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CLERK OF THE BOARD
OF COUNTY COMMISSIONERS
MIAMI-DADE COUNTY, FLORIDA

MEMORANDUM

Agenda Item No. 8(H)(1)

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

DATE: November 3, 2015

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Resolution accepting a perpetual Conservation Easement in favor of Miami-Dade County from the Deering Estate Foundation, Inc. for a land parcel located at 7350 SW 162 Street, identified by folio number 33-5026-000-0230, held in trust for the Deering Estate at Cutler by the Deering Estate Foundation, Inc.; authorizing the County Mayor to execute said easement and to exercise all provisions contained therein; and directing County Mayor to record said easement

Resolution No. R-979-15

The accompanying resolution was prepared by the Parks, Recreation and Open Spaces Department and placed on the agenda at the request of Prime Sponsor Commissioner Daniella Levine Cava.

Abigail Price-Williams
County Attorney

APW/lmp

Memorandum

MIAMI-DADE COUNTY

Date: November 3, 2015

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

From: Carlos A. Gimenez
Mayor

Subject: Resolution Accepting a Perpetual Conservation Easement in favor of Miami-Dade County from the Deering Estate Foundation, Inc. for a Land Parcel Held in Trust for the Deering Estate at Cutler by the Deering Estate Foundation, Inc.

Recommendation

It is recommended that the Board of County Commissioners (Board) approve the attached resolution accepting a perpetual conservation easement in favor of Miami-Dade County from the Deering Estate Foundation, Inc. (Foundation) for a land parcel located at 7350 SW 162 Street, Miami, Florida, 33157, with a folio number of 33-5026-000-0230, owned by the Deering Estate Foundation, Inc. in the form attached hereto as Attachment 1; and authorize the County Mayor or Designee to execute the Conservation Easement and take all actions necessary to ensure its enforcement.

Scope

The parcel described above and the adjacent 450 acre Deering Estate at Cutler (Deering Estate) are located in County Commission District 8, which is represented by Commissioner Daniella Levine Cava. The Miami-Dade Parks, Recreation and Open Spaces Department (PROS) operates and manages the Deering Estate at Cutler.

Fiscal Impact/Funding Source

There is no anticipated fiscal impact to the County from this item. The Foundation will pay PROS to maintain the property in its natural state through its budgeted operating funds.

Track Record/Monitor

Deering Estate director Jennifer Tisthammer will monitor and manage this conservation easement.

Background

The Foundation is a private not-for-profit corporation, organized to provide resources, marketing, and awareness, and to promote philanthropic support of the Deering Estate at Cutler in its mission to advance conservation, science education, and nature-based recreation for residents and tourists alike. In 2005, the Board approved Resolution No. R-493-05 authorizing an Operating Agreement between the County and the Foundation, formalizing a public-private partnership that exclusively directs the efforts and resources of the Foundation to the support of the Deering Estate and its programs. The Foundation has raised more than $6.5 million in cash and in-kind resources in the last five (5) years and has embarked on a $17 million capital campaign to support the Deering Estate and its programs.

On April 22, 2015, the Foundation received an 8.8 acre land parcel of land located at 7350 SW 162 Street, Miami, Florida, 33157, with a folio number of 33-5026-000-0230 through a donation from a private individual pursuant to the agreement attached hereto as Attachment 2. As part of the land conveyance agreement, the private donor required that a conservation easement, limiting commercial development of the land, be placed on the property in perpetuity and that Miami-Dade County through PROS be listed as the conservation easement holder with monitoring and curative

through PROS be listed as the conservation easement holder with monitoring and curative responsibilities. The purpose of the conservation easement is to ensure, through a covenant carried with the land in perpetuity, that the Foundation (land owner) and County (Conservation Easement holder) maintain the property in its natural state.

This Conservation Easement benefits both parties because the shared use of this property, established by the formal partnership agreement between the Deering Estate and the Foundation will advance its land conservation mission, increase revenues, collaborative programming opportunities, brand equity, and social impact, which coincides with the mission and goals set forth in the Miami-Dade County's Parks and Open Space System Master Plan approved by the Board in 2008.

Michael Spring, Senior Advisor
Office of the Mayor

ATTACHMENT 1

Conservation Easement running with the land owned by the Deering Estate Foundation, Inc. in favor of Miami-Dade County concerning Land located in the area of 7350 SW 162 St as designated on attached description and survey.

