

MEMORANDUM

Agenda Item No. 14(A)(5)

TO: Honorable Chairwoman Audrey M. Edmonson
and Members, Board of County Commissioners

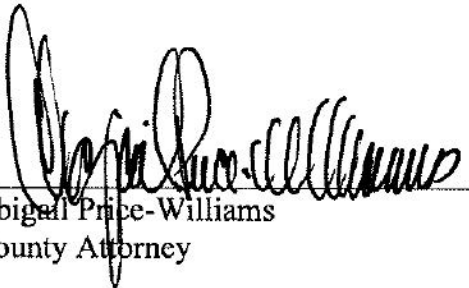
DATE: July 21, 2020

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Resolution approving restrictive covenant in favor of the State of Florida, Department of State, Division of Cultural Affairs, for a term of ten years in exchange for grant in the amount of \$412,000.00 to be used by Zoo Miami Foundation in support of Zoo Miami's Conservation Action Center at the Miami-Dade County-owned park known as Zoo Miami, located at 12400 SW 152 Street, Miami, FL 33177-1499; and further authorizing the County Mayor to execute restrictive covenant for and on behalf of Miami-Dade County and authorizing its recordation in the public records of Miami-Dade County

Resolution No. R-761-20

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 Dennis C. Moss.



Abigail Price-Williams
County Attorney

APW/smm

Memorandum



Date: July 21, 2020

To: Honorable Chairwoman Audrey M. Edmonson
and Members, Board of County Commissioners

From: Carlos A. Gimenez
Mayor

A handwritten signature in blue ink, appearing to read "Carlos A. Gimenez", written over the name in the "From:" field.

Subject: Resolution Approving a Restrictive Covenant in Favor of the State of Florida Required in Exchange for a \$412,000 Cultural Facilities Grant to the Zoo Miami Foundation for the Renovation of the Conservation Action Center at the Miami-Dade County Park Known as Zoo Miami.

Recommendation

It is recommended that the Board of County Commissioners (Board) approve the Restrictive Covenant for a ten-year term in favor of the State of Florida to be placed on the land underlying the Conservation Action Center (Center) at the Miami-Dade County-owned Zoo Miami (Zoo Miami), located at 12400 SW 152 Street, Miami, which Center is to be renovated and operated by Zoo Miami, in exchange for a \$412,000 grant to Zoo Miami Foundation (Foundation) for the interior renovations to create permanent, interpretive educational exhibits of the Center.

Scope

The Conservation Action Center is located at 12400 SW 152 Street, Miami in County Commission District 9, which is represented by Commissioner Dennis C. Moss.

Fiscal Impact/Funding Source

The State of Florida, Department of State, Division of Cultural Affairs (the State) awarded a \$412,000 Cultural Facilities Grant to be used by for renovation and installation of the Center. The County will provide \$825,250 in matching funds through the Zoo Miami Improvement Trust Fund, index code PRE600945085. The Zoo Miami Improvement Trust Fund was established to be used for extraordinary maintenance, repairs and improvements at Zoo Miami.

Track Record/Monitor

The Parks, Recreation and Open Spaces Department's (PROS) Assistant Director of Planning, Design, and Construction Excellence, Joe Cornely, will manage the restrictive covenant.

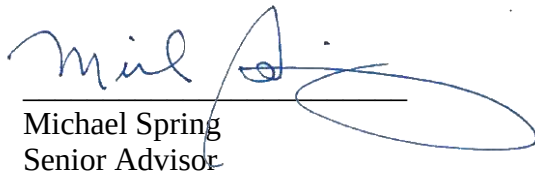
Background

The amended and restated Miami-Dade Zoological Park and Gardens Operating Agreement states that the design and construction of capital improvements shall be carried out jointly by the Foundation and the County. Further, either party may contract for design and construction services and perform related contract management functions, subject to applicable legal requirements.

