

MEMORANDUM

Agenda Item No. 11(A)(11)

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

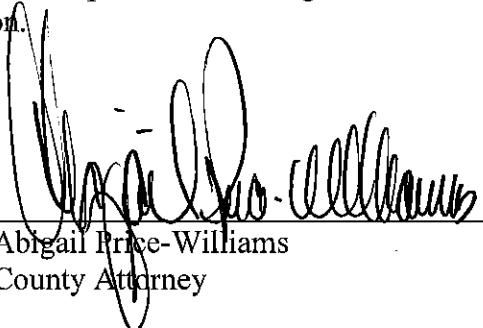
DATE: July 6, 2016

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Resolution authorizing Third Amendment to declaration of restrictions between Miami-Dade County and Southeast Overtown/Park West Community Redevelopment Agency to provide the developer with the option of paying two up front lump sum payments as an alternative to making annual payments to the County and the CRA as set forth in the current declaration and prior amendments, approving agreement between Lyric Development LLC and the County regarding payment of additional funds into the Community Benefits Program, and authorizing County Mayor to execute same, to exercise all rights set forth therein, and to perform all acts necessary to effectuate same

Resolution No. R-659-16

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


Abigail Price-Williams
County Attorney

APW/smm



MEMORANDUM
(Revised)

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

DATE: July 6, 2016

FROM: Abigail Price-Williams
County Attorney

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

Please note any items checked.

- "3-Day Rule" for committees applicable if raised
- 6 weeks required between first reading and public hearing
- 4 weeks notification to municipal officials required prior to public hearing
- Decreases revenues or increases expenditures without balancing budget
- Budget required
- Statement of fiscal impact required
- Statement of social equity required
- Ordinance creating a new board requires detailed County Mayor's report for public hearing
- No committee review
- Applicable legislation requires more than a majority vote (i.e., 2/3's _____, 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)(11)
7-6-16

RESOLUTION NO. R-659-16

RESOLUTION AUTHORIZING THIRD AMENDMENT TO DECLARATION OF RESTRICTIONS BETWEEN MIAMI-DADE COUNTY AND SOUTHEAST OVERTOWN/PARK WEST COMMUNITY REDEVELOPMENT AGENCY TO PROVIDE THE DEVELOPER WITH THE OPTION OF PAYING TWO UP FRONT LUMP SUM PAYMENTS AS AN ALTERNATIVE TO MAKING ANNUAL PAYMENTS TO THE COUNTY AND THE CRA AS SET FORTH IN THE CURRENT DECLARATION AND PRIOR AMENDMENTS, APPROVING AGREEMENT BETWEEN LYRIC DEVELOPMENT LLC AND THE COUNTY REGARDING PAYMENT OF ADDITIONAL FUNDS INTO THE COMMUNITY BENEFITS PROGRAM, AND AUTHORIZING COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE SAME, TO EXERCISE ALL RIGHTS SET FORTH THEREIN, AND TO PERFORM ALL ACTS NECESSARY TO EFFECTUATE SAME

WHEREAS, pursuant to Resolution No. R-294-13, this 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 36, which set forth requirements for development on such Block, including a retail component and certain project payments to the County and the CRA; and

WHEREAS, the settlement agreement preapproved The Gatehouse Group, LLC or its affiliate (in this case Lyric Development LLC) as the Developer of Block 36 (the "Developer"), subject to the CRA entering into a development agreement in accordance with the provisions of the Declaration; and

WHEREAS, the Developer requested certain variances to the Declaration which were incorporated into an Amendment to Declaration of Restrictions, as well as a subsequent Second Amendment to Declaration of Restrictions (Declaration, Amendment and Second Amendment collectively referred to as the “Amended Declaration”), and the CRA entered into a development agreement with the Developer; and

WHEREAS, the Declaration provides for project payments to both the CRA and the County including the higher of 1) \$38,500.00 per year for the first five years, with an increase of 3 percent per year for each year thereafter, or 2) 2.5 percent of the gross rent, for a 25 year period (the “Project Payment”), commencing the earlier of 30 days from the issuance of a temporary certificate of occupancy or its equivalent, or five years from the date of recordation of the Declaration (May 15, 2013); and

