell, Vice Chair

Bruno A. Barreiro
Jose "Pepe" Diaz
Sally A. Heyman
Jean Monestime
Sen. Javier D. Souto
Juan C. Zapata

Esteban L. Bovo, Jr.
Audrey M. Edmonson
Barbara J. Jordan
Dennis C. Moss
Xavier L. Suarez

The Chairperson thereupon declared the resolution duly passed and adopted this 22nd day of October, 2013. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

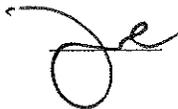
MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: _____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

Debra Herman



Holland & Knight

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Holland & Knight LLP | www.hklaw.com

William R. Bloom
(305) 789-7712
william.bloom@hklaw.com

September 17, 2013

By Hand Delivery

Honorable Carlos A. Gimenez
Mayor
Miami-Dade County Office of the Mayor
111 NW 1st Street
Miami, FL 33128

Re: Settlement Agreement effective May 15, 2013 (the "Settlement Agreement") by and among the City of Miami, the Southeast Overtown/Park West Community Redevelopment Agency and Miami-Dade County, Florida. Defined terms utilized herein but not defined herein shall have the meaning ascribed to said terms in the Settlement Agreement.

Dear Mayor Gimenez:

In accordance with Paragraph 8 of the Settlement Agreement, this letter constitutes Notice that the Board of Commissioners of the CRA has selected Overtown Gateway Partners, LLC, or its affiliate ("Overtown Gateway"), to be the Developer of Block 45 and All Aboard Florida-Stations, LLC, or its affiliate ("All Aboard"), to be the Developer of Block 56 and the proposed variances to the Declaration listed on Exhibit "A" attached hereto (the "Proposed Variances") in accordance with Paragraph 22 of the Settlement Agreement.

In accordance with the terms of the Settlement Agreement, the Board of County Commissioners shall have forty-five (45) days from receipt of this Notice to approve Overtown Gateway as the Developer of Block 45, All Aboard as the Developer of Block 56, and to consider the Proposed Variances and if the Board of County Commissioners does not approve or reject Overtown Gateway and All Aboard and the Proposed Variances, within forty-five (45) days from receipt of this Notice (unless the Commission is in recess during such period, in which instance an additional day will be added for each day of recess), Overtown Gateway and All Aboard shall be deemed approved by the County and the Proposed Variances to the Declaration shall be deemed approved by the County.

Honorable Carlos A. Gimenez
September 17, 2013
Page 2

Should you have any questions please feel free to contact me.

Sincerely yours,

HOLLAND & KNIGHT LLP

A handwritten signature in black ink that reads "William R. Bloom". The signature is written in a cursive style with a large, prominent "W" and "B".

William R. Bloom

WRB:dad

cc: Debra Herman, Esq.
Clarence E. Woods III
Edward Marquez

Exhibit "A"

Proposed Variances

Overtown Gateway and All Aboard propose the following variances to the Declaration:

1. Project Payments. In lieu of making the Project Payments as defined in the Declaration, which requires payment over time, Overtown Gateway and All Aboard shall each pay on the respective Closing Date, Two Million Seven Hundred Fifty Thousand and No/100 Dollars (\$2,750,000.00) to be shared equally by the County and the CRA. In addition Overtown Gateway and All Aboard shall each contribute \$125,000.00 per year for 10 years to a community benefits program to be established within the Southeast Overtown/Park West Community Redevelopment Area.

2. Completion Date. Overtown Gateway shall be required to complete the Residential Component within thirty-six (36) months after commencement of vertical construction of the Residential Component to be constructed on Block 45 instead of twenty-four (24) months.

Overtown Gateway shall be required to complete the Retail Component to be constructed on Block 45 within thirty-six (36) months after commencement of vertical construction of the Retail Component to be constructed on Block 45 instead of twenty-four (24) months.

All Aboard shall be required to complete the Retail Component to be constructed on Block 56 within thirty-six (36) months after commencement of vertical construction of the Retail Component to be constructed on Block 56 instead of twenty-four (24) months.

3. Estoppel. Overtown Gateway and All Aboard propose the addition of a provision to the Declaration authorizing the County Mayor or its designee, on behalf of the County, and the Executive Director, on behalf of the CRA, to execute an estoppel certificate or similar instrument, upon the request of the Developer and in form and substance reasonably acceptable to the County or the CRA, as appropriate, affirming compliance with the conditions set forth in the Declaration and the termination of the possibility of reverter.

