

# MEMORANDUM

Agenda Item No. 11(A)(9)

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

**DATE:** April 8, 2014

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

**SUBJECT:** Resolution accepting an  
alternative risk management  
solution as provided for in the  
settlement of the lawsuit between  
the City of Miami, the Southeast  
Overtown/Park West Community  
Redevelopment Agency and  
Miami-Dade County relating to  
Blocks 45 and 56

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



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R. A. Cuevas, Jr.  
County Attorney

RAC/smm

# Memorandum



**Date:** April 8, 2014

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

**From:** Carlos A. Gimenez  
Mayor

R. A. Cuevas, Jr.  
County Attorney

**Subject:** Approving the Alternate Risk Management Solution For Blocks 45 and 56

## **Recommendation**

It is recommended that the Board of County Commissioners (Board) adopt the accompanying resolution, which approves the Alternate Risk Management Solution for Blocks 45 and 56 (Blocks) proposed by All Aboard Florida Stations, LLC and Overtown Gateway Partners, LLC, (Developers).

The Developers were approved by the County, the City of Miami (City), and the Southeast Overtown/Park West Community Redevelopment Agency (CRA) for the development of Blocks 45 and 56. Under the Settlement Agreement, the Developers were required to indemnify the County, the City, and the CRA against claims by other parties arising from certain past transactions and litigation associated with the Blocks, or alternatively, to submit an alternative risk management solution for approval. The Developers have submitted a proposed alternative risk management solution providing for indemnification by a separate entity, as well as procuring a release from the prior litigants.

## **Scope**

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

## **Fiscal Impact/Funding Source**

The Alternate Risk Management Solution will not have a fiscal impact on the County.

## **Track Record/Monitor**

The County's Internal Services Department will monitor the progress of the development, the recording and preparation of any necessary 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. More specifically, R-294-13 authorized the Settlement Agreement entered into by the parties that required the CRA to conduct a solicitation for a developer of Blocks 45 and 56. The City, the CRA and the County each signed a release of claims against each other which were raised, or could have been raised, in the lawsuit.

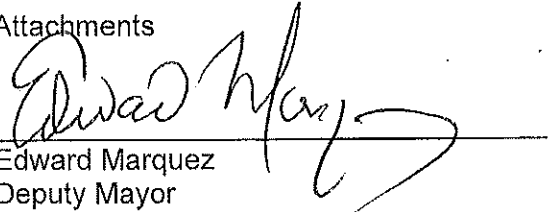
Additionally, as part of the Settlement Agreement, a Declaration of Restrictions was recorded against the Blocks, which provided parameters and requirements for the development of the Blocks. One such parameter was the requirement for the Developer to execute an

indemnification agreement, attached as Exhibit "A," regarding prior litigation by Sawyer's Walk Ltd. and Poinciana Village of Miami, Ltd. (collectively Sawyers Walk Entities) as to claims regarding their alleged development rights on the Blocks. Subsequently, through Resolution R-860-13, the County approved the selection of the Developers in addition to multiple variances to the original Declaration of Restrictions. One of the approved variances to the Declaration of Restrictions provided that as an alternative, the County could accept an indemnification by the City or the CRA if authorized by their respective Boards. As another alternative, the original Settlement Agreement provided that the Developers could submit an alternative risk management solution, subject to approval by the CRA and the County.

Subsequent to the County approval of the variances pursuant to Resolution No. 860-13, the Developers asserted that the indemnification requirement has made obtaining bank financing for the project more difficult, and have therefore proposed an alternative risk management solution to the County, the CRA and the City as permitted by the terms of the original Settlement Agreement. Accordingly, the Developers requested an alternative risk management solution (via proposed Development Agreements submitted to the CRA) for each respective block, proposing that: 1) the Sawyers Walk Entities would provide a release of all claims against the City, the CRA and the County, 2) the Sawyers Walk Entities would indemnify the City, the County and the CRA, and 3) the Developers would each pay \$500,000 to the CRA, and the CRA would pay the Sawyers Walk Entities these funds as consideration for the releases and indemnification. The CRA also has approved a separate development agreement with the Sawyers Walk Entities conveying a separate CRA-owned block (Block 46) to them, provided that they execute the release and indemnification as to the City, the CRA and the County, attached as Exhibits B and C, as well as an opinion letter from counsel for the Sawyers Walk Entities confirming that the release and indemnification are enforceable and binding. Although the County does not approve the Development Agreements under the terms of the Settlement Agreement, it is required to approve any variances to terms of the Declaration of Restrictions as well as any variances to the indemnification requirement as originally set forth under the terms of the Settlement Agreement.