WHEREAS, the Amendment to Declaration of Restrictions provides for additional annual project payments by the Developer of \$50,000.00 per year, for a 10 year period into a community benefits program to be established in the Southeast Overtown/Park West Redevelopment Area (the “Community Benefit Project Payments”), commencing on the date that the CRA conveys title to the property to the Developer (no later than November 14, 2017); and

WHEREAS, the Developer has requested the option to pay upfront lump sum payments in lieu of annual Project Payments and Community Benefit Project Payments under the current Amended Declaration; and

WHEREAS, administration for the County has recommended a lump sum amount after converting such annual payments to lump sum payments, including \$395,635.00 as an upfront Community Benefit Project Payment, and \$785,421.25 each to the CRA and the County for an

upfront Project Payment plus a proportionate increase if the proposed Retail Project exceeds 63,250 square feet (i.e. if the proposed project exceeds 63,250 by 10 percent, then the payments due to each of the CRA and the County shall increase by 10 percent); and

WHEREAS, as a further inducement, the Developer has offered to pay an additional \$100,000.00 into the Community Benefits Program on the terms set forth in the Agreement attached as Exhibit "B" (the "Agreement"), and such additional payment is recommended by the County administration; and

WHEREAS, the requested amendment to the Amended Declaration requires the approval of the respective boards of both the County and the CRA; and

WHEREAS, the CRA Board has approved the Third Amendment to Declaration, and has authorized the Executive Director of the CRA to enter into the Declaration amendment in the form and substance approved by special counsel to the CRA, as reflected in the resolution attached as Exhibit "C"; and

WHEREAS, special counsel to the CRA has approved the form and substance of the Third Amendment to Declaration attached hereto as Exhibit "A" (the "Third Amendment to Declaration"),

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

Section 1. This Board incorporates and approves the foregoing recitals as if fully set forth herein.

Section 2. This Board authorizes the Third Amendment to Declaration in substantially the form attached hereto as Exhibit "A."

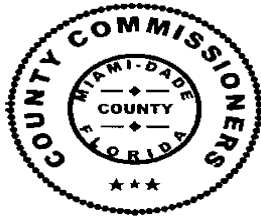
Section 3. The County Mayor or County Mayor’s designee is authorized to execute the Third Amendment to Declaration in substantially the form attached hereto as Exhibit “A,” to execute the Agreement in substantially the form attached as Exhibit “B,” to exercise all rights set forth in the Agreement and the Third Amendment to Declaration, to perform all acts necessary to effectuate same, and to appoint staff to monitor compliance with the Declaration of Restrictions, including all amendments thereto, and the Agreement. The Board’s approval of the Third Amendment to Declaration is contingent upon the Developer’s compliance with the terms of the Agreement which is a condition subsequent.

Section 4. Pursuant to Resolution No. R-974-09, the Board directs the County Mayor or County Mayor’s designee to record the Third Amendment to Declaration and the Agreement approved herein in the Public Records of Miami-Dade County, Florida; and to provide a recorded copy of such instruments to the Clerk of the Board within 30 days of execution of said instruments; 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 **Dennis C. Moss**, 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 | aye | Rebeca Sosa | aye |
| Sen. Javier D. Souto | aye | Xavier L. Suarez | aye |
| Juan C. Zapata | aye | | |

The Chairperson thereupon declared the resolution duly passed and adopted this 6th day of July, 2016. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this Resolution and the filing of this approval with the Clerk of the Board.



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

HARVEY RUVIN, CLERK

By: **Christopher Agrippa**
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

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

Debra Herman

Prepared by:
William R. Bloom, Esq.
Holland & Knight LLP
701 Brickell Avenue, Suite 3300
Miami, FL 33131

THIRD AMENDMENT TO DECLARATION OF RESTRICTIONS

THIS THIRD AMENDMENT is made and entered into as of _____, 2016, by and between the SOUTHEAST OVERTOWN/PARK WEST COMMUNITY REDEVELOPMENT AGENCY, a public agency and body corporate created pursuant to Section 163.358, Florida Statutes (the "CRA") and MIAMI-DADE COUNTY, FLORIDA, a political subdivision of the State of Florida (the "County").