The Foundation submitted and received a \$412,000 Cultural Facilities Grant from the Florida Department of State. The grant funds will be used for interior renovations of an existing building to create permanent, interpretive educational exhibits. The new Conservation Action Center will be an immersive, interactive exhibit experience that introduces guests to wildlife

and nature conservation issues in Florida and from around the world, through compelling storytelling. The displays in the center will provide fun, engaging, meaningful visitor experiences that help people to connect with, care for, and conserve our wildlife and the environment.

A requirement of the State's Cultural Facilities Grant Program is that a restrictive covenant (Attachment A) be executed by the Owner (Miami-Dade) and the Grant Recipient (the Foundation) as well as be recorded with the Clerk of Circuit Court of Miami-Dade County. The restrictive covenant specifically requires both parties to maintain the Center as a cultural facility for at least ten years following the recordation date of the covenant. If the covenant is violated, the Foundation must return the entire grant amount or a defined percentage to the State.



Michael Spring
Senior Advisor

ATTACHMENT A

RESTRICTIVE COVENANT

(Grantee leases land and building from Govt. Entity.)

THIS RESTRICTIVE COVENANT is hereby entered into this _____ day of _____,

20____, by **Miami-Dade County**, hereinafter referred to as the "Owner"; **Zoo Miami Foundation**, hereinafter referred to as the "Grantee;" and the State of Florida, Department of State, Division of Cultural Affairs, hereinafter referred to as the "Division".

WHEREAS, the Owner is the fee simple title holder of the building(s) and the underlying land located at **12400 SW 152 Street, Miami, Florida 33177-1499**. A legal description of the subject property is attached as Exhibit A and made a part of this covenant.

WHEREAS, the Grantee leases the building(s) and underlying land from the Owner **commencing November 24, 1998**. "Facility" is used herein to refer to the building(s) and the associated land that will be used as a "cultural facility," as defined herein.

WHEREAS, the Grantee has been approved to receive a Cultural Facilities Grant in the amount of **\$412,000**, to be administered by the Division and used only for the acquisition, renovation, and construction of the cultural facility in accordance with Section 265.701(1), Florida Statutes.

WHEREAS, the Division has authority under Section 265.701(4), Florida Statutes, to require the recordation of this restrictive covenant to ensure that the facility will be used as "cultural facility," as defined herein, for at least (10) ten years following the execution of the grant award agreement.

NOW THEREFORE, in partial consideration for the Cultural Facilities Grant and in accordance with Section 265.701(4), Florida Statutes, the Parties hereby agree to the following:

- 1.) This restrictive covenant shall run with the title to the land and the cultural facility, encumber them, and be binding upon the Grantee, the Owner and their successors in interest for ten (10) years following the execution of the grant award agreement.
- 2.) The grant award shall only be expended for

Project Title: Zoo Miami Conservation Action Center (20.c.cf.200.229)

3.) The Parties agree that for the required duration of this covenant, all improvements to the facility and the associated land, funded in whole or part by grant funds shall be owned by the Owner.

4.) The Division has the right to inspect the facility and the associated land at all reasonable times to determine whether the conditions of the grant award agreement and this covenant are being complied with.

5.) The facility shall be maintained as a "cultural facility," defined as a building which shall be used primarily for the programming, production, presentation, exhibition or any combination of the above functions of any of the cultural disciplines, such as: music, dance, theatre, creative writing, literature, painting, sculpture, folk arts, photography, crafts, media arts, and historical and science museums.

6.) This restrictive covenant will be violated if the Grantee, the Owner, or their successors in interest do not use or cease to use the facility as a cultural facility, as defined herein, and as required by Section 265.701(4), F.S., within ten (10) years following the execution of the grant award agreement. If the Grantee or Owner violates this restrictive covenant, the violating party shall repay the grant funds to Division pursuant to the amortization schedule set forth below:

- a. If the violation occurs within five (5) years following the execution of the grant award agreement, 100% of the grant amount;
- b. If the violation occurs more than five (5) but less than six (6) years following execution of the grant award agreement, 80% of the grant amount;
- c. If the violation occurs more than six (6) but less than seven (7) years following execution of the grant award agreement, 65% of the grant amount;
- d. If the violation occurs more than seven (7) but less than eight (8) years following execution of the grant award agreement, 50% of the grant amount;
- e. If the violation occurs more than eight (8) but less than nine (9) years following execution of the grant award agreement, 35% of the grant amount; and
- f. If the violation occurs more than nine (9) but less than ten (10) years following execution of the grant award agreement, 20% of the grant amount.