Whereas, in connection with the transfer of the subject property ("Property") referenced herein, the transferor desires to have the new owner, the Deering Estate Foundation, Inc., as grantor under this Conservation Easement ("Grantor" or "owner"), maintain a perpetual conservation easement in favor of Miami-Dade County ("Grantee" or "Easement Holder"), pursuant to Section 704.06, Florida Statutes over portions of the Property so that it is preserved and maintained as provided for herein.

Now therefore, in consideration of the above and the mutual covenants, terms, conditions and restrictions contained herein, and pursuant to Section 704.06, Florida Statutes, Grantor hereby grants and conveys to, and creates and establishes in favor of Grantee, a perpetual conservation easement (the "Conservation Easement") over the portions of the Property legally described as set forth in exhibit A, attached hereto and incorporated herein by reference, and located in the area of 7350 S.W. 162nd St., Palmetto Bay, FL, and furthermore identified for ad valorem tax purposes as a portion of tax folio number 33 – 5026 – 000 – 0230, which shall run with the land and shall be binding upon Grantor, it's successors and assigns, and shall remain in full force and effect forever. The scope, nature, terms and conditions of this Conservation Easement shall be as follows:

1. This Conservation Easement is hereby created as a permanent Conservation Easement and covenant running with the land for the benefit of the parties as set forth herein. It expressly does not cover any portions of the land owned by the Deering Estate Foundation, Inc. not expressly included under the specific legal description attached as a part of Exhibit A as being within the land subject to the Conservation Easement.

2. The undersigned owner covenants with the Easement Holder that the Property shall be maintained in its natural state as set forth under the conditions and exceptions set forth herein. Further, during the term of the existing Covenant dated 9-27-2010 existing with Miami Dade County for the Environmentally Endangered Lands program, the undersigned owner shall also comply with the terms of that agreement. Due to the permanent nature of the Conservation Easement created by this agreement, owner shall utilize best practices in maintaining the restricted areas

in their natural state, including control of exotic species. Grantee, its employees, agents, contractors and invitees shall have the right to enter upon the Property at reasonable times and following reasonable notice to the owner or current occupant of the Property in order to monitor compliance with and otherwise secure compliance with and enforce the terms of this Conservation Easement as set forth herein. Except to the extent otherwise permitted by this Conservation Easement the following activities are prohibited in or on the Property:

a. Construction or placement of buildings, roads, signs, billboards or other advertising, utilities, or other structures on or above the ground.
b. Dumping or placing of soil or other substance or material as landfill or dumping or placing of trash, waste or unsightly or offensive materials.
c. Removal or destruction of trees, shrubs or other vegetation except for normal maintenance.
d. Excavation, dredging or removal of loam, peat, gravel, soil, rock or other material substance in such manner as to affect the surface.
e. Surface use except for purposes that permit the land or water area to remain predominantly in its natural condition.
f. Activities detrimental to drainage, flood control, water conservation, erosion control, soil conservation or fish and wildlife habitat preservation.
g. Acts or uses detrimental to such retention of land or water areas.
h. Acts or uses detrimental to the preservation of the structural integrity or physical appearance of the historical, architectural or archaeological components of the Property.

3. Notwithstanding the above restrictions the owner may make minor developments as may be appropriate, including, but not limited to, for the purpose of installing walkways or pathways along the Property. Allowable components shall include: ancillary improvements supporting the maintenance, security and primary conservation, interpretation, study, presentation and educational programming use of the property, that includes but is not limited to nature trails, gazebo/picnic areas, interpretive signage, restroom facility, perimeter feature upgrade, entrance from alternate areas, perimeter signage; and laboratory, testing and field station facilities designed to feature the review, examination and presentation of the natural areas and historic features.

4. The undersigned owner further covenants and represents that the undersigned owner is the owner in fee or will be at the time of delivery and recordation of this agreement. It is acknowledged that this agreement may be executed prior to the closing on the Property taking place wherein title is being transferred to the undersigned owner, but that this document shall be recorded immediately upon recordation of the deed in favor of the undersigned owner.