RECITALS

A. The County and the CRA entered into that certain Declaration of Restrictions recorded May 15, 2013 in Official Records Book 28631, at Page 1277 of the Public Records of Miami-Dade County, Florida (the "Original Declaration"); as amended by Amendment to Declaration of Restrictions by and between the County and the CRA dated August 21, 2014 and recorded September 9, 2014 in Official Records Book 29302, at Page 2873 of the Public Records of Miami-Dade County, Florida (the "First Amendment"); as amended by the Second Amendment to Declaration of Restrictions by and between the County and the CRA dated May 14, 2015 and recorded May 18, 2015 in Official Records Book 29620 at Page 3008 of the Public Records of Miami-Dade County (the "Second Amendment"); together with the Original Declaration and the First Amendment, collectively the "Declaration.")

B. The County and the CRA desire to modify and amend certain terms and provisions of the Declaration, as hereinafter provided.

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

1. Recitals. The Recitals to this Third Amendment are correct and are incorporated herein by reference.
2. Defined Terms. All defined terms utilized in this Third Amendment but not defined in this Third Amendment shall have the meanings ascribed to said terms in the Declaration.
3. The Declaration is hereby amended to add the following language:

- (a) Lump Sum Payments. As an alternative to the annual Project Payments set forth in Section 17 of the Original Declaration and in lieu of the payments with respect to the Program set forth in Section 9 of the First Amendment, the Developer may elect by written notice to the CRA and to the County, at least twenty (20) days prior to the conveyance of the Property by the CRA to the Developer, to make a lump sum Project Payment of Seven Hundred Eighty Five Thousand Four Hundred Twenty One and 25/100 Dollars (\$785,421.25) to the County and a lump sum Project Payment of Seven Hundred Eighty Five Thousand Four Hundred Twenty One and 25/100 Dollars (\$785,421.25) to the CRA simultaneously with the conveyance of the Property by the CRA to the Developer, provided, however, that if the Retail Component, based upon the plans and specifications approved or deemed approved by the Executive Director of the CRA, exceeds 63,250 square feet, then the lump sum Project Payments due the County and the CRA shall increase proportionately (i.e. if the Retail Component exceeds 63,250 square feet by 10% - 69,575 square feet - the lump sum Project Payments due to the CRA and the County to be made simultaneously with the conveyance of the Property by the CRA to the Developer, shall be increased by 10% to Eight Hundred Sixty Three Thousand Nine Hundred Sixty Three and 38/100 Dollars (\$863,963.38) each). In addition, the Developer shall be required to make a lump sum payment of Three Hundred Ninety Five Thousand Six Hundred Thirty Five and No/100 Dollars (\$395,635.00) into the Program simultaneously with the conveyance of the Property by the CRA to the Developer in lieu of the payments required with respect to the Program in Section 9 of the First Amendment. The prepayment option in favor of the Developer is a one time right and if not timely exercised is deemed waived.
- (b) Development of the Property. The requirement under the Declaration that the Developer construct a Retail Component containing a minimum of 55,000 square feet and a sufficient number of parking spaces not less than as required by applicable building codes is not intended to limit any additional or other types of uses of the Property, such as a multifamily residential component in addition to the Retail Component, except as prohibited under applicable zoning and building codes, or other applicable law.
- (c) Additional Payments. The Developer shall not make any payment to the CRA without paying an equal amount to the County, or to the County without paying an equal amount to the CRA with respect to (i) any additional Project Payment(s) and/or (ii) any compensation or payment related to or arising from the sale, transfer or assignment of the Property by the Developer to any other person or entity (noting however that there is no present right, obligation, or requirement for the payment set forth in (c)(ii)). This paragraph shall not apply to any payments made by the Developer into the Program, or any payments

which are currently set forth under the existing terms of the Development Agreement between the CRA and the Developer.

- (d) Successor to the CRA. In the event of a termination of the CRA, the City shall be successor to the CRA for all purposes under the Declaration. In such event, all references in the Declaration to the CRA shall be deemed references to the City, all references in the Declaration to the approval by the Board of the CRA shall be deemed references to the Board of the City and all references in the Declaration to the Executive Director of the CRA shall be deemed references to the Mayor of the City for all purposes under the Declaration.
- (e) 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. This section shall be in addition to any other remedies available at law, in equity, or both.
- (f) 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.
- (g) 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.
- (h) 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 perogatives 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.
- (i) Governing Law. This Declaration shall be construed and governed in accordance with the laws of the State of Florida, without application of conflict of law principles. Venue shall be in the Circuit Court in and for Miami-Dade County, Florida.