7.) The amount due as a result of the violating parties' violation of this restrictive covenant shall be due in full within 90 days of the violation, or some other period of time as agreed upon by the parties.

8.) If the entire amount due under the paragraph (6.) is not repaid by the violating party within the time allotted, the Parties agree that the Division may obtain a stipulated judgment against the violating party or Owner for the amount due plus interest at the current legal rate, and record it in the public records of the county where the facility is located. The Parties further agree that such a judgment shall be a stipulated judgment by virtue of full execution of this restrictive covenant; that it shall not require further approval of the violating party to obtain; and that no trial or hearing shall be necessary to make such a stipulated judgment legally effective. The Division shall have the right to enforce the stipulated judgment by resorting to any legal or equitable available remedy including an action for specific performance.

9.) As a condition to receipt of the grant funds, the Grantee shall:

- a. Record this covenant in the public records with the Clerk of the Circuit Court of **Miami-Dade** County, Florida;
- b. Pay all fees associated with its recording; and

c. Provide a certified copy of the recorded covenant to the Division and to the Owner.

10.) The Parties agree that the Division shall incur no tax liability as a result of this covenant.

IN WITNESS WHEREOF, the Grantee and the Owner hereby affirm that they have read this restrictive covenant; that they understand and agree to its terms; and that they hereby affix their signatures accordingly.

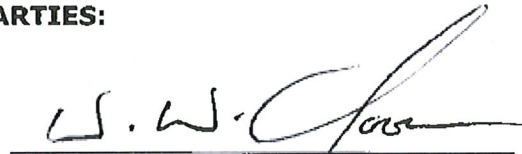
WITNESSES:



First Witness Signature

Corey Davis
First Witness Name (print)

PARTIES:



GRANTEE SIGNATURE

William W. Moore
GRANTEE NAME (print)



Second Witness Signature

12400 SW 152 ST
GRANTEE ADDRESS

Harena D. Costa
Second Witness Name (print)

miami FL 33177
City State Zip

The State of Florida County of Florida

I certify that on this date before me, an officer duly authorized in the state and county named above to take acknowledgments, that

William W Moore personally
(Name)

appeared as Grantee
Pres & CEO for Zoom Miami Foundation
(Position) (Name of Qualifying Entity)

known to me to be or proved to my satisfaction that he/she is the person described in and who executed the foregoing instrument.

Type of Identification Produced Florida Driver's license

Executed and sealed by me at Miami, Florida on 2/27/20

 NOEMI MIYARES
NOTARY PUBLIC
STATE OF FLORIDA
Comm# GG272254
Expires 10/29/2022
[SEAL]

Notary Public in and for

The State of Florida

My commission expires: 10/29/22

First Witness Signature

OWNER SIGNATURE

First Witness Name (print)

OWNER NAME (print)

Second Witness Signature

OWNER ADDRESS

Witness Name (print)

City

State

Zip

The State of Florida County of _____

I certify that on this date before me, an officer duly authorized in the state and county named above to take acknowledgments, that

_____ personally
(Name)

appeared as _____ for _____
(Position) (Name of Qualifying Entity)

known to me to be or proved to my satisfaction that he/she is the person described in and who executed the foregoing instrument.

Type of Identification Produced _____

Executed and sealed by me at _____, Florida on _____

Notary Public in and for

The State of _____

My commission expires: _____

[SEAL]

For the Division of Cultural Affairs:

R.A. Gray Building
500 S. Bronough St.
Tallahassee, Florida 32303

Sandy Shaughnessy, Director

First Witness Signature

First Witness Name (Print)

Second Witness Signature

Second Witness Name (Print)

The State of Florida County of _____

I certify that on this date before me, an officer duly authorized in the state and county named above to take acknowledgments, that

_____ personally
(Name)

appeared as _____ for the Florida Department of State, Division of
(Position)

Cultural Affairs known to me to be or proved to my satisfaction that he/she is the person described in and who executed the foregoing instrument.