5. The undersigned owner covenants and agrees that Easement Holder, as authorized agents, shall have the right upon written notification to the owner or current occupant of the Property, to inspect the Property at reasonable times to determine

whether the Property is being used and maintained in the manner promised by the undersigned owner in this covenant. This right to inspect shall be granted with a special condition that the representatives of the Easement Holder, shall also require the concurrence a majority of this designated representative of the Easement Holder as well as the Director of Miami Dade County Parks, Recreation & Open Spaces (or its successor agency) or their appointee and the Miami Dade County Director of the Deering Estate at Cutler or their appointee to take any specific action to enforce compliance with this Conservation Easement Covenant.

6. Should the Easement Holder, by its designees determine after such inspection that some curative action on the Property is necessary, as set forth in the enforcement mechanism below, the Easement Holder shall notify the owner in writing by certified mail, return receipt requested to 16701 SW 72 Ave Palmetto Bay, Fl. 33157, as well as by email to pettitmary@bellsouth.net (or to alternate street addresses and email addresses as designated by owner in the future) of the particular curative action to be taken by the owner of the Property and the reasons therefore.

7. The owner shall take such curative action within a reasonable time (within 30 days, unless the required curative action is of such a nature that it cannot reasonably be corrected in that time period, in which case there shall be no default as long as the owner continues to use best efforts to correct the matter designated as requiring curative action), provided however, the owner shall have the right to require mediation as a condition precedent to any such requirement or any enforcement action by sending a written request to the party giving owner notice of the requested curative action, within 30 days after receipt of written notification of such proposed curative action, and the reasons therefore. If requested as set forth above, mediation shall take place and proceed to resolution or impasse. If the parties cannot agree upon a mediator, the mediator may be selected by the Easement Holder. The parties shall share equally in the cost of the mediator.

8. The undersigned owner covenants and agrees that this covenant and provisions contained herein may be enforced by preliminary and permanent, prohibitory and mandatory injunctions or by any other remedies available under Florida law. This Conservation Easement creates rights enforceable only by Grantee, its successors and assigns, as set forth herein. Any costs, including but not limited to reasonable attorneys fees and court costs which are incurred in enforcing the terms and restrictions of this Conservation Easement shall be borne by and recoverable against the nonprevailing party. In any action in which the Grantee prevails, the Grantee shall be entitled to recover the cost of restoring the Property to the condition existing at the time of violation of this Conservation Easement. Any forbearance on behalf of Grantee to exercise its rights hereunder or to enforce the terms hereof in the event of any violation by Grantor shall not be deemed or construed as a waiver of Grantee's rights hereunder. There shall be no reversionary interest nor any right by the Easement Holder to receive title.

9. Grantee shall not be liable to Grantor or to any other party for the use, preservation and maintenance of the Property in the condition provided, or for the enforcement of this Conservation Easement. Grantor and successor owners of the Property shall remain responsible for and, to the extent assessable or applicable given the Grantor's not for profit status, shall pay all real property taxes and assessments levied against the Property.

10. This Conservation Easement shall be liberally construed in favor of Grantee to effect the purpose of this Conservation Easement and the purposes of Section 704.06 Florida Statutes. If any provision of the Conservation Easement is found to be invalid, the remainder of the provisions of this Conservation Easement shall not be affected thereby so long as the purposes of this Conservation Easement are preserved.

11. This Conservation Easement shall run with the land and shall bind all Grantor's successors in title to the Property. Grantee will not assign its rights and obligations under this Conservation Easement except to another organization or governmental entity qualified to hold conservation easements under Florida law.

12. This Conservation Easement shall be perpetual in duration. Grantee may re-record this Conservation Easement and/or file a notice pursuant to Section 712 Florida Statutes, at any time Grantee deems it desirable or necessary to preserve its rights hereunder.

(signature on following page)

In witness whereof the undersigned have caused this Conservation Easement Covenant to be executed this 24 day of July, 2015,

Witnesses:

Print: Brittne Bassant

Print: Min Li

Owner:

Deering Estate Foundation, Inc.
By: [illegible]
President

STATE OF FLORIDA
COUNTY OF MIAMI DADE

The foregoing instrument was acknowledged before me this July 24, 2015 (date) by David A. Marley, Jr. (name of officer or agent, title of officer or agent) of Deering Estate Foundation, Inc. (name of corporation acknowledging), a Florida (state or place of incorporation) corporation, on behalf of the corporation. (He)/she is personally known to me or has produced (type of identification) as identification.

