MEMORANDUM

Agenda Item No. 11(A)(1)

TO:	Honorable Chairwoman Rebeca Sosa and Members, Board of County Commissioners	**DATE:**	February 20, 2013
FROM:	R. A. Cuevas, Jr. County Attorney	**SUBJECT:**	Resolution authorizing the Conveyance of County-owned Land located at NW 207th St. and NW 32nd Avenue to the Nigerian-American Foundation

This item was amended at the 1-16-13 Infrastructure and Land Use Committee to include an additional directive to the Mayor or the Mayor's designee to conduct all necessary due diligence associated with the proposed conveyance, to identify any obstacles in connection with the conveyance, and to verify that there all no such obstacles prior to any conveyance.

The accompanying resolution was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Barbara J. Jordan.

R. A. Cuevas, Jr.
County Attorney

RAC/lmp

/

MEMORANDUM
(Revised)

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

DATE: February 20, 2013

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

SUBJECT: Agenda Item No. 11(A)(1)

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)(1)
2-20-13

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE CONVEYANCE OF COUNTY-OWNED LAND LOCATED AT NW 207TH STREET AND NW 32ND AVENUE IN MIAMI-DADE COUNTY, FLORIDA TO THE NIGERIAN-AMERICAN FOUNDATION AT NO COST AND IN ACCORDANCE WITH FLORIDA STATUTE 125.38; WAIVING ADMINISTRATIVE ORDER 8-4 AS IT RELATES TO REVIEW BY THE PLANNING ADVISORY BOARD; DIRECTING THE MAYOR OR THE MAYOR'S DESIGNEE TO TAKE ALL NECESSARY STEPS TO ACCOMPLISH THE CONVEYANCE AND AUTHORIZING EXECUTION OF A COUNTY DEED AND DECLARATION OF RESTRICTIONS FOR SUCH PURPOSE

WHEREAS, the Nigerian-American Foundation ("NAF") is a Florida not-for-profit corporation, organized for the community interest and welfare purposes of promoting, projecting, and protecting the image of Nigerians, and to educate the community regarding African culture; and

WHEREAS, the County owns vacant property, located at NW 207th Street and NW 32nd Avenue in the City of Miami Gardens in Miami-Dade County, folio number 34-1133-007-1801 (the "Property") as well as adjacent property, folio number 34-1133-007-1800, which includes a building (the "Adjacent Property"); and

WHEREAS, the Property and the Adjacent Property are currently platted as one legal buildable site (the "Platted Property"); and

WHEREAS, NAF wishes to construct an African museum and cultural arts center including activities such as an arts museum, dance theatre, and lecture hall on the Property, and has applied to the County for the conveyance of the Property for the construction of the facility thereon; and

WHEREAS, NAF has represented that it will use the Property consistently with its mission, in support of the community interest and welfare purposes for which it is organized; and

WHEREAS, the Board finds that, pursuant to Section 125.38 of the Florida Statutes, the conveyance of the Property would be required for such use, and that the intended use would promote community interest and welfare; and

WHEREAS, re-platting would be required to subdivide the Adjacent Property from the Property in order for NAF to develop the African museum and cultural arts center on the Property; and

WHEREAS, after re-platting, the Property would be conveyed, at no cost, to NAF by a County Deed in substantially the form attached hereto ("County Deed") along with a Declaration of Restrictions ("Declaration") which will require the completion of the construction of the museum within five years, and which will further restrict the use and re-conveyance of the Property to ensure compliance with the intent of this Board,

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

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

Section 2. This Board directs the Mayor or the Mayor's designee to take all necessary steps to convey the Property to NAF for construction of the facility, to confirm the continued legal viability of the Adjacent Property and existing structure thereon after conveyance and to create a legal description in accordance therewith, >>to conduct all necessary due diligence associated with the proposed conveyance and to identify any obstacles in connection

therewith,<<[1] to re-plat the Platted Property as necessary in order for it to be separately developed by NAF after conveyance, including obtaining any necessary approvals from the City of Miami Gardens, to file a Certificate with the Clerk confirming that re-platting has been accomplished>>, that there are no obstacles to conveyance,<< and that the Adjacent Property can continue to function after such conveyance ("Certificate"), and to take any other necessary steps to achieve the conveyance.

Section 3. After any necessary re-platting or subdivision, and subject to the filing of the Certificate, this Board finds that the Property is not needed for County purposes, approves the conveyance of the Property pursuant to Section 125.38 of the Florida Statutes, authorizes the waiver of Administrative Order 8-4 as it relates to review by the Planning Advisory Board, authorizes the County Mayor to execute the County Deed and Declaration of Restrictions, and further authorizes the County Mayor or Mayor's designee to take all actions necessary to effectuate the conveyance and to exercise any and all rights set forth in the Deed and Declaration.