In the event that the Sawyers Walk Entities do not have similar assets to the current Developers (All Aboard and Gateway), then certain risks would exist regarding accepting indemnification from the alternative entity if there are insufficient assets to cover the indemnification. Additionally, the County has no way of determining whether the Sawyers Walk Entities have assigned their claims to another entity. However, the Sawyers Walk Entities have proposed executing the release attached as Exhibit B in addition to the indemnification. Accordingly, in order to mitigate these risks, and to allow All Aboard and Gateway to more easily obtain financing and to proceed with the project, staff recommends approval of an alternative risk management solution, provided that the Sawyers Walk Entities 1) execute the indemnification in substantially the form attached as Exhibit C, 2) execute a general release of the County, 3) provide an opinion letter from counsel, acceptable to staff, confirming that the release and indemnification are enforceable and binding, and 4) execute an affidavit that the subject claims have not been transferred to any other person or entity.

Attachments



Edward Marquez  
Deputy Mayor

### Indemnification Agreement

This Indemnification Agreement (this "Agreement"), dated this \_\_\_\_\_ day of \_\_\_\_\_, 2013, is executed by [\_\_\_\_\_] a \_\_\_\_\_ (the "Indemnitor"), in favor of CITY OF MIAMI, a Florida municipal corporation (the "City"), MIAMI-DADE COUNTY, FLORIDA, a political subdivision of the State of Florida (the "County") and SOUTHEAST OVERTOWN/PARK WEST COMMUNITY REDEVELOPMENT AGENCY, a public agency and body corporate created pursuant to Section 163.356, Florida Statutes (the "CRA;" and together with the City and the County, individually and collectively, the "Indemnitee").

### RECITALS

A. City previously issued a request for proposals (as may have been amended from time to time, the "Poinciana RFP") with respect to that certain real property located in Miami-Dade County, Florida more particularly described on Exhibit "A" attached hereto and made a part hereof (the "Poinciana Village Project").

B. A response to the Poinciana RFP was submitted by Indian River Investments of Miami, Inc., a Florida corporation ("Indian River"), acting in the capacity of general partner on behalf of Poinciana Village of Miami, Ltd., a Florida limited partnership ("Poinciana").

C. Pursuant to the Poinciana RFP, the City selected Poinciana as the successful proposer for the Poinciana Village Project.

D. The City Commission subsequently approved Poinciana as the successful proposer with respect to both the Poinciana RFP and the Poinciana Village Project.

E. The Poinciana Village Project is subject to that certain Southeast Overtown/Park West Lease and Development Agreement dated June 15, 1988, as amended by Amendment No. 1 dated February 17, 1989, as amended by Amendment No. 2, dated July 13, 1989, as amended by Amendment No. 3, dated January 11, 1990, as amended by an Amendment dated September 23, 1998; and as assigned from the City to the CRA by that certain Assignment of Leases dated January 9, 1996 (collectively the "Poinciana Lease").

F. The City issued an additional request for proposals (as same may have been amended from time to time, the "Sawyer's Walk RFP") with respect to that certain real property located in Miami-Dade County, Florida, more particularly described on Exhibit "B", attached hereto and made a part hereof (the "Sawyer's Walk Project").

G. The sole response to the Sawyer's Walk RFP was submitted by Sawyer's Walk Ltd., a Florida limited partnership ("Sawyer's Walk") with respect to the Sawyer's Walk Project.

H. Pursuant to City of Miami Resolution No. 91-509 (the "Resolution"), the City selected Sawyer's Walk as the developer of the Sawyer's Walk Project subject to the satisfaction of certain conditions as set in the Resolution.

I. Subsequently, the following litigation was commenced with respect to the Poinciana Village Project: Southeast Overtown/Park West Community Redevelopment Agency v. Poinciana Village of Miami, Ltd., Case No. 02-06846 CA 9, filed in the Circuit Court of the 11th Judicial Circuit in and for Miami-Dade County, Florida (the "Poinciana Litigation");

J. Subsequently, the following litigation was commenced with respect to the Sawyer's Walk Project: The City of Miami vs. Sawyer's Walk, Ltd., Case No. 00-28860 CA 9, filed in the 11th Judicial Circuit in and for Miami-Dade County, Florida (the "Sawyer's Walk Litigation").

K. Sawyer's Walk, Poinciana, the CRA and the City entered into that certain settlement agreement dated as of January 27, 2005 with respect to the Poinciana Litigation and the Sawyer's Walk Litigation, as amended, (the "Settlement Agreement").

L. The transaction contemplated by the Settlement Agreement was never consummated and the Sawyer's Walk Litigation and the Poinciana Litigation have been consolidated and were dismissed for lack of prosecution on December 5, 2007.

M. The CRA issued a request for proposals (the "New RFP") with respect to that certain real property located in Miami-Dade County, Florida more particularly described on Exhibit "C" attached hereto (the "New Project").

N. As a condition of awarding the New Project to Indemnitor pursuant to the New RFP, Indemnitor has agreed to execute this Agreement in favor of each Indemnitee.