4. Conflict. In the event of a conflict between the terms and provisions of this Third Amendment and the terms and provisions of the Declaration, the provisions of this Amendment shall control.

5. Ratification. Except as herein modified, the CRA and the County ratify and reaffirm all terms and provisions of the Declaration as modified by this Third Amendment.

[SIGNATURE PAGES TO FOLLOW]

IN WITNESS WHEREOF, the County and the CRA have executed this Amendment as of the date first above written.

Witnesses:

CRA:

Southeast Overtown/Park West Community Redevelopment Agency, a public agency and body corporate created pursuant to Section 163.358, Florida Statutes

Printed Name: _____

By: _____
Clarence E. Woods, III
Executive Director

Printed Name: _____

ATTEST:

Clerk of the Board

Pursuant to CRA Reso. No. CRA-R-15-_____

By: _____

Approved for legal sufficiency

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

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

The foregoing instrument was acknowledged before me this ____ day of _____, 2016, 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)

Notary Public - State of _____
Commission Number: _____

Printed Name: _____

Printed Name: _____

Pursuant to County Resolution No. R-__ - __

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: _____

AGREEMENT

THIS AGREEMENT is made and entered into as of _____, 2016, by and between LYRIC DEVELOPMENT LLC (the "Developer") its successors and assigns, and MIAMI-DADE COUNTY, a political subdivision of the State of Florida (the "County").

RECITALS

WHEREAS, the County and Southeast Overtown/Park West Community Redevelopment Agency (the "CRA") executed and recorded a Declaration of Restrictions against Block 36, recorded May 15, 2013 in Official Records Book 28631, at Page 1277 of the Public Records of Miami-Dade County, Florida, which set forth requirements for development on such Block, including certain project payments to the County and the CRA, and subsequently amended such Declaration on two subsequent occasions, recorded in Official Records Book 29302, at Page 2873 and Official Records Book 29620 at Page 3008, of the Public Records of Miami-Dade County, Florida (collectively the "Declaration"); and

WHEREAS, the Declaration provides for payment by the Developer into a community benefits program to be established in the Southeast Overtown/Park West Redevelopment Area (the "Community Benefits Program"); and

WHEREAS, the Developer has requested the option to pay upfront lump sum payments in lieu of annual Project Payments and Community Benefit Project Payments under the current Declaration; and

WHEREAS, as further inducement to the County's consideration and approval of the requested lump sum option, the Developer has offered to contribute an additional and separate lump sum payment of \$100,000.00 into the Community Benefits Program bringing the total payment into the Community Benefits Program up to \$495,635.00,

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 Developer agree as follows:

1. The recitals above are adopted and incorporated herein by reference.
2. The County and the Developer, its successors and assigns, agree to contribute an additional lump sum payment of \$100,000.00 into the Community Benefits Program in the event that the Developer exercises its option under the Third Amendment to Declaration to pay upfront lump sum payments in lieu of annual Project Payments or Community Benefit Project Payments under the current Declaration, and the Developer agrees that such payment is a condition precedent the County's approval of such option and to the exercise of such option by the Developer or any or its successors or assigns. Such payment shall be made contemporaneously with the Developer's other lump sum payments in the event the option is exercised under the terms of the Third Amendment to Declaration.
3. This Agreement may not be assigned by the Developer absent the consent of the Miami-Dade County Mayor or Mayor's designee.

4. This Agreement shall be construed and governed in accordance with the laws of the State of Florida, without application of conflict of law principles. Venue shall be in the Circuit Court in and for Miami-Dade County, Florida. In the event that the Developer breaches this Agreement, the County's approval of the lump sum payment option shall be null and void.

[SIGNATURE PAGES TO FOLLOW]

IN WITNESS WHEREOF, the County and the Developer have executed this Agreement as of the date first above written.