Section 4. Pursuant to Resolution No. R-974-09, this Board directs the County Mayor or County Mayor's designee to record the County Deed and Declaration authorized herein in the Public Records of Miami-Dade County, Florida; and to provide a recorded copy of the instruments to the Clerk of Board within thirty (30) days of execution of said instruments; and directs the Clerk of the Board to attach and permanently store a recorded copy of the County Deed and Declaration of Restrictions together with this resolution.

---

[1]Committee amendments are indicated as follows: Words stricken through and/or [[double bracketed]] are deleted, words underscored and/or >>double arrowed<< are added.

Section 5. This Board directs the County Mayor or Mayor's designee to appoint staff to monitor compliance with the terms of the conveyance, to file the Certificate, and to report back to this Board on the status of the conveyance in 180 days from the Effective Date of this Resolution.

The Prime Sponsor of the foregoing resolution is Commissioner Barbara J. Jordan. 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	Esteban L. Bovo, Jr.
Jose "Pepe" Diaz	Audrey M. Edmonson
Sally A. Heyman	Barbara J. Jordan
Jean Monestime	Dennis C. Moss
Sen. Javier D. Souto	Xavier L. Suarez
Juan C. Zapata	

The Chairperson thereupon declared the resolution duly passed and adopted this 20th day of February, 2013. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

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

HARVEY RUVIN, CLERK

By:_____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

Debra Herman

This instrument was prepared by:
Debra Herman, Esquire
County Attorney's Office
Miami-Dade County
111 N.W. 1st Street, 28th Floor
Miami, Florida 33129

Folio No.: To Be Inserted (Space reserved for Clerk)

DECLARATION OF RESTRICTIONS

WHEREAS, Miami-Dade County (the "County") has conveyed to the Nigerian-American Foundation, Inc., a Florida not-for-profit corporation ("NAF"), real property located in Miami-Dade County (the "Property"). The legal description of the Property is:

TO BE INSERTED

WHEREAS, NAF hereby acknowledges and agrees that this Declaration of Restrictions (hereinafter "Declaration") was an inducement and part of the consideration for the County to convey the Property to NAF.

NOW THEREFORE, in order to assure the County that the representations made by NAF will always be abided by, NAF, for sufficient consideration, makes the following Declaration covering and running with the Property.

NAF hereby agrees and stipulates as follows:

Permitted Use of the Property. The Property shall solely be used for the construction, operation and ongoing maintenance of a public museum and cultural arts center thereon (the "Arts Center"), as evidenced by a final certificate of occupancy within five years of the date of the conveyance of the Property. Construction of the Arts Center shall be completed, as evidenced by a final certificate of occupancy, within five years of the conveyance of the Property.

County Inspection. It is hereby agreed that Miami-Dade County, or its duly authorized agents, shall have the right at any time during normal working hours of entering and inspecting the Property, to determine whether the requirements herein are being fully complied with.

Covenant Running with the Land. This Declaration shall constitute a covenant running with the land on the Property, and shall be recorded in the public records of Miami-Dade County, Florida, and shall remain in full force and effect and be binding upon NAF, and its subsidiaries, successors and assigns until such time as the same is modified, amended or released by mutual agreement with, and as evidenced by resolution of, Miami-Dade County. NAF, its subsidiaries, successors and assigns, agrees that acceptance of this Declaration is legally binding upon them, and does not in any way obligate or provide a limitation on the County.

Assignment, Lease or Subsequent Conveyance. NAF shall not assign, lease, or convey the Property to any person or entity without the prior written consent of Miami-Dade County, which may be withheld in its sole and absolute discretion.

Modification, Amendment, Release. This Declaration may not be amended or released without the written consent of Miami-Dade County, in its sole and absolute discretion.

Authorization for Miami-Dade County to Reacquire the Property. In the event any of the terms or covenants of this Declaration are not being complied with, the Property shall immediately revert to the County, upon written notice provided by certified mail by the County to NAF. The reverter shall immediately become effective upon the date that written notice is received by NAF (the "effective reverter date"). The County shall have the right to immediate possession of the Property, with any and all improvements thereon, at no cost to the County, on the effective reverter date. In the event that the County exercises the reverter, upon written request, NAF shall immediately provide the County with a deed of conveyance of the Property back to the County. These rights shall be in addition to any other remedy that the County may have herein and/or at law or in equity.

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, at will, such other additional rights, remedies, or privileges.

Severability. Invalidation of any one of these covenants, by judgment of a court, shall not affect any of the other provisions which shall remain in full force and effect. However, if any material portion is invalidated, Miami-Dade County shall be entitled to reacquire the Property predicated upon the invalidated portion of this Declaration as a result of its reversionary interest in the Property.