4. Residential Restrictions. Overtown Gateway proposes providing 60 residential units in compliance with the provisions of Section 3 of the Declaration with all residential units in excess of 60 residential units being market rate units. The Residential Component shall be constructed on Block 45.

5. Indemnification Agreement. In lieu of providing the Indemnification Agreement Overtown Gateway and All Aboard are proposing an alternative risk management solution in the form of a payment of Five Hundred Thousand and No/100 Dollars (\$500,000.00) (the "Indemnity Payment") for the benefit of the City, the County and the CRA. Within one (1) business day following the end of the Inspection Period if Overtown Gateway and All Aboard do not elect to terminate their respective Development Agreements, the respective developer shall deposit the Indemnity Payment with an escrow agent, which shall be disbursed (i) at Closing pursuant to disbursement instructions signed by the City, County and the CRA or (ii) disbursed to the developer if the Agreement is terminated prior to Closing.

6. Clarification on Reversion Rights. Section 9(E) of the Declaration provides as follows: "In the event a Default Notice is issued pursuant to Section 9(A)(i), (ii), or (iii) of this Declaration, and is not cured in the Default Cure Period, as same may be extended, in accordance with the last sentence of Section 9(A), title to any portion(s) of the Property which have not been improved with buildings shall automatically revert to the CRA, subject to the right of the County set forth in the Declaration and in the Settlement Agreement . . ." It is Overtown Gateway's and All Aboard's understanding that the foregoing reversion shall not apply if improvements to the Property have been commenced, even if such improvements have not been substantially completed. Overtown Gateway and All Aboard each agree to pay the following in lieu of any such possible reversion rights: payment to each of the County and the CRA, as liquidated damages, Two Thousand Five Hundred and No/100 Dollars (\$2,500.00) per day for each day between the Outside Date until substantial completion of the Project. The Outside Date shall mean the later of the date (i) the Developer should have achieved substantial completion of the Project, as may be extended as provided in the Declaration, or (ii) May 15, 2018.

7. Default. Default with respect to Block 45 under the Declaration shall not constitute a default with respect to Block 56 and default with respect to Block 56 under the Declaration shall not constitute a default with respect to Block 45 under the Declaration.

CRA Requested Clarification

Termination based upon Inspection. If the Development Agreement is executed between the Developer and the CRA and the Developer terminates the Development Agreement during the Inspection Period, the CRA shall be required to issue another Development Opportunity within thirty (30) days of the date of termination.

Holland & Knight

EXHIBIT B

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william.bloom@hklaw.com

September 26, 2013

Via Email

Debra Herman, Esq.
Assistant County Attorney
Miami-Dade County Attorneys Office
111 NW 1st Street
Miami, FL 33128

Re: Declaration of Restriction dated as of May 8, 2013 (the "Declaration") by and between Miami-Dade County, Florida (the "County") and the Southeast Overtown/Park West Community Redevelopment Agency (the "CRA") recorded May 15, 2013 in Official Records Book 28631, at Page 1264 of the Public Records of Miami-Dade County, Florida. Defined terms utilized herein but not defined herein shall have the meanings set forth in the Declaration.

Dear Debra:

As we discussed, the Proposed Variances to be considered by the County include amending the Declaration so that a default with respect to Block 45 under the Declaration will not constitute a default with respect to Block 56 and a default with respect to Block 56 under the Declaration will not constitute a default with respect to Block 45 under the Declaration. To implement this proposed variance, it is the intent of the CRA to amend the Declaration, to allocate the Residential Component, as defined in the Declaration, to Block 45 and to allocate the Retail Component equally between Block 45 and Block 56 (i.e., the Block 45 Developer and Block 56 Developer will each be required to include not less than 75,000 square feet of retail, office, hotel and/or permitted institutional component and a minimum number of structured parking spaces no less than required by the applicable building codes).

Debra Herman, Esq.
September 26, 2013
Page 2

Please contact me should you have any questions.

Sincerely yours,

HOLLAND & KNIGHT LLP

A handwritten signature in cursive script that reads "William R. Bloom".

William R. Bloom

WRB:dad

Holland & Knight

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William R. Bloom
(305) 789-7712
william.bloom@hklaw.com

October 15, 2013

Mr. Ed Marquez
Deputy Mayor
Office of the Mayor
111 NW 1st Street
Miami, FL 33128

Re: Settlement Agreement effective May 15, 2013 (the "Settlement Agreement") by and among the City of Miami, the Southeast Overtown/Park West Community Redevelopment Agency (the "CRA") and Miami-Dade County, Florida. Defined terms utilized herein but not defined herein shall have the meaning ascribed to said terms in the Settlement Agreement.