COUNTY:

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

Printed Name: _____

By: _____

Printed Name: _____

Pursuant to County Resolution No. R-__-__

ATTEST:

Harvey Ruvin, Clerk

By: _____

Deputy Clerk

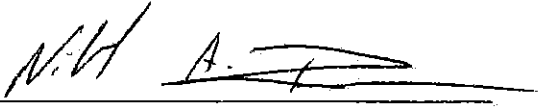
Approved for legal sufficiency
County Attorney

By: _____

DEVELOPER:

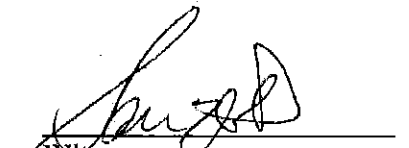
LYRIC DEVELOPMENT LLC,
a Florida limited liability company

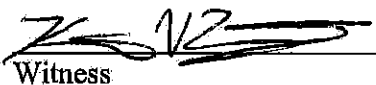
The Gatehouse Group, Inc.,
a Massachusetts corporation,
Its manager

By: 

Name: Nikul A. Inamdar

Title: Vice President


Witness
SANTIR ZAHAF
Print Name


Witness
Kier V. Turpin
Print Name

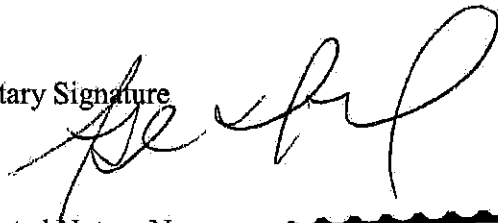
**STATE OF FLORIDA
COUNTY OF MIAMI-DADE**

I HEREBY CERTIFY, that on this 18th day of May, A.D. 2016, before me, an officer duly authorized to administer oaths and take acknowledgments, personally appeared Niket A. Isandar, personally known to me, or proven, by producing the following identification: to be a duly authorized representative of Lyric Development, LLC, a Limited Liability Company existing under the laws of the State of Florida, and in whose name the foregoing instrument is executed and that said member/managing member/manager severally acknowledged before me that he executed said instrument acting under the authority duly vested by said Limited Liability Company freely and voluntary for the purposes therein expressed.

WITNESS my hand and official seal in the County and State aforesaid, the day and year last aforesaid.

NOTARY SEAL/STAMP

Notary Signature

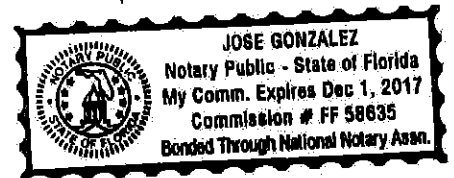


Printed Notary Name

Notary Public, State of

My commission expires:

Commission/Serial No. FF58635





City of Miami
Certified Copy

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

File Number: 15-01609

Enactment Number: CRA-R-15-0054

A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE SOUTHEAST OVERTOWN/PARK WEST COMMUNITY REDEVELOPMENT AGENCY ("CRA"), WITH ATTACHMENT(S); AUTHORIZING THE EXECUTIVE DIRECTOR OF THE CRA TO ENTER INTO AN AMENDMENT (THE "DECLARATION AMENDMENT") WITH MIAMI-DADE COUNTY, FLORIDA (THE "COUNTY") TO THE DECLARATION OF RESTRICTIONS RECORDED IN OFFICIAL RECORDS BOOK 28631, AT PAGE 1277 OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY WITH RESPECT TO BLOCK 36, AS AMENDED (THE "BLOCK 36 DECLARATION"), TO GRANT THE DEVELOPER AS DEFINED IN THE BLOCK 36 DECLARATION THE OPTION OF MAKING A LUMP SUM PAYMENT TO THE CRA IN THE AMOUNT OF \$785,421.25 AND A LUMP SUM PAYMENT TO THE COUNTY IN THE AMOUNT OF \$785,421.25 IN LIEU OF THE DEVELOPER MAKING THE PAYMENTS CONTEMPLATED BY SECTION 17 OF THE BLOCK 36 DECLARATION, WHICH PAYMENTS WILL INCREASE PROPORTIONATELY IF THE PROPOSED PROJECT EXCEEDS 63,250 SQUARE FEET (I.E., IF THE PROPOSED PROJECT EXCEEDS 63,250 SQUARE FEET BY 10% THE PAYMENTS DUE TO EACH OF THE CRA AND THE COUNTY SHALL INCREASE BY 10%) AND A LUMP SUM PAYMENT TO THE COUNTY IN THE AMOUNT OF \$395,636.00 IN LIEU OF THE COMMUNITY BENEFITS PAYMENTS CONTEMPLATED BY THE BLOCK 36 DECLARATION WHICH LUMP SUM PAYMENTS WILL BE DUE ON THE DATE THE CRA CONVEYS TITLE TO THE PROPERTY TO THE DEVELOPER IF APPROVED BY THE COUNTY; AND AUTHORIZING THE EXECUTIVE DIRECTOR TO ENTER INTO AN AMENDMENT TO THE DEVELOPMENT AGREEMENT BY AND BETWEEN LYRIC DEVELOPMENT, LLC, A FLORIDA LIMITED LIABILITY COMPANY (THE "DEVELOPER") AND THE CRA DATED DECEMBER 17, 2012, AS AMENDED, TO ALLOW FOR THE CORRESPONDING OPTION TO MAKE THE LUMP SUM PAYMENTS TO THE CRA AND THE COUNTY IN ACCORDANCE WITH THE TERMS OF THE DECLARATION AMENDMENT.