Recording. This Declaration shall be filed in the public records of Miami-Dade County, Florida at the cost of NAF, following the conveyance of the Property to NAF. This Declaration shall become effective immediately upon recordation. This Declaration shall be filed on the date the Property is conveyed to NAF.

Acceptance of Declaration. NAF acknowledges that acceptance of this Declaration does not obligate Miami-Dade County in any manner, and does not entitle NAF to favorable approval of any application, zoning or otherwise, and that the County retains its full power and authority to accept or reject any application, in whole or in part.

Incorporation of Recitals. NAF hereby agrees that all recitals in this Declaration are hereby true and correct, and are incorporated into this Declaration.

IN WITNESS WHEREOF, NAF has caused this Declaration to be executed by its respective and duly authorized representative on this _____ day of _____, 2013, and it intends to be legally bound hereby to all of the terms and conditions of this Declaration.

Nigerian American Foundation,
a Florida 501(c)(3) organization

_____
Witness/Attest:

By:_____
Name:_____
Title:_____

_____
Witness/Attest:

STATE OF _____

SS:

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 2013, by _____, of the Nigerian American Foundation, a 501(c)(3) organization whose title is _____ and s/he has produced _____as identification.

(SEAL)

_____

_____
Notary Public-State of_____
Commission Number: _____

MIAMI-DADE COUNTY, FLORIDA,
a political subdivision of the State of
Florida by its Board of County
Commissioners

By:_____
Name:_____
Title:_____

ATTEST:

HARVEY RUVIN, CLERK

By:_____
Deputy Clerk

APPROVED FOR FORM AND LEGAL SUFFICIENCY

By:_____
Name:_____
Title: Assistant County Attorney

Instrument prepared by and returned to:
Debra Herman, Esquire
Miami-Dade County, County Attorney's Office
111 N.W. 1 Street, Suite 2810
Miami, Florida 33128-1907

Folio No. : To BE INSERTED

----------{{SPACE ABOVE THIS LINE RESERVED FOR RECORDING DATA} ----------

COUNTY DEED

THIS COUNTY DEED, made this day of , 2013, by Miami-Dade County, Florida, a political subdivision of the State of Florida, party of the first part, whose address is: Stephen P. Clark Center, 111 N.W. 1st Street, Miami, Florida 33128, and the Nigerian-American Foundation, Inc., a Florida not-for-profit corporation ("NAF"), party of the second part, whose address is: _____.

WITNESSETH:

That the said party of the first part (the "County'), for and in consideration of the sum of Ten ($10.00) Dollars, to it in hand paid by the party of the second part, receipt whereof is hereby acknowledged has granted, bargained and sold, except without the right to convey or assign, to the party of the second part, its successors and assigns forever ("NAF"), the following described lands lying and being in Miami-Dade County, Florida, ("Property"):

LEGAL DESCRIPTION
(to be inserted)

This grant conveys only the interest of the County and its Board of County Commissioners in the Property herein described and shall not be deemed to warrant the title or to represent any statement of facts concerning the same. The County retains a reversionary interest in the Property, which right may be exercised by the County in accordance with this Deed or the Declaration of Restrictions recorded on this date.

This conveyance is made for the public purpose of constructing and maintaining a public

museum and cultural arts center. If in the sole discretion of the County, the Property ceases to be used for this purpose by NAF, or if NAF violates any of the covenants or terms contained in the Declaration of Restrictions ("Declaration") recorded together with this Deed, title to the Property shall immediately revert to the County upon written notice provided by certified mail by the County to NAF. The reverter shall immediately become effective upon the date that written notice is received by NAF (the "effective reverter date"). The County shall have the right to immediate possession of the Property, with any and all improvements thereon, at no cost to the County, on the effective reverter date. In the event that the County exercises the reverter, upon written request, NAF shall immediately provide the County with a deed of conveyance of the Property back to the County.

[THE REMAINDER OF THIS PAGE WAS INTENTIONALLY LEFT BLANK]

[ONLY THE SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF Miami-Dade County has caused these presents to be executed in its name by its Board of County Commissioners acting by the Chair or Vice Chair of said Board, the day and year aforesaid.

(OFFICIAL SEAL)

ATTEST:
FLORIDA

HARVEY RUVIN, CLERK

By: _____
Deputy Clerk

MIAMI-DADE COUNTY,

BY ITS BOARD OF
COUNTY COMMISSIONERS

By: _____
Rebeca Sosa, Chairwoman

Approved for legal sufficiency: _____

The foregoing was authorized by Resolution No.: _____approved by the Board of County Commissioners of Miami-Dade County, Florida, on the _____day of _____, 2013.