Karen A. Solms
Signature of person taking acknowledgment)

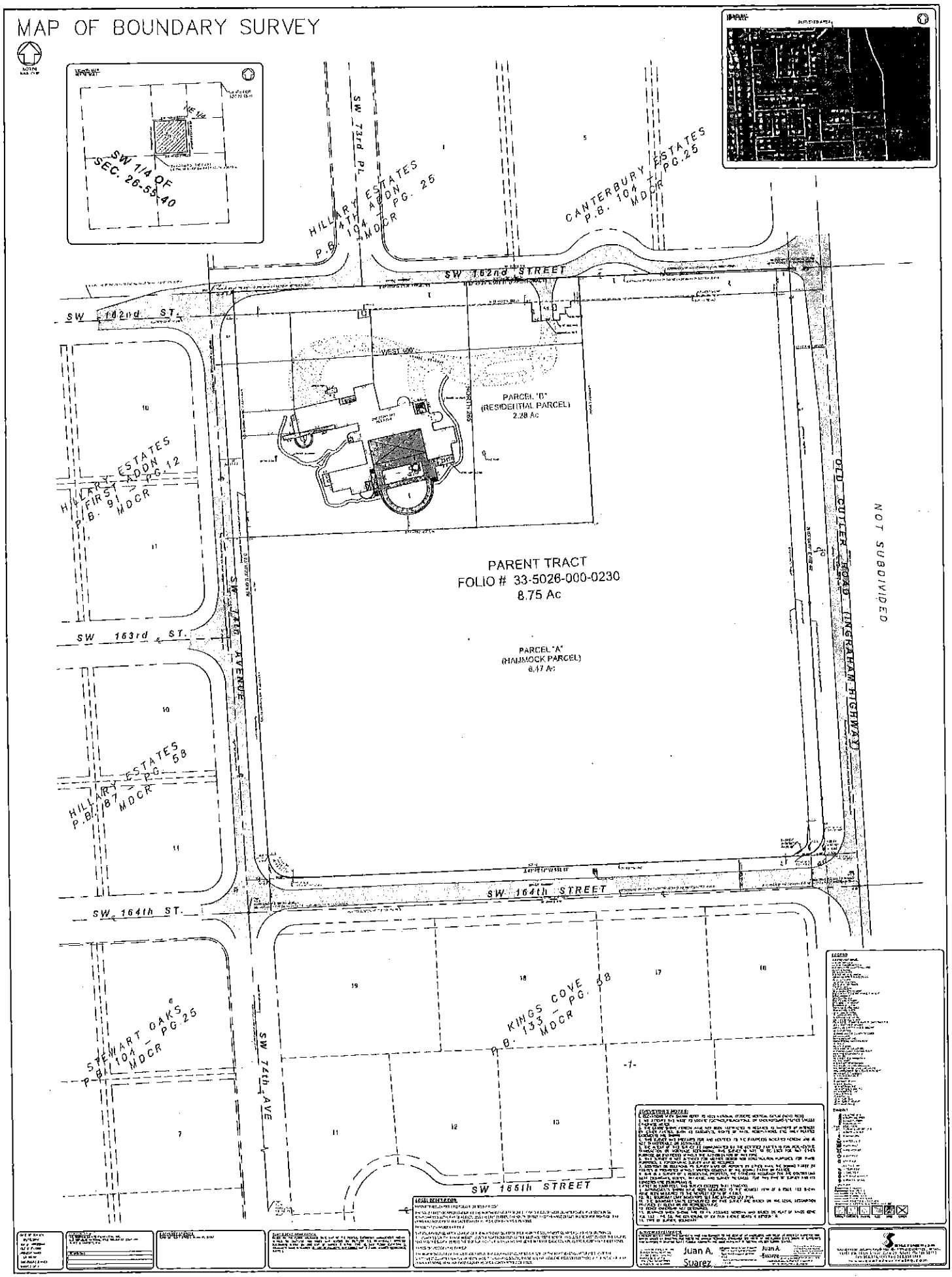
KAREN A. SOLMS
MY COMMISSION # FF057909
EXPIRES: September 26, 2017

Karen A. Solms
(Name typed, printed or stamped)

FF057909
(Title or rank) (Serial number, if any)

Exhibit A
Survey and Legal Description information

MAP OF BOUNDARY SURVEY



suarez surveying & mapping

January 27, 2015

Re: Job # 150120844

LEGAL DESCRIPTION:

PARENT TRACT *(ENTIRE SITE)*

THE SOUTHWEST QUARTER (SW 1/4) OF THE NORTHEAST QUARTER (NE 1/4) OF THE SOUTHWEST QUARTER (SW 1/4) OF SECTION 26, TOWNSHIP 55 SOUTH, RANGE 40 EAST; LESS THE EAST 35 FEET, THE SOUTH 35 FEET AND THE WEST 25 FEET THEREOF FOR RIGHT-OF-WAY; LYING AND BEING IN MIAMI-DADE COUNTY, FLORIDA, CONTAINING 8.75 ACRES.