WHEREAS, in accordance with the Settlement Agreement between the City of Miami, the County, and the CRA, dated May 9, 2013 (the "Settlement Agreement"), the County and the CRA executed that Declaration of Restrictions with respect to Block 36 which was recorded in Official Records Book 28631, at Page 1277 of the Public Records of Miami-Dade County, Florida, as amended by Amendment to Declaration of Restrictions recorded in Official Records Book 29302, at Page 2873 of the Public Records of Miami-Dade County, Florida, and as amended by Second Amendment to Declaration of Restrictions recorded in Official Records Book 29620, at Page 3008 of the Public Records of Miami-Dade County, Florida (collectively, the "Block 36 Declaration"); and

WHEREAS, the CRA and Lyric Development, LLC, a Florida limited liability company (the "Developer"), executed a Development Agreement dated December 17, 2012, as amended by Amendment to Development Agreement dated September 30, 2013, as amended by Second Amendment to Development Agreement dated July 7, 2014, and as amended by Third Amendment to

Development Agreement dated May 26, 2015 (collectively, the "Development Agreement") for the development of Block 36 and other land in compliance with the terms of the Block 36 Declaration.

WHEREAS, the Developer has requested the County and the CRA enter into an amendment to the Block 36 Declaration (the "Declaration Amendment") to allow the Developer the option of making a lump sum payment to the CRA in the amount of \$785,421.25 and a lump sum payment to the County in the amount of \$785,421.25 in lieu of the Developer making the payments contemplated by Section 17 of the Block 36 Declaration, which lump sum payments will increase proportionately if the proposed project exceeds 63,250 square feet (i.e., if the proposed project exceeds 63,250 square feet by 10% (69,575 square feet) the lump sum payments due each of the CRA and the County shall be increased by 10% to \$863,963.38 each) and a lump sum payment to the County in the amount of \$395,636.00 in lieu of the Community Benefits Payments contemplated by the Block 36 Declaration which lump sum payments shall be due on the date the CRA conveys title to Block 36 to the Developer, if the Declaration Amendment is approved by the County, which payments are described in Exhibit "A" attached hereto.

WHEREAS, the Developer has requested that the CRA enter into an amendment to the Development Agreement (the "Development Agreement Amendment") to allow the corresponding option to make the lump sum payments to the CRA and the County in accordance with the terms of the Development Agreement if the County approves the Declaration Amendment.

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:

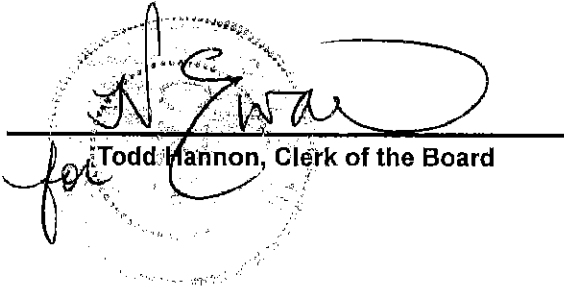
Section 1. The recitals and findings contained in the Preamble to this Resolution are adopted by reference and incorporated herein as if fully set forth in this Section.

Section 2. The Board of Commissioners hereby authorizes the Executive Director of the CRA to enter into the Declaration Amendment, in form and substance approved by special counsel to the CRA, with the County, if the County authorizes the Declaration Amendment.

Section 3. The Board of Commissioners hereby authorizes the Executive Director to enter into the Development Agreement Amendment, in form and substance approved by special counsel to the CRA, with the Developer if the County executes the Declaration Amendment.

Section 4. This Resolution shall become effective immediately upon its adoption.