Type of Identification Produced _____

Executed and sealed by me at _____, Florida on _____.

Notary Public in and for

The State of _____

My Commission expires: _____

[SEAL]

This document was prepared by the following individual:

Teri R. Abstein
R. A. Gray Building
500 South Bronough Street
Tallahassee, FL 32399-0250

EXHIBIT "A"

METRO ZOO EDUCATION COURT BUILDING

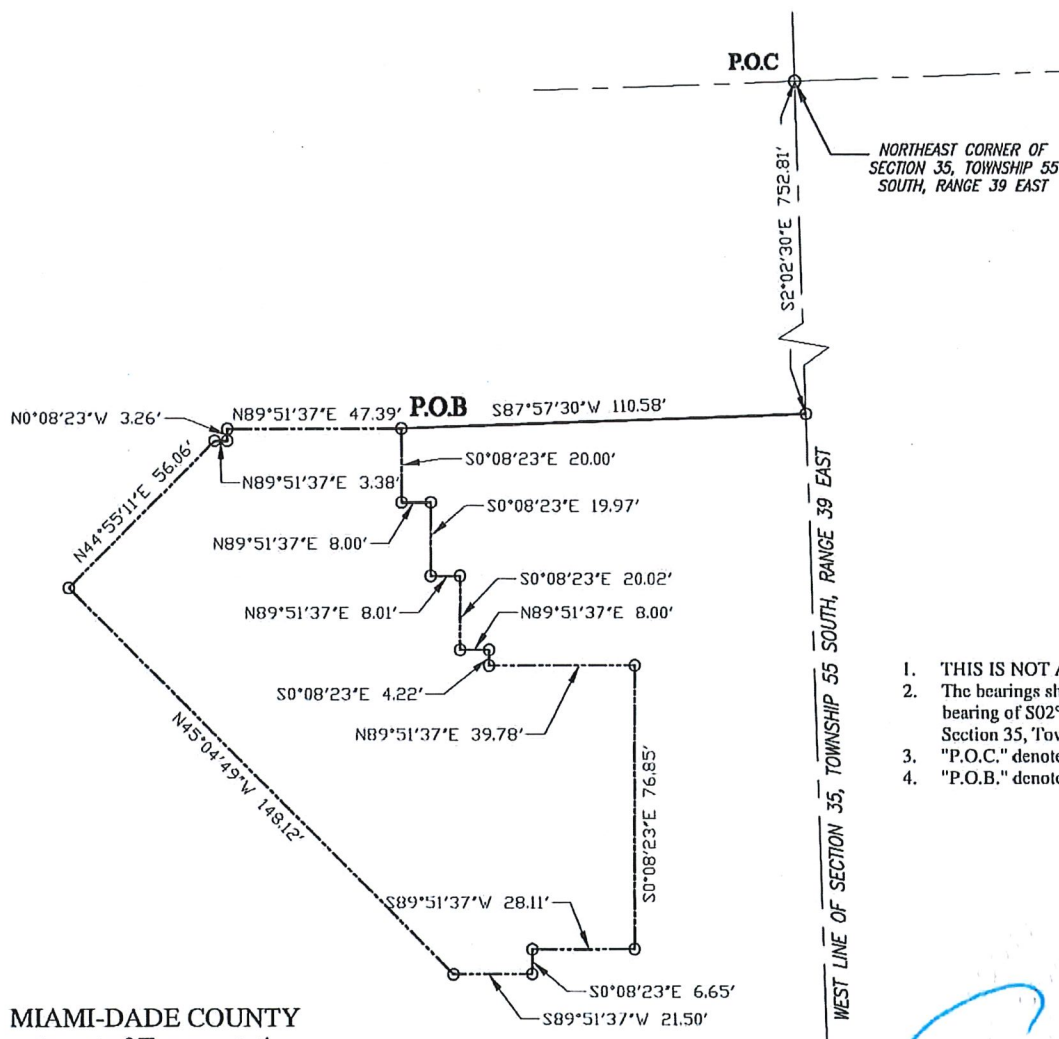
LEGAL DESCRIPTION

LEGAL DESCRIPTION OF EDUCATION COURT BUILDING:

ALL OF THOSE LANDS LYING IN SECTIONS 35 OF TOWNSHIP 55 SOUTH, RANGE 39 EAST, LOCATED IN MIAMI-DADE COUNTY, FLORIDA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

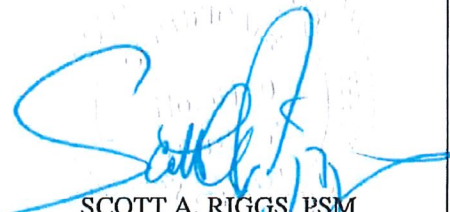
COMMENCING AT THE NORTHEAST CORNER OF SECTION 35, TOWNSHIP 55 SOUTH, RANGE 39 EAST; THENCE S02°02'30"E ALONG THE WEST LINE OF SECTION 35 FOR A DISTANCE OF 752.81 FEET, THENCE S87°57'30"W FOR A DISTANCE OF 110.58 FEET TO THE POINT OF BEGINNING OF THIS PARCEL; THENCE S0°08'23"E FOR A DISTANCE OF 20.00 FEET; THENCE N89°51'37"E FOR A DISTANCE OF 8.00 FEET; THENCE S0°08'23"E FOR A DISTANCE OF 19.97 FEET; THENCE N89°51'37"E FOR A DISTANCE OF 8.01 FEET; THENCE S0°08'23"E FOR A DISTANCE OF 20.02 FEET; THENCE N89°51'37"E FOR A DISTANCE OF 8.00 FEET; THENCE S0°08'23"E FOR A DISTANCE OF 4.22 FEET; THENCE N89°51'37"E FOR A DISTANCE OF 39.78 FEET; THENCE S0°08'23"E FOR A DISTANCE OF 76.85 FEET; THENCE S89°51'37"W FOR A DISTANCE OF 28.11 FEET; THENCE S0°08'23"E FOR A DISTANCE OF 6.65 FEET; THENCE S89°51'37"W FOR A DISTANCE OF 21.50 FEET; THENCE N45°04'49"W FOR A DISTANCE OF 148.12 FEET; THENCE N44°55'11"E FOR A DISTANCE OF 56.06 FEET; THENCE N89°51'37"E FOR A DISTANCE OF 3.38 FEET; THENCE N0°08'23"W FOR A DISTANCE OF 3.26 FEET; THENCE N89°51'37"E FOR A DISTANCE OF 47.39 FEET TO THE POINT OF BEGINNING OF THIS PARCEL.

CONTAINING 12,670 SQUARE FEET, OR 0.29 ACRES, MORE OR LESS.



1. THIS IS NOT A BOUNDARY SURVEY.
2. The bearings shown hereon are referenced to the bearing of S02°02'30"E for the West line of Section 35, Township 55 East, Range 39 South.
3. "P.O.C." denotes "point of commencement".
4. "P.O.B." denotes "point of beginning".

MIAMI-DADE COUNTY
Department of Transportation
and Public Works
111 NW First Street, Suite # 1610
Miami, Florida 33128 (305) 375-2657
Date: 10-03-2019


SCOTT A. RIGGS, PSM
Florida License # 6160

This Legal Description and the accompanying sketches are not valid without the signature and raised seal of a Florida Licensed Surveyor and Mapper. This Legal Description and the accompanying sketches are not valid one without the other.