PARCEL "A" *(HAMMOCK PARCEL)*

THE SOUTHWEST QUARTER (SW 1/4) OF THE NORTHEAST QUARTER (NE 1/4) OF THE SOUTHWEST QUARTER (SW 1/4) OF SECTION 26, TOWNSHIP 55 SOUTH, RANGE 40 EAST, LESS THE NORTH 265 FEET OF THE WEST 400 FEET THEREOF; AND LESS THE WEST 25 FEET, THE EAST 35 FEET AND THE SOUTH 35 FEET THEREOF FOR RIGHT-OF-WAY; LYING AND BEING IN MIAMI-DADE COUNTY, FLORIDA, CONTAINING 6.47 ACRES.

PARCEL "B" *(RESIDENTIAL PARCEL)*

THE NORTH 265 FEET OF THE WEST 400 FEET OF THE SOUTHWEST QUARTER (SW 1/4) OF THE NORTHEAST QUARTER (NE 1/4) OF THE SOUTHWEST QUARTER (SW 1/4) OF SECTION 26, TOWNSHIP 55 SOUTH, RANGE 40 EAST; LESS THE WEST 25 FEET THEREOF FOR RIGHT-OF-WAY; LYING AND BEING IN MIAMI-DADE COUNTY, FLORIDA, CONTAINING 2.28 ACRES.

15190 SW 136th Street, Suite 20, Miami, Florida 33196 Tel: 305.596.1799 Fax: 305.596.1886
www.suarezsurveying.com

MEMORANDUM

(Revised)

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

DATE: November 3, 2015

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Agenda Item No. 8(H)(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. 8(H)(1)
11-3-15

RESOLUTION NO. R-979-15

RESOLUTION ACCEPTING A PERPETUAL CONSERVATION EASEMENT IN FAVOR OF MIAMI-DADE COUNTY FROM THE DEERING ESTATE FOUNDATION, INC. FOR A LAND PARCEL LOCATED AT 7350 SW 162 STREET, IDENTIFIED BY FOLIO NUMBER 33-5026-000-0230, HELD IN TRUST FOR THE DEERING ESTATE AT CUTLER BY THE DEERING ESTATE FOUNDATION, INC.; AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE SAID EASEMENT AND TO EXERCISE ALL PROVISIONS CONTAINED THEREIN; AND DIRECTING COUNTY MAYOR OR MAYOR'S DESIGNEE TO RECORD SAID EASEMENT

WHEREAS, this Board desires to accomplish the purposes set forth in the attached memorandum which is incorporated herein by reference and made a part hereof,

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 recital and the attached memorandum as if fully set forth herein.

Section 2. This Board hereby accepts the Conservation Easement in favor of the County from the Deering Estate Foundation, Inc. in substantially the form attached to the Mayor's Memorandum as Attachment 1 and authorizes the County Mayor or County Mayor's designee to execute the Conservation Easement and to exercise all provisions contained therein.

Section 3. Pursuant to Resolution No. R-974-09, this Board directs: (a) the County Mayor or County Mayor's designee to record the Conservation Easement and to provide a recorded copy of the Conservation Easement to the Clerk of the Board within 30 days of execution of each said instrument; and (b) the Clerk of the Board to attach and permanently store a recorded copy of the Conservation Easement together with this resolution.

The foregoing resolution was offered by Commissioner **Barbara J. Jordan** , who moved its adoption. The motion was seconded by Commissioner **Xavier L. Suarez** and upon being put to a vote, the vote was as follows:

Jean Monestime, Chairman	**aye**		
Esteban L. Bovo, Vice Chairman	**aye**		
Bruno A. Barreiro	**absent**	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 3rd day of November, 2015. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this Resolution and the filing of this approval with the Clerk of the Board.

MIAMI-DADE COUNTY, FLORIDA

BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: **Christopher Agrippa**
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency. MRP

Monica Rizo