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OF COUNTY COMMISSIONERS
MIAMI-DADE COUNTY, FLORIDA

MEMORANDUM

Agenda Item No. 11(A)(13)

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

DATE: May 5, 2015

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

SUBJECT: Resolution authorizing a six month extension of certain deadlines set forth in Amended and Restated Declaration of Restrictions between Miami-Dade County and Southeast Overtown Park West Community Redevelopment Agency for development on Block 45 located in Miami-Dade County, Florida without cost to developer; authorizing Mayor to execute First Amendment to such Declaration of Restrictions Memorializing approval of such extensions, subject to satisfaction of conditions

Resolution No. R-430-15

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

R. A. Cuevas, Jr.
County Attorney

RAC/lmp

MEMORANDUM
(Revised)

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

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Please note any items checked.

_____ **"3-Day Rule" for committees applicable if raised**

_____ **6 weeks required between first reading and public hearing**

_____ **4 weeks notification to municipal officials required prior to public hearing**

_____ **Decreases revenues or increases expenditures without balancing budget**

_____ **Budget required**

_____ **Statement of fiscal impact required**

_____ **Ordinance creating a new board requires detailed County Mayor's report for public hearing**

_____ **No committee review**

_____ **Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous _____) to approve**

_____ **Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required**

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 11(A)(13)
5-5-15

RESOLUTION NO. R-430-15

RESOLUTION AUTHORIZING A SIX MONTH EXTENSION OF CERTAIN DEADLINES SET FORTH IN AMENDED AND RESTATED DECLARATION OF RESTRICTIONS BETWEEN MIAMI-DADE COUNTY AND SOUTHEAST OVERTOWN PARK WEST COMMUNITY REDEVELOPMENT AGENCY FOR DEVELOPMENT ON BLOCK 45 LOCATED IN MIAMI-DADE COUNTY, FLORIDA WITHOUT COST TO DEVELOPER; AUTHORIZING MAYOR OR MAYOR'S DESIGNEE TO EXECUTE FIRST AMENDMENT TO SUCH DECLARATION OF RESTRICTIONS MEMORIALIZING APPROVAL OF SUCH EXTENSIONS, SUBJECT TO SATISFACTION OF CONDITIONS

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

WHEREAS, in accordance with the terms of the settlement agreement, the CRA and the County executed and recorded a Declaration of Restrictions (the "Declaration") against Block 45, which set forth requirements for development on such Block, including a retail component and a residential component; and

WHEREAS, the CRA selected and approved Overtown Gateway Partners, LLC as the developer of Block 45 (the "Developer"), subject to the CRA entering into a development agreement in accordance with the provisions of the Declaration, and the Developer was approved by this Board; and

WHEREAS, the Developer requested certain variances to the Declaration prior to entering into the development agreement, which were incorporated into an Amended and Restated Declaration of Restrictions for Block 45 (the "Amended Declaration), and the CRA subsequently entered into a development agreement with the Developer; and

WHEREAS, the Amended Declaration requires the Developer to commence vertical construction of the retail and residential components on Block 45 no later than May 15, 2016 (the "Vertical Construction Commencement Deadline"); and

WHEREAS, the Amended Declaration requires the Developer to substantially complete the Residential Component on or before May 15, 2018 (the "Residential Completion Deadline") and to substantially complete the Retail Component on or before May 15, 2018 (the "Retail Completion Deadline"), subject to any extension rights provided in the Amended Declaration; and

WHEREAS, the Amended Declaration provides that notwithstanding any other provision in the Amended Declaration, in the event that the Developer does not commence vertical construction by May 15, 2016, Block 45 would revert to the County upon request; and

WHEREAS, the Amended Declaration provides that the Retail Completion Deadline and Residential Completion Deadline can be extended for an additional six months by paying $250,000.00 each to the County and the CRA; and

WHEREAS, the Developer has expressed concern about the ability to comply with the current Vertical Construction Commencement Deadline in the Amended Declaration due to unanticipated delays, as set forth in the letter from the Developer attached as Exhibit "A"; and

WHEREAS, the Developer has requested that the CRA and the County agree to extend the Vertical Construction Commencement Deadline by a six month period, thereby extending the date of reverter, the Residential Completion Deadline, and the Retail Completion Deadline by six months; and

WHEREAS, in light of the foregoing, the Board finds that a six month extension is a reasonable period of time to extend the Vertical Construction Commencement Deadline, which would likewise extend the Residential Completion Deadline, the Retail Completion Deadline and the date of reverter, based upon the unanticipated delays; and

WHEREAS, the requested extension and amendment to the Amended Declaration would require the approval of the respective boards of both the County and the CRA,