NOW THEREFORE, in consideration of other agreements and other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, Indemnitor, intending to be legally bound, agrees as follows:

1. Recitals. The foregoing recitals are true and correct and are hereby incorporated into, and constitute a part of, this Agreement.

2. Indemnity. Indemnitor hereby agrees to indemnify, defend and hold harmless each Indemnitee from and against any claim, loss, demand, damage, liability, obligation, suit, cause of action, cost or expense (including fees, costs and disbursements of attorneys and other professionals and court costs, both prior to and on appeal and regardless of whether an action or lawsuit is actually instituted or filed) by Sawyer's Walk, Indian River Investment Communities, Inc., a Florida corporation ("Communities"), Indian River, and Poinciana, or any of them, and any of their successors and assigns, based upon, directly or indirectly, the Sawyer's Walk RFP, the Poinciana Litigation, the Sawyer's Walk Litigation and/or the Settlement Agreement, including, without limitation, claims raised or that could have been raised by Indian River, Communities, Poinciana and Sawyer's Walk or any of them, in the Poinciana Litigation and/or the Sawyer's Walk Litigation.

3. Release. Indemnitor hereby remises, releases, acquits, satisfies, and forever discharges each Indemnitee, of and from all, and all manner of action and actions, cause and causes of action, suits, debts, dues, sums of money, accounts, agreements, promises, damages, judgments, executions, claims and demands whatsoever, in law or in equity, which Indemnitor

ever had, now has, or which Indemnitor hereafter can, shall or may have, against any Indemnitee, for, upon or by reason of any matter, cause or thing whatsoever, from the beginning of the world to the date of these presents relating to or arising out of, directly or indirectly, to the Poinciana Village Project, the Sawyer's Walk Project, the Poinciana Lease, the Sawyer's Walk RFP and the Settlement Agreement.

4. Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Florida without giving effect to the choice of law provisions thereof.

5. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be binding as of the date first written above, and all of which shall constitute one and the same instrument. Each such copy shall be deemed an original, and it shall not be necessary in making proof of this Agreement to produce or account for more than one such counterpart.

IN WITNESS WHEREOF, the Buyer has executed this Indemnity and Release Agreement dated the date written above.

Witnesses

INDEMNITOR:

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
a \_\_\_\_\_  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
Print Name

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

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 201\_\_ by \_\_\_\_\_, as \_\_\_\_\_, a \_\_\_\_\_, on behalf of said \_\_\_\_\_. He/She is personally known to me or has produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
NOTARY PUBLIC  
State of Florida at Large  
My Commission Expires:

## EXHIBIT A

### POINCIANA VILLAGE PROJECT LEGAL DESCRIPTION

Being a tract or parcel of land containing 1.23353 acres (53,733 Sq. Ft.) out of lots 4 thru 12 and lots 16 and 17, block 46 N of "A.L. Knowlton Subdivision" according to the plat thereof recorded in plat book 2, page 41 of the public records of Dade County, Florida. Also being a part of lots 6 and 7 to include a portion of a 20 foot Right of Way according to the plat of George C. Bolles Subdivision thereof recorded in plat book 1, page 16 of the public records of Dade County, Florida & being more particularly described by metes and bounds as follows:

BEGINNING at a point of intersection of the East Right of Way line on NW 3rd Avenue and the South Right of Way line of NW 8th Street, said point being 10.00 feet Easterly and 12.50 feet Southerly from the Northwest corner of lot 10 of said "A.L. Knowlton Subdivision"; thence Easterly along said South Right of Way line of NW 8th Street, a distance of 340.17 feet to a corner; thence Southerly leaving said South Right of Way line of NW 8th Street and parallel with the West Right of Way line of NW 2nd Avenue, a distance of 89.77 feet to a corner; thence Westerly perpendicular to said Right of Way of NW 2nd Avenue, a distance of 19.00 feet to a corner; thence Southerly parallel with said Right of Way of NW 2nd Avenue, a distance of 77.00 feet to a corner; thence Easterly parallel with the Right of Way of NW 7th Street, a distance of 190.43 feet to a corner; thence Southerly perpendicular to said Right of Way of NW 7th Street, a distance of 13.00 feet to a corner; thence Westerly parallel with said Right of Way of NW 7th Street, a distance of 130.33 feet to a corner, the same being in the East Right of Way line of NW 3rd Avenue; thence Northerly along said East Right of Way of NW 3rd Avenue, a distance of 170.28 feet to the POINT OF BEGINNING of the tract herein described containing within these metes & bounds 1.23353 acres (53,733 Sq. Ft.) of land.

