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THE CITY OF KEY WEST

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To: The City Commission for the City of Key West
From: Ron Ramsingh, Assistant City Attorney
Date: May 1, 2015
RE: Settlement of liability insurance claim re: Barbara Turner

EXECUTIVE SUMMARY

*******REDACTED COMMUNICATION (H.I.P.A.A.)*****
FOR PUBLIC REVIEW**

Background: Ms. Barbara Turner is a 66-yr old lady from Franklin, Indiana who was visiting Key West on June 10, 2013 with her husband and 10 members of her family. Ms. Turner was walking on the brick sidewalk portion of the 400 block of South Street towards the Southernmost Point monument when she tripped over a brick planter border and fell onto a wrought iron decorative planter fence. Ms. Turner's right cheek was impaled by one of the spikes on the wrought iron fence and she also struck her forehead. Ms. Turner also had dental work performed for a cracked tooth as a result of this fall.

Exposure/ Risk: Ms. Turner's attorney has listed her bills thus far which total \$15,595.62. When evaluating personal injury cases, a 3.5 multiplier is typically considered as a potential verdict. However, facial injuries are typically valued higher than say, a broken arm or other orthopedic type injury. If a multiplier of 4.5 is used, the risk at verdict on a claim like this could be approximately 70,200.00.

This claim was handled administratively from its inception by our liability adjuster, Audrey Knight, our Risk Manager, Lisa Borzy, and the undersigned. A complaint for damages has not been filed and all legal costs were saved in-house by the city's Legal Dept.

The undersigned could not find one permit that was issued to install the bricks. These are “old Chicago” style bricks that were installed directly in front of 400 South Street; a home belonging to Seward Johnson. From the pictures attached, there were raised borders for the planters from the same bricks as well as short, wrought iron garden fencing. This created an unsafe tripping hazard. Mr. Johnson purchased the home at 400 South St., and in the 90’s, performed extensive renovations. Part of those renovations was installing the Chicago brick pavers and planters with the fencing, but I do not see that any easements, licenses or permits were ever issued, rather, I am told that “informal verbal approval” was given by management back then, at the request of a former city commissioner who used to live in the area. Therefore, the city cannot make a good faith claim that this dangerous condition was created without the city’s knowledge. Even if this unofficial consent was not given, every year that the bricks were allowed to remain estops the city from raising a lack of knowledge of the defect as a defense- especially on what is considered one of the most travelled blocks in the city. The city immediately removed all of the bricks in question upon notice of this claim and poured a concrete sidewalk consistent with the rest of the block.

Options:

1. Agree to the proposed settlement with Barbara Turner in the amount of \$34,000.00.
2. Decline to settle this matter and a Complaint for Damages will be filed and proceed accordingly. I believe that the city has a dismal chance at success at trial given these facts. However, a judgement would likely be shared with the owner of 400 South St., Mr. Johnson. I anticipate that the city’s share of a likely judgement would still exceed the current settlement amount of \$34,000.00.

Recommendation: Agree to enter into a settlement with Ms. Turner for \$34,000.00