Dear Ed:

By letter dated September 17, 2013 addressed to the Honorable Carlos A. Gimenez, the Southeast Overtown/Park West Community Redevelopment Agency (the "CRA") provided notice in accordance with Paragraph 8 of the Settlement Agreement that the Board of Commissioners of the CRA had selected Overtown Gateway Partners, LLC, or its affiliate ("Overtown Gateway") to be the developer of Block 45 and All Aboard Florida-Stations, LLC, or its affiliate ("All Aboard") to be the developer of Block 56 and proposed variances to the Declaration listed on Exhibit "A" attached thereto, which proposed variances were requested in accordance with Paragraph 22 of the Settlement Agreement.

The CRA requests that Proposed Variances set forth in Exhibit "A" of my September 17, 2013 letter be replaced by the Proposed Variances listed on Exhibit "A" attached hereto.

This request for modification of the Proposed Variances is being made with the express understanding that such request will not change the timeframe under the terms of the Settlement Agreement for the Board of County Commissioners to consider the Proposed Variances which is forty-five (45) days from receipt of the Notice which was hand delivered to the County on September 17, 2013.

Mr. Ed Marquez
October 15, 2013
Page 2

Should you have any questions, please feel free to contact me.

Sincerely yours,

HOLLAND & KNIGHT LLP


William R. Bloom

WRB:dad

cc: Debra Herman, Esq.
Clarence E. Woods, III

Exhibit "A"

Proposed Variances

Unless otherwise defined herein, all capitalized terms set forth herein are as defined in that certain Declaration of Restrictions recorded May 15, 2013 in Official Records Book 28631, Page 1264 of the Public Records of Miami-Dade County, Florida (the "Declaration").

Overtown Gateway and All Aboard propose the following variances to the Declaration, which shall be accomplished through an amendment of the Declaration or by amending and restating the Declaration into two declarations, with one relating to Block 56 and the other relating to Block 45:

1. Default and Reversion. Default with respect to Block 45 under the Declaration shall not constitute a default with respect to Block 56 and default with respect to Block 56 under the Declaration shall not constitute a default with respect to Block 45 under the Declaration and the rights and remedies related to default shall be enforceable separately as to each Developer (e.g., terms regarding Default Cure Periods and reversion shall apply as to All Aboard for Block 56 and as to Overtown Gateway for Block 45). Further, reversion with respect to Block 45 under the Declaration shall not constitute a reversion with respect to Block 56 and reversion with respect to Block 56 under the Declaration shall not constitute a reversion with respect to Block 45 under the Declaration.
2. Project Payments. In lieu of making the Project Payments, which requires payment over time, (i) Overtown Gateway shall pay (A) to the County on the Closing Date, Two Million Five Hundred Thousand and No/100 Dollars (\$2,500,000.00) which shall be used only for projects that support Overtown redevelopment efforts, to be held in a County account or separated to be utilized solely for such purpose, (B) to the CRA on the Closing Date, One Million Three Hundred Seventy-Five Thousand and No/100 Dollars (\$1,375,000.00) to be utilized by the CRA for projects in the Southeast Overtown/Park West Community Redevelopment Area, and (C) to the community benefits program to be established within the Southeast Overtown/Park West Community Redevelopment Area (the "Program"), One Hundred Twenty-Five Thousand and No/100 Dollars (\$125,000.00) per year for 10 years to the Program with the first payment commencing on the Closing Date and each anniversary thereof; and (ii) All Aboard shall pay (A) to the County on the Closing Date, Two Million Five Hundred Thousand and No/100 Dollars (\$2,500,000.00) which shall be used for projects that support Overtown redevelopment efforts to be held in a County account or separated to be utilized solely for such purpose, (B) to the CRA on the Closing Date, One Million Three Hundred Seventy-Five Thousand and No/100 Dollars (\$1,375,000.00) to be utilized by the CRA for projects in the Southeast Overtown/Park West Community Redevelopment Area, and (C) to the Program One Hundred Twenty-Five Thousand and No/100 Dollars (\$125,000.00) per year for 10 years with the first payment commencing on the Closing Date and each anniversary thereof. The Program shall be administered by a committee appointed by community stakeholders from the Southeast Overtown Park/Park West

community and the County shall act as the fiduciary for holding and disbursing funds contributed to the Program.

3. Project Components.

(i) Overtown Gateway shall be required to complete a portion of the Retail Component which shall be a minimum of 75,000 square feet and the Residential Component to be constructed on Block 45.

(ii) All Aboard shall be required to complete a portion of the Retail Component which shall be a minimum of 75,000 square feet to be constructed on Block 56.