I, Todd B. Hannon, City Clerk of the City of Miami, Florida, and keeper of the records thereof, do hereby certify that this constitutes a true and correct copy of CRA Resolution No. CRA-R-15-0054, with attachments, passed by the SEOPW Community Redevelopment Agency on 12/14/2015.



for **Todd Hannon, Clerk of the Board**

May 24, 2016

Date Certified

Exhibit "A"

17. Compensation.

Beginning the earlier of (a) thirty (30) days from the issuance of a temporary certificate of occupancy or its equivalent for the Retail Component or (b) five (5) years from the date of recordation of this Declaration, the Developer shall separately pay to each of the County and the CRA each year for twenty-five (25) years a sum of money commencing with the greater of Thirty Eight Thousand Five Hundred and No/100 Dollars (\$38,500.00) 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 the Gross Rent paid by tenants of the Property (the "Project Payment"). "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 associated with the Retail Component including parking revenues paid directly or indirectly to the owner of the Retail Component), 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.

A. The term "Project Payment" shall mean the then current annual payment due from the Developer to the County and the CRA. All subsequent Project Payments shall be due on the anniversary of the first payment. No Project Payment shall be due with respect to the Parking Component; however, any rent derived from the retail liner and/or office space, if any, shall be included in the calculation of Gross Rent attributable to the Retail Component.

B. [DELETED BY PRIOR AMENDMENT].

C. In the event Developer fails to make the Project Payment within ten (10) days of when due, Developer shall pay 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 Developer fails to make any Project Payment within thirty (30) days of when due such Project Payment shall bear interest at 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 thereof. In such event, the approval of the CRA shall not be required if the County chooses to waive its rights nor shall approval of the County be required in the event the CRA elects to waive its rights.

9. Community Benefits.

- a. In addition to the Project Payment Developer shall pay to a community benefits program to be established in the Southeast Overtown/Park West Redevelopment Area (the "Program") Fifty Thousand and No/100 Dollars (\$50,000.00) per year for ten (10) years to the Program with the first payment to commence on the date the CRA conveys title to the Property to the Developer and each anniversary thereof. The County shall act as the fiduciary for holding and disbursing funds contributed to the Program.
- b. In the event Developer fails to make the payment to the Program within ten (10) days of when due, the Developer shall pay each of the County and the CRA a late fee equal to five percent (5%) of the payment then due.
- c. In the event Developer fails to make any payment to the Program within thirty (30) days of when due such payment to the Program shall bear interest at 12% per annum from the date due until paid.

the approval of Gatehouse's proposed variance, if any), with no obligation on the part of the Board of County Commissioners to approve any such variances from this 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 an amendment to this Declaration to reflect the variances approved, or deemed approved, by the Board of County Commissioners.

16. Construction. 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.

→ 17. Compensation.

Beginning the earlier of (a) thirty (30) days from the issuance of a temporary certificate of occupancy or its equivalent for the Retail Component or (b) five (5) years from the date of recordation of this Declaration, the Developer shall separately pay to each of the County and the CRA each year for twenty-five (25) years a sum of money commencing with the greater of Thirty Eight Thousand Five Hundred and No/100 Dollars (\$38,500.00) 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 the Gross Rent paid by tenants of the Property (the "Project Payment"). "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 associated with the Retail Component including parking revenues paid directly or indirectly to the owner of the Retail Component), 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

EXHIBIT
"A"

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.

A. The term "Project Payment" shall mean the then current annual payment due from the Developer to the County and the CRA. All subsequent Project Payments shall be due on the anniversary of the first payment. No Project Payment shall be due with respect to the Parking Component; however, any rent derived from the retail liner and/or office space, if any, shall be included in the calculation of Gross Rent attributable to the Retail Component.

B. To the extent the gross revenues generated by the Parking Component exceed operating expenses of the Parking Component calculated in accordance with generally accepted accounting principles consistently apply, as confirmed by the CRA's auditors, the owner of the Parking Component shall pay to the County 2.5% of the net revenues derived from the operation of the Parking Component each year on an annual basis for twenty-five (25) years from the issuance of the temporary certificate of occupancy or its equivalent for the Parking Component.

C. In the event Developer fails to make the Project Payment within ten (10) days of when due, Developer shall pay 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 Developer fails to make any Project Payment within thirty (30) days of when due such Project Payment shall bear interest at 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 thereof. In such event, the approval of the CRA shall not be required if the County chooses to waive its rights nor shall approval of the County be required in the event the CRA elects to waive its rights.