Being a tract or parcel of land containing 1.91852 acres (83,571 Sq. Ft.) out of lots 1 thru 4, lots 11 & 12 and lots 16 thru 20, Block 16 N of "A.L. Knowlton Subdivision" according to the plat thereof recorded in plat book B, page 41 of the public records of Dade County, Florida. Also being a part of lots 1 thru 8 to include a portion of a 20 foot right of way according to the plat of George C. Bolles Subdivision thereof recorded in plat book 1, page 14 of the public records of Dade County, Florida & being more particularly described by metes and bounds as follows:

BEGINNING at a point of intersection of the North Right of Way line of NW 7th Street and the East Right of Way line of NW 3rd Avenue, said point being 10.00 feet Easterly from the Southwest corner of lot 11 of said "A.L. Knowlton Subdivision"; thence Northerly along said East Right of Way of NW 3rd Avenue, a distance of 117.17 feet to a corner; thence Easterly leaving said East Right of Way of NW 3rd Avenue and parallel with said North Right of Way of NW 7th Street, a distance of 130.33 feet to a corner; thence Northerly perpendicular to said Right of Way of NW 7th Street, a distance of 13.00 feet to a corner; thence Easterly parallel with said Right of Way of NW 7th Street, a distance of 190.83 feet to a corner; thence Northerly parallel with the Right of Way of NW 2nd Avenue, a distance of 77.00 feet to a corner; thence Easterly perpendicular to said NW 2nd Avenue, a distance of 19.00 feet to a corner; thence Northerly parallel with said Right of Way of NW 2nd Avenue a distance of 80.27 feet to a corner, the same being in the South Right of Way line of NW 8th Street; thence Easterly along said South Right of Way line of NW 8th Street, a distance of 137.49 feet to a corner, the same being at a point of intersection of said South Right of Way line of NW 8th Street & the West Right of Way line of said NW 2nd Avenue, thence Southerly along said West Right of Way line of NW 2nd Avenue, a distance of 287.45 feet to a corner, the same being at a point of intersection of said West Right of Way line of NW 2nd Avenue and said North Right of Way line of NW 7th Street; thence Westerly along said North Right of Way line of NW 7th Street, a distance of 477.63 feet to the POINT OF BEGINNING of the tract herein described containing within these Metes and Bounds 1.91852 acres (83,571 Sq. Ft.) of land.



## EXHIBIT B

### SAWYER'S WALK PROJECT LEGAL DESCRIPTION

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

Lots 1 through 20, inclusive, Block 55, NORTH CITY OF MIAMI, according to the Plat thereof, as recorded in Plat Book "B", 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", page 41 of the Public Records of Miami-Dade County, Florida.

EXHIBIT C

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.

POINCIANA/SAWYER'S WALK RELEASE

KNOW ALL MEN BY THESE PRESENTS that SAWYER'S WALK, LTD., a Florida limited partnership ("Sawyer's Walk") and POINCIANA VILLAGE OF MIAMI, LTD., a Florida limited partnership ("Poinciana") [INSERT NAMES OF PARTNERS OF EACH] (Sawyer's Walk and Poinciana, and their respective partners, are collectively referred to as the "first party") and CITY OF MIAMI, a Florida municipal corporation (the "City"); SOUTHEAST OVERTOWN/PARK WEST COMMUNITY REDEVELOPMENT AGENCY, an agency of the State of Florida (the "CRA"), MIAMI-DADE COUNTY, a political subdivision of the State of Florida (the "County"); ALL ABOARD FLORIDA NW SIXTH STREET LLC, a Delaware limited liability company ("All Aboard") and OVERTOWN GATEWAY PARTNERS, LLC, a Florida limited liability company ("Overtown Gateway") (the City, the County, Overtown Gateway, All Aboard and the CRA are collectively referred to as the "second party"), for and in consideration of Ten and 00/100 Dollars (\$10.00), and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, remises, releases, acquits, satisfies, and forever discharges the said second party and their officers, directors, commissioners, agents and employees, of and from all, and all manner of action and actions, cause and causes of action, suits, debts, dues, sums of money, accounts, agreements, promises, damages, judgments, executions, claims and demands whatsoever, in law or in equity, which said first party ever had, now has, or which said first party hereafter can, shall or may have, against said second party, for, upon or by reason of any matter, cause or thing whatsoever, from the beginning of the world to the date of these presents relating to or arising out of, directly or indirectly: (i) that in response to a request for proposals (the "RFP") issued by the City with respect to that certain real property located in Miami-Dade County, Florida more particularly described on Exhibit "A" attached hereto and made a part hereof (the "Poinciana Village Project"); (ii) the response to the RFP submitted by Indian River Investments of Miami, Inc., a Florida corporation ("Indian River"), acting in the capacity of general partner on behalf of Poinciana; (iii) the selection of Poinciana as a successful proposer to the RFP by the City for the Poinciana Village Project; (iv) the approval by the City Commission of Poinciana as the successful proposer with respect to the RFP and Poinciana Village Project; (v) the Southeast Overtown/Park West Lease and Development Agreement dated June 15, 1988, as amended by Amendment No. 1 dated February 17, 1989, as amended by Amendment No. 2, dated July 13, 1989, as amended by Amendment No. 3, dated January 11, 1990, as amended by an Amendment dated September 23, 1998; and as assigned from the City to the CRA by that certain Assignment of Leases dated January 9, 1996 (collectively the "Poinciana Lease"); (vi) RFP issued by the City with respect to that certain real property located in Miami-Dade County, Florida, more particularly described on Exhibit "B", attached hereto and made a part hereof (the "Sawyer's Walk Project"); (vii) the sole response to the RFP submitted by Sawyer's Walk with respect to the Sawyer's Walk Project; (ix) the City of Miami Resolution No. 91-509 selecting