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

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

Section 2. This Board authorizes an extension of certain deadlines set forth in the Amended Declaration as follows: (a) a six month extension of the Vertical Construction Commencement Deadline from May 15, 2016 to November 15, 2016; (b) a six month extension of the Residential Completion Deadline from May 15, 2018 to November 15, 2018; (c) a six month extension of the Retail Completion Deadline from May 15, 2018 to November 15, 2018; and (d) a six month extension of the date of reverter to the County if vertical construction does not commence by the Vertical Commencement Construction Deadline, from May 15, 2016 to November 15, 2016. These time extensions shall be memorialized in an amendment to the Amended Declaration, which amendment shall be referred to as the "First Amendment to Amended Declaration." This extension does not alter any provisions of the Amended Declaration, other than as set forth herein, including the ability of the Executive Director of the CRA to extend certain time frames by 10 percent as set forth in paragraph 17 of the Amended

"CRA Option"), or the Developer's ability to obtain an extension of the Residential Completion Deadline and Retail Completion Deadline by paying $250,000 to each of the County and the CRA as set forth in paragraph 8B of the Amended Declaration.

Section 3. The Mayor or the Mayor's designee is authorized to execute the First Amendment to Amended Declaration, after consultation with the County Attorney's Office subject to satisfaction of all of the following conditions: (a) full and binding authority by the CRA board authorizing all of the time extensions set forth in Section 2 herein and approving such First Amendment to Amended Declaration; and (b) execution by the CRA of the First Amendment to Amended Declaration. In the event that the CRA board does not approve each term and condition set forth herein on the identical terms and conditions set forth herein, then any such changes or additions shall be presented to this Board for consideration, and must be approved by this Board prior to the Mayor's or Mayor's designee's execution of the First Amendment to Amended Declaration.

Section 4. This Board authorizes the foregoing extensions without cost to the Developer in light of the unanticipated delay, contingent upon a finding by the CRA board that such extensions are likewise without cost to the Developer. Any future extensions (excepting the CRA Option under the terms set forth in Paragraph 17 of the Amended Declaration), shall be subject to the payment of no less than $250,000.00 to each of the CRA and the County, as set forth in the Amended Declaration.

Section 5. Pursuant to Resolution No. R-974-09, the Board directs the County Mayor or the County Mayor's designee to record the First Amendment to Amended Declaration approved 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 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 including the drafting of the First Amendment to Amended Declaration, as approved by the County Attorneys' Office, in accordance herewith.

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

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

The Chairperson thereupon declared the resolution duly passed and adopted this 5th day of May, 2015. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this Resolution and the filing of this approval with the Clerk of the Board.

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

HARVEY RUVIN, CLERK

By: *Christopher Agrippa*
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

Debra Herman

EXHIBIT "A"

OVERTOWN GATEWAY PARTNERS, LLC

2020 Ponce De Leon Boulevard, Suite 907, Coral Gables, Florida 33134

March 3, 2015

Honorable Commissioner Edmonson
Miami-Dade County, District 3
Martin Luther King Building
2525 NW 62nd Street
Suite 4200
Miami, Florida 33147

Re: Deadlines in Declaration of Restrictions for Block 45 (the "Declaration")

Dear Commissioner Edmonson:

Overtown Gateway Partners writes to request your consideration of select amendments to the Declaration. Specifically, we request that (i) the deadline for commencement of construction be extended by six (6) months and (ii) the subsequent deadlines be shifted by an equal amount of time.

Our team anticipates spending over $1 million to complete all pre-construction activities required prior to commencement of construction. Given the delays discussed below, we are concerned that the existing deadlines present risk of loss after we would have invested significant dollars for pre-construction.

We ask that the deadlines be extended as follows:

- Commencement of Construction – November 15, 2016; now May 15, 2016
- Residential Completion Date – November 15, 2018; now May 15, 2018
- Retail Completion Date – November 15, 2018; now May 15, 2018

These extensions are moderate; ranging between sixteen percent (16%) for commencement and ten percent (10%) for completion.

As background, the Declaration deadlines were established in relation to the recordation for the original Declaration in May 2013. All subsequent deadlines were set in relation to this date with intent to provide reasonable timeframes for a would-be developer. The deadline for commencement of construction was set to provide a three (3) year window of time; hence May 15, 2016. The completion deadlines for the Retail and Residential Components were set to provide a five (5) year window of time; hence May 15, 2018.

Our extension request is necessary due to a combination of the significant time that was expended during the RFP to finalize selection our team as the preferred developer

and also unanticipated delays in finalizing various supplementary agreements with the Southeast Overtown / Park West CRA (the "CRA").

The award process was an extended one that did not officially finish until late January 2014. By then, eight and one-half (8.5) months of time had been lost with regards to the window of time provided for commencement of construction. In addition to the Development Agreement, the CRA established various supplementary agreements as requirements. Due to circumstances beyond our control and unanticipated, there was significant delay in finalizing these agreements. As a result, further time was lost from the window for commencement of construction.

The intended window for the commencement of construction has been substantially shortened by circumstances that we did not materially influence. We are seeking this extension to provide reasonable time for completion of our preconstruction activities.

Thank you for your gracious time. We welcome further discussion, if you deem appropriate.

Sincerely,

Barron Channer
Authorize Representative
Overtown Gateway Partners, LLC