[SIGNATURE PAGES TO FOLLOW]



City of Miami Master Report

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

Enactment Number: CRA-R-15-0054

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|---|----------------------------------|---|
| File Number: 15-01609 | File Type: CRA Resolution | Status: Passed |
| Version: 2 | Reference: | Controlling Body: SEOPW Community Redevelopment Agency |
| File Name: Approval of an amendment to the Declaration of Restrictions for Block 36 with Miami-Dade County and the approval of a corresponding change to the Development Agreement between the Southeast Overtown/Park West Community Redevelopment Agency and Lyric Devel | | Introduced: 12/9/2015 |
| Requester: | Cost: | Final Action: 12/14/2015 |

Title: A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE SOUTHEAST OVERTOWN/PARK WEST COMMUNITY REDEVELOPMENT AGENCY ("CRA"), WITH ATTACHMENT(S); AUTHORIZING THE EXECUTIVE DIRECTOR OF THE CRA TO ENTER INTO AN AMENDMENT (THE "DECLARATION AMENDMENT") WITH MIAMI-DADE COUNTY, FLORIDA (THE "COUNTY") TO THE DECLARATION OF RESTRICTIONS RECORDED IN OFFICIAL RECORDS BOOK 28631, AT PAGE 1277 OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY WITH RESPECT TO BLOCK 36, AS AMENDED (THE "BLOCK 36 DECLARATION"), TO GRANT THE DEVELOPER AS DEFINED IN THE BLOCK 36 DECLARATION THE OPTION OF MAKING A LUMP SUM PAYMENT TO THE CRA IN THE AMOUNT OF \$785,421.25 AND A LUMP SUM PAYMENT TO THE COUNTY IN THE AMOUNT OF \$785,421.25 IN LIEU OF THE DEVELOPER MAKING THE PAYMENTS CONTEMPLATED BY SECTION 17 OF THE BLOCK 36 DECLARATION, WHICH PAYMENTS WILL INCREASE PROPORTIONATELY IF THE PROPOSED PROJECT EXCEEDS 63,250 SQUARE FEET (I.E., IF THE PROPOSED PROJECT EXCEEDS 63,250 SQUARE FEET BY 10% THE PAYMENTS DUE TO EACH OF THE CRA AND THE COUNTY SHALL INCREASE BY 10%) AND A LUMP SUM PAYMENT TO THE COUNTY IN THE AMOUNT OF \$395,636.00 IN LIEU OF THE COMMUNITY BENEFITS PAYMENTS CONTEMPLATED BY THE BLOCK 36 DECLARATION WHICH LUMP SUM PAYMENTS WILL BE DUE ON THE DATE THE CRA CONVEYS TITLE TO THE PROPERTY TO THE DEVELOPER IF APPROVED BY THE COUNTY; AND AUTHORIZING THE EXECUTIVE DIRECTOR TO ENTER INTO AN AMENDMENT TO THE DEVELOPMENT AGREEMENT BY AND BETWEEN LYRIC DEVELOPMENT, LLC, A FLORIDA LIMITED LIABILITY COMPANY (THE "DEVELOPER") AND THE CRA DATED DECEMBER 17, 2012, AS AMENDED, TO ALLOW FOR THE CORRESPONDING OPTION TO MAKE THE LUMP SUM PAYMENTS TO THE CRA AND THE COUNTY IN ACCORDANCE WITH THE TERMS OF THE DECLARATION AMENDMENT.

Sponsors:

Notes:

Indexes:

Attachments: File # 15-01609 Cover Memo.pdf,File # 15-01609 Backup.pdf,File # 15-01609 Legislation.pdf,File # 15-01609 Legislation v2.pdf,File # 15-01609 Exhibit SUB.pdf,

History of Legislative File

| Version: | Acting Body: | Date: | Action: | Sent To: | Due Date: | Return Date: | Result: |
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City of Miami

Master Report

City Hall
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www.miamigov.com

Enactment Number: CRA-R-15-0054

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|---|---|------------|-------------------------------|------|
| 2 | SEOPW Community Redevelopment Agency | 12/14/2015 | ADOPTED WITH MODIFICATIONS | Pass |
| 2 | CRA Special Counsel | 1/12/2016 | Reviewed and Approved | |