Sawyer's Walk as the developer of the Sawyer's Walk Project; (x) matters raised and the matters that could have been raised in the action styled Southeast Overtown/Park West Community Redevelopment Agency v. Poinciana Village of Miami, Ltd., Case No. 02-06846 CA 9, pending in the Circuit Court of the 11<sup>th</sup> Judicial Circuit in and for Miami-Dade County, Florida; (xii) matters raised and the matters that could have been raised in the action styled The City of Miami vs. Sawyer's Walk, Ltd., Case No. 00-28860 CA 9, pending in the 11<sup>th</sup> Judicial Circuit in and for Miami-Dade County, Florida; (xiii) any claims related to having any development rights with respect to the property described on Exhibit A and Exhibit B.

This Release shall not release the CRA from its obligations under the Development Agreement dated January \_\_, 2014 by and between Sawyer's Walk, Poinciana and the CRA.

First party hereby represents and warrants that they are fully competent and able to understand the terms of this Release, that first party is not relying upon any statements or representations (whether express or implied) of the second party, their employees and attorneys regarding this Release and that first party is entering into this Release under their own free will believing that this Release to be in their best interest.

The terms of this release are contractual and not a mere recital.

This Release shall be governed by and construed in accordance with the laws of the State of Florida.

IN WITNESS WHEREOF, we have hereunto set out hand and seal this \_\_\_\_  
day of \_\_\_\_\_, 20\_\_.

WITNESSES:

\_\_\_\_\_  
Print Name: \_\_\_\_\_

SAWYER'S WALK LTD., a Florida limited  
partnership

\_\_\_\_\_  
Print Name: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Partners of Sawyer's Walk, Ltd.

\_\_\_\_\_  
Print Name: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_

\_\_\_\_\_  
Print Name: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_

\_\_\_\_\_  
Print Name: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_

\_\_\_\_\_  
Print Name: \_\_\_\_\_

\_\_\_\_\_  
Print Name: \_\_\_\_\_

\_\_\_\_\_  
Print Name: \_\_\_\_\_

POINCIANA VILLAGE OF MIAMI, LTD., a  
Florida limited partnership

\_\_\_\_\_  
Print Name: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_

\_\_\_\_\_  
Print Name: \_\_\_\_\_

Partners of Poinciana Village of Miami, Ltd.

\_\_\_\_\_  
Print Name: \_\_\_\_\_

\_\_\_\_\_  
Print Name: \_\_\_\_\_

\_\_\_\_\_  
Print Name: \_\_\_\_\_

\_\_\_\_\_  
Print Name: \_\_\_\_\_

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\_\_\_\_\_  
Print Name: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Exhibit "A"

Legal Description Poinciana Village

Lots 1-12 and Lots 16-20 Block 46 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

AND

Lots 1, 2, 3, 4, 5, 6, 7, 8 and closed NW 2<sup>nd</sup> Court (lying North of NW 7<sup>th</sup> Street between Lots 2, 7 and 8, and Lots 3, 5 and 6), of GEORGE C. BOLLES RE-SUBDIVISION of Lots 13, 14 and 15, of Block 46 North, City of Miami, according to the Plat thereof, as recorded in Plat Book 1, at Page 16, of the Public Records of Miami-Dade County, Florida.

Exhibit "B"

Legal Description Sawyer's Walk

All of Blocks 45, 55 and 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:



### Indemnification Agreement

This Indemnification Agreement (this "Agreement"), dated this \_\_\_\_\_ day of \_\_\_\_\_, 2013, is executed by Sawyer's Walk Ltd., a Florida limited partnership ("Sawyer's Walk"), Poinciana Village of Miami, Ltd., a Florida limited partnership ("Poinciana", together with Sawyer's Walk "Indemnitor"), in favor of CITY OF MIAMI, a Florida municipal corporation (the "City"), MIAMI-DADE COUNTY, FLORIDA, a political subdivision of the State of Florida (the "County") and SOUTHEAST OVERTOWN/PARK WEST COMMUNITY REDEVELOPMENT AGENCY, a public agency and body corporate created pursuant to Section 163.356, Florida Statutes (the "CRA;" and together with the City and the County, individually and collectively, the "Indemnitee").