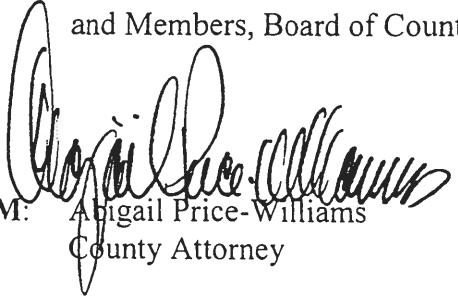


MEMORANDUM

(Revised)

TO: Honorable Chairwoman Audrey M. Edmonson
and Members, Board of County Commissioners

DATE: July 21, 2020

FROM: 
Abigail Price-Williams
County Attorney

SUBJECT: Agenda Item No. 14(A)(5)

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 present ____, 2/3 membership ____, 3/5's ____, unanimous ____, CDMP 7 vote requirement per 2-116.1(3)(h) or (4)(c) ____, CDMP 2/3 vote requirement per 2-116.1(3)(h) or (4)(c) ____, or CDMP 9 vote requirement per 2-116.1(4)(c)(2) ____ 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. 14(A)(5)
7-21-20

RESOLUTION NO. R-761-20

RESOLUTION APPROVING RESTRICTIVE COVENANT IN FAVOR OF THE STATE OF FLORIDA, DEPARTMENT OF STATE, DIVISION OF CULTURAL AFFAIRS, FOR A TERM OF TEN YEARS IN EXCHANGE FOR GRANT IN THE AMOUNT OF \$412,000.00 TO BE USED BY ZOO MIAMI FOUNDATION IN SUPPORT OF ZOO MIAMI'S CONSERVATION ACTION CENTER AT THE MIAMI-DADE COUNTY-OWNED PARK KNOWN AS ZOO MIAMI, LOCATED AT 12400 SW 152 STREET, MIAMI, FL 33177-1499; AND FURTHER AUTHORIZING THE COUNTY MAYOR OR MAYOR'S DESIGNEE TO EXECUTE RESTRICTIVE COVENANT FOR AND ON BEHALF OF MIAMI-DADE COUNTY AND AUTHORIZING ITS RECORDATION IN THE PUBLIC RECORDS OF MIAMI-DADE COUNTY

WHEREAS, this 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 approves the restrictive covenant between the County, the Zoo Miami Foundation, and in favor of the State of Florida, Department of State, Division of Cultural Affairs in substantially the form attached to the Mayor's Memorandum as Attachment "A" to be placed upon the County-owned land underlying the Conservation Action Center and that is depicted in Exhibit A to Attachment A, in exchange for \$412,000.00 from a Cultural Facilities grant to the Foundation to be used in support of the production and installations of the Conservation Action Center.

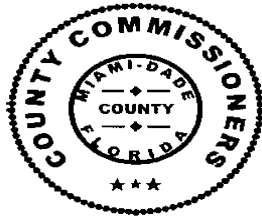
Section 2. The Board authorizes the County Mayor or Mayor’s designee to execute the restrictive covenant on behalf of the County and to exercise all provisions contained therein. The County Mayor or Mayor’s designee shall be required to seek Board approval for any approvals, consents, actions, events or undertakings that would create a financial obligation, cost or expense to the County beyond those specifically identified and set forth in the Agreement.

Section 3. This Board, pursuant to Resolution No. R-974-09, (a) directs the County Mayor or Mayor’s designee to record the instrument of conveyance accepted herein in the Public Records of Miami-Dade County, Florida, and to provide a recorded copy of the instrument to the Clerk of the Board within thirty (30) days of execution of said instrument; and (b) directs the Clerk of the Board to attach and permanently store a recorded copy of said instrument together with this resolution.

The foregoing resolution was offered by Commissioner **Sally A. Heyman** , who moved its adoption. The motion was seconded by Commissioner **Dennis C. Moss** and upon being put to a vote, the vote was as follows:

Audrey M. Edmonson, Chairwoman	aye
Rebeca Sosa, Vice Chairwoman	absent
Esteban L. Bovo, Jr.	absent
Jose “Pepe” Diaz	aye
Eileen Higgins	aye
Joe A. Martinez	absent
Dennis C. Moss	aye
Xavier L. Suarez	absent
Daniella Levine Cava	aye
Sally A. Heyman	aye
Barbara J. Jordan	aye
Jean Monestime	aye
Sen. Javier D. Souto	aye

The Chairperson thereupon declared this resolution duly passed and adopted this 21st day of July, 2020. 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: **Melissa Adames**
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

A handwritten signature in dark ink, appearing to read "mjs", is written over a horizontal line.

Melanie J. Spencer