The minimum square feet for the Retail Component set forth above for each block shall be in lieu of the minimum of 150,000 square feet for the Retail Component set forth in the Declaration for both blocks.

4. Residential Restrictions. The Residential Component shall be constructed on Block 45. Block 56 shall not be required to have a Residential Component. Sixty (60) residential units still have to be provided on Block 45 in compliance with the provisions of Section 3 of the Declaration. All residential units in excess of 60 residential units can be market rate units and will not be limited by the affordable housing restrictions of Section 3 of the Declaration.

5. Completion Date. The Declaration provides that the Developer shall be required to obtain the Approvals by May 15, 2015 and to commence construction of the vertical improvements of the Residential Component and the Retail Component by May 15, 2016 and complete the Residential Component within twenty-four (24) months after commencement of vertical construction of the Residential Component and complete the Retail Component within twenty-four (24) months after commencement of vertical construction of the Retail Component, subject to Unavoidable Delay, default cure periods as provided in Section 9 of the Declaration and the ability to extend the time period to obtain the Approvals for a six month period in accordance with Section 9(B) of the Declaration, extend the Residential Completion Date for a six month period in accordance with Section 9(D) of the Declaration and to extend the Retail Completion Date in accordance with Section 9(C) of the Declaration.

(i) Overtown Gateway requests a waiver to provide (i) that if the extension of the time period pursuant to Section 9(B) of the Declaration to obtain the Approvals is not exercised or exercised and not used in its entirety, Overtown Gateway may exercise such extension or use the unused portion of the approval extension period to extend the Residential Completion Date and the Retail Completion Date, in addition to the current ability to extend the Residential Completion Date and the Retail Completion Date for six months pursuant to Sections 9(C) and 9(D) and (ii) if Overtown Gateway commences construction of the Residential Component and the Retail Component on Block 45 prior to May 15, 2016, the time for completion of the construction of the Residential Component and the Retail Component shall be extended for the number of days between said commencement date and May 15, 2016. Overtown Gateway further

requests that if the Retail Component and the Residential Component are built as part of one integrated structure the date Overtown Gateway commences vertical construction of either the Residential Component or the Retail Component shall constitute commencement of construction of both the Residential Component and the Retail Component and the Residential Completion Date and Retail Completion Date shall be the same. Further, if the Retail Component and Residential Component are built as part of one integrated structure, Overtown Gateway may extend both the Residential Completion Date and the Retail Completion Date in pursuant to Section 9(C) and 9(D) of the Declaration by making one payment of Two Hundred Fifty Thousand and No/Dollars (\$250,000.00) which payment will extend both the Residential Completion Date and the Retail Completion Date, but such extension pursuant to payment under Sections 9(C) and 9(D) shall be limited to a total of 6 months.

(ii) All Aboard requests a waiver to provide (i) that if the extension of the time period pursuant to Section 9(B) of the Declaration to obtain the Approvals is not exercised or exercised and not used in its entirety, then All Aboard may exercise such extension or use the unused portion of the approval extension period to extend the Retail Completion Date in addition to the current ability to extend the Retail Completion Date for six months pursuant to Section 9(C) and (ii) if All Aboard commences construction of the Retail Component on Block 56 prior to May 15, 2016, the time for completion of the construction of the Retail Component shall be extended for the number of days between said commencement date and May 15, 2016. Further, All Aboard may extend the Retail Completion Date in pursuant to Section 9(C) of the Declaration by making one payment of Two Hundred Fifty Thousand and No/Dollars (\$250,000.00) which payment will extend the Retail Completion Date.

6. Indemnification Agreement. Overtown Gateway and All Aboard are proposing that Section 7f of the Settlement Agreement be modified to reflect that in lieu of the Indemnification Agreement, each of Overtown Gateway and All Aboard may submit an alternative risk management solution(s) acceptable to the Mayor, or its designee, in lieu of requiring Miami-Dade County Commission approval of the alternative risk management solution(s).

7. Parking. Overtown Gateway agrees to provide 150 parking spaces in excess of code requirements existing at the time of commencement of vertical construction with respect to the development on Block 45, and All Aboard agrees to provide 150 parking spaces in excess of code requirements existing at the time of commencement of vertical construction on Block 56.

8. Development Agreements.

(a) The CRA shall negotiate two (2) separate development agreements: one with All Aboard for Block 56 and one with Overtown Gateway for Block 45.

(b) The failure to execute a Development Agreement with respect to one block shall only require the CRA to terminate negotiations with that Developer and issue a new Developer Opportunity for that block.