### RECITALS

A. City previously issued a request for proposals (as may have been amended from time to time, the "Poinciana RFP") with respect to that certain real property located in Miami-Dade County, Florida more particularly described on Exhibit "A" attached hereto and made a part hereof (the "Poinciana Village Project").

B. A response to the Poinciana RFP was submitted by Indian River Investments of Miami, Inc., a Florida corporation ("Indian River"), acting in the capacity of general partner on behalf of Poinciana.

C. Pursuant to the Poinciana RFP, the City selected Poinciana as the successful proposer for the Poinciana Village Project.

D. The City Commission subsequently approved Poinciana as the successful proposer with respect to both the Poinciana RFP and the Poinciana Village Project.

E. The Poinciana Village Project is subject to that certain Southeast Overtown/Park West Lease and Development Agreement dated June 15, 1988, as amended by Amendment No. 1 dated February 17, 1989, as amended by Amendment No. 2, dated July 13, 1989, as amended by Amendment No. 3, dated January 11, 1990, as amended by an Amendment dated September 23, 1998; and as assigned from the City to the CRA by that certain Assignment of Leases dated January 9, 1996 (collectively the "Poinciana Lease").

F. The City issued an additional request for proposals (as same may have been amended from time to time, the "Sawyer's Walk RFP") with respect to that certain real property located in Miami-Dade County, Florida, more particularly described on Exhibit "B", attached hereto and made a part hereof (the "Sawyer's Walk Project").

G. The sole response to the Sawyer's Walk RFP was submitted by Sawyer's Walk with respect to the Sawyer's Walk Project.

H. Pursuant to City of Miami Resolution No. 91-509 (the "Resolution"), the City selected Sawyer's Walk as the developer of the Sawyer's Walk Project subject to the satisfaction of certain conditions as set in the Resolution.

I. Subsequently, the following litigation was commenced with respect to the Poinciana Village Project: Southeast Overtown/Park West Community Redevelopment Agency v. Poinciana Village of Miami, Ltd., Case No. 02-06846 CA 9, filed in the Circuit Court of the 11th Judicial Circuit in and for Miami-Dade County, Florida (the "Poinciana Litigation");

J. Subsequently, the following litigation was commenced with respect to the Sawyer's Walk Project: The City of Miami vs. Sawyer's Walk, Ltd., Case No. 00-28860 CA 9, filed in the 11th Judicial Circuit in and for Miami-Dade County, Florida (the "Sawyer's Walk Litigation").

K. Sawyer's Walk, Poinciana, the CRA and the City entered into that certain settlement agreement dated as of January 27, 2005 with respect to the Poinciana Litigation and the Sawyer's Walk Litigation, as amended, (the "Settlement Agreement").

L. The transaction contemplated by the Settlement Agreement was never consummated and the Sawyer's Walk Litigation and the Poinciana Litigation have been consolidated and were dismissed for lack of prosecution on December 5, 2007.

M. The CRA issued a request for proposals (the "New RFP") with respect to that certain real property located in Miami-Dade County, Florida more particularly described on Exhibit "C" attached hereto (the "New Project").

N. As a condition of awarding the New Project to Indemnitor pursuant to the New RFP, Indemnitor has agreed to execute this Agreement in favor of each Indemnitee.

NOW THEREFORE, in consideration of other agreements and other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, Indemnitor, intending to be legally bound, agrees as follows:

1. Recitals. The foregoing recitals are true and correct and are hereby incorporated into, and constitute a part of, this Agreement.

2. Indemnity. Indemnitor hereby agrees to indemnify, defend and hold harmless each Indemnitee from and against any claim, loss, demand, damage, liability, obligation, suit, cause of action, cost or expense (including fees, costs and disbursements of attorneys and other professionals and court costs at trial and on appeal (but excluding any attorney fees and costs incurred by the Indemnitee prior to the date hereof) and regardless of whether an action or lawsuit is actually instituted or filed) by Sawyer's Walk, Indian River Investment Communities, Inc., a Florida corporation ("Communities"), Indian River, and Poinciana, or any of them, and any of their successors and assigns, based upon, directly or indirectly, the Sawyer's Walk RFP, the Poinciana Litigation, the Sawyer's Walk Litigation and/or the Settlement Agreement, including, without limitation, claims raised or that could have been raised by Indian River, Communities, Poinciana and Sawyer's Walk or any of them, in the Poinciana Litigation and/or the Sawyer's Walk Litigation.

3. Release. Indemnitor hereby remises, releases, acquits, satisfies, and forever discharges each Indemnitee, of and from all, and all manner of action and actions, cause and causes of action, suits, debts, dues, sums of money, accounts, agreements, promises, damages, judgments, executions, claims and demands whatsoever, in law or in equity, which Indemnitor ever had, now has, or which Indemnitor hereafter can, shall or may have, against any Indemnitee, for, upon or by reason of any matter, cause or thing whatsoever, from the beginning of the world to the date of these presents relating to or arising out of, directly or indirectly, to the Poinciana Village Project, the Sawyer's Walk Project, the Poinciana Lease, the Sawyer's Walk RFP and the Settlement Agreement.

4. Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Florida without giving effect to the choice of law provisions thereof.

5. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be binding as of the date first written above, and all of which shall constitute one and the same instrument. Each such copy shall be deemed an original, and it shall not be necessary in making proof of this Agreement to produce or account for more than one such counterpart.

IN WITNESS WHEREOF, the Buyer has executed this Indemnity and Release Agreement dated the date written above.

\_\_\_\_\_  
Print Name: \_\_\_\_\_

SAWYER'S WALK LTD., a Florida limited partnership

\_\_\_\_\_  
Print Name: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
Print Name: \_\_\_\_\_

POINCIANA VILLAGE OF MIAMI, LTD., a Florida limited partnership

\_\_\_\_\_  
Print Name: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 201\_\_ by \_\_\_\_\_, as \_\_\_\_\_, a \_\_\_\_\_, on behalf of said \_\_\_\_\_. He/She is personally known to me or has produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
NOTARY PUBLIC  
State of Florida at Large  
My Commission Expires: \_\_\_\_\_

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

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
201\_\_ by \_\_\_\_\_, as \_\_\_\_\_, a \_\_\_\_\_, on behalf of  
said \_\_\_\_\_. He/She is personally known to me or has produced \_\_\_\_\_  
as identification.

\_\_\_\_\_  
NOTARY PUBLIC  
State of Florida at Large  
My Commission Expires:

## EXHIBIT A

### POINCIANA VILLAGE PROJECT LEGAL DESCRIPTION

Being a tract or parcel of land containing 1.2333 acres (53,733 Sq. Ft.) out of lots 4 thru 12 and lots 16 and 17, block 46 N of "A.L. Knowlton Subdivision" according to the plat thereof recorded in plat book 8, page 41 of the public records of Dade County, Florida. Also being a part of lots 6 and 7 to include a portion of a 20 foot Right of Way according to the plat of George C. Solles Subdivision thereof recorded in plat book 1, page 16 of the public records of Dade County, Florida and being more particularly described by metes and bounds as follows:

BEGINNING at a point of intersection of the East Right of Way line on NW 3rd Avenue and the South Right of Way line of NW 8th Street, said point being 10.00 feet Easterly and 12.50 feet Southerly from the Northwest corner of lot 10 of said "A.L. Knowlton Subdivision"; thence Easterly along said South Right of Way line of NW 8th Street, a distance of 340.17 feet to a corner; thence Southerly leaving said South Right of Way line of NW 8th Street and parallel with the West Right of Way line of NW 2nd Avenue, a distance of 80.27 feet to a corner; thence Westerly perpendicular to said Right of Way of NW 2nd Avenue, a distance of 19.00 feet to a corner; thence Southerly parallel with said Right of Way of NW 2nd Avenue, a distance of 77.00 feet to a corner; thence Westerly parallel with the Right of Way of NW 7th Street, a distance of 130.83 feet to a corner; thence Southerly perpendicular to said Right of Way of NW 7th Street, a distance of 13.00 feet to a corner; thence Westerly parallel with said Right of Way of NW 7th Street, a distance of 130.33 feet to a corner, the same being in the East Right of Way line of NW 3rd Avenue; thence Northerly along said East Right of Way of NW 3rd Avenue, a distance of 170.28 feet to the POINT OF BEGINNING of the tract herein described containing within these metes & bounds 1.2333 acres (53,733 Sq. Ft.) of land.

Being a tract or parcel of land containing 1.91852 acres (83,571 Sq. Ft.) out of lots 1 thru 4, lots 11 & 12 and lots 16 thru 20, block 46 N of "A.L. Knowlton Subdivision" according to the plat thereof recorded in plat book B, page 41 of the public records of Dade County, Florida. Also being a part of lots 1 thru 8 to include a portion of a 20 foot right of way according to the plat of George C. Bolles Subdivision thereof recorded in plat book 1, page 16 of the public records of Dade County, Florida & being more particularly described by metes and bounds as follows:

BEGINNING at a point of intersection of the North Right of Way line of NW 7th Street and the East Right of Way line of NW 3rd Avenue, said point being 10.00 feet Easterly from the Southwest corner of lot 11 of said "A.L. Knowlton Subdivision"; thence Northerly along said East Right of Way of NW 3rd Avenue, a distance of 117.17 feet to a corner; thence Easterly leaving said East Right of Way of NW 3rd Avenue and parallel with said North Right of Way of NW 7th Street, a distance of 130.33 feet to a corner; thence Northerly perpendicular to said Right of Way of NW 7th Street, a distance of 13.00 feet to a corner; thence Easterly parallel with said Right of Way of NW 7th Street, a distance of 190.83 feet to a corner; thence Northerly parallel with the Right of Way of NW 2nd Avenue, a distance of 77.00 feet to a corner; thence Easterly perpendicular to said NW 2nd Avenue, a distance of 19.00 feet to a corner; thence Northerly parallel with said Right of Way of NW 2nd Avenue a distance of 80.27 feet to a corner, the same being in the South Right of Way line of NW 8th Street; thence Easterly along said South Right of Way line of NW 8th Street, a distance of 137.49 feet to a corner, the same being at a point of intersection of said South Right of Way line of NW 8th Street & the West Right of Way line of said NW 2nd Avenue, thence Southerly along said West Right of Way line of NW 2nd Avenue, a distance of 287.45 feet to a corner, the same being at a point of intersection of said West Right of Way line of NW 2nd Avenue and said North Right of Way line of NW 7th Street; thence Westerly along said North Right of Way line of NW 7th Street, a distance of 477.65 feet to the POINT OF BEGINNING of the tract herein described containing within these Metes and Bounds 1.91852 acres (83,571 Sq. Ft.) of land.

**EXHIBIT B**

**SAWYER'S WALK PROJECT LEGAL DESCRIPTION**

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

Lots 1 through 20, Inclusive, Block 55, NORTH CITY OF MIAMI, according to the Plat thereof, as recorded in Plat Book "B", 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", page 41 of the Public Records of Miami-Dade County, Florida.



EXHIBIT C

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.



# MEMORANDUM

(Revised)

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

**DATE:** April 8, 2014

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

**SUBJECT:** Agenda Item No. 11(A)(9).

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)(9)

4-8-14

RESOLUTION NO. \_\_\_\_\_

RESOLUTION ACCEPTING AN ALTERNATIVE RISK MANAGEMENT SOLUTION AS PROVIDED FOR IN THE SETTLEMENT OF THE LAWSUIT BETWEEN THE CITY OF MIAMI, THE SOUTHEAST OVERTOWN/PARK WEST COMMUNITY REDEVELOPMENT AGENCY AND MIAMI-DADE COUNTY RELATING TO BLOCKS 45 AND 56 LOCATED IN MIAMI-DADE COUNTY AND DIRECTING MAYOR OR MAYOR'S DESIGNEE TO DRAFT AND FINALIZE ALL DOCUMENTS NECESSARY TO EFFECTUATE SAME

**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**, pursuant to Resolution No. 860-13, the County approved the developers, Overtown Gateway Partners, LLC and All Aboard Florida-Stations, LLC (the "Developers"); and

**WHEREAS**, the settlement agreement, as supplemented by Resolution No. 860-13, provided for the developer, the City, or the CRA to execute the indemnification agreement attached to the Mayor's memorandum as Exhibit A, regarding prior litigation by Sawyer's Walk Ltd. and Poinciana Village of Miami, Ltd. (collectively the "Sawyers Walk entities") as to claims regarding development rights on Blocks 45 and 56, or alternatively, to submit an alternative risk management solution to the County; and

**WHEREAS**, the Developers have asserted that the indemnification requirement makes obtaining bank financing for the project difficult, and have proposed an alternative risk management solution; and

**WHEREAS**, the proposed alternative risk management solution includes a release of the County, the City, and the CRA by the Sawyers Walk entities as well as execution of the indemnification agreement by the Sawyers Walk entities, in exchange for payments by the Developers to the Sawyers Walk entities as well as the conveyance of Block 46, a CRA-owned property; and

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

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

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

Section 2. This Board accepts an alternative risk solution which at a minimum provides for execution by the Sawyers Walk entities of the indemnification agreement in substantially the form attached to the Mayor's memorandum as Exhibit C, as well as execution

of a general release of all claims by the Sawyers Walk entities, an affidavit that the Sawyers Walk entities have not transferred the claims, and an opinion letter from counsel for the Sawyers Walk entities that the release and indemnification are binding and enforceable, and directs the Mayor or Mayor's designee to draft, review, approve and execute all documents necessary, in a form approved by the County Attorney's Office, to effectuate same, including the execution of any additional documents deemed appropriate or necessary.

Section 3. Pursuant to Resolution No. R-974-09, the Board directs the Mayor or Mayor's designee to record any revisions to the Declaration required by the actions 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 8<sup>th</sup> day of April, 2014. 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

*for DH*