

MEMORANDUM

Agenda Item No. 9(A)(1)

TO: Honorable Chairman Jose "Pepe" Diaz
and Members, Board of County Commissioners

DATE: October 6, 2022

FROM: Geri Bonzon-Keenan
County Attorney

SUBJECT: Resolution approving an
Underground Utility Easement
agreement between Miami-Dade
County and Miami Supertower A
LLC for a nominal sum of
\$10.00; authorizing the County
Mayor to execute the
Underground Utility Easement
and to exercise all rights
conferred therein

Resolution No. R-866-22

The accompanying resolution was prepared by the Information Technology Department and placed on the agenda at the request of Prime Sponsor Commissioner Eileen Higgins.



Geri Bonzon-Keenan
County Attorney

GBK/ks

Memorandum



Date: October 6, 2022

To: Honorable Chairman Jose "Pepe" Diaz
and Members, Board of County Commissioners

From: Daniella Levine Cava
Mayor *Daniella Levine Cava*

Subject: Resolution approving an Underground Utility Easement Agreement between Miami-Dade County and Miami Supertower A LLC for a nominal sum of \$10.00.

Executive Summary

This item seeks Board approval of an Underground Utility Easement Agreement between Miami-Dade County and Miami Super Tower A LLC for a nominal sum of \$10.00. The County has a handhole located along NW 1 Avenue that provides access to a fiber optic plant that supports critical County infrastructure. The County's handhole is located 10 feet inside the property line of vacant land being sold for development. An agreement was reached with the developers, and both the seller and the buyer agree to granting the County an underground utility easement prior to the closing.

Recommendation

It is recommended that the Board of County Commissioners (Board) approve an Underground Utility Easement agreement, between Miami-Dade County and Miami Supertower A LLC for a nominal fee of \$10.00. The easement provides continued access to a handhole located along NW 1st avenue that contains a critical County Fiber Optic Plant.

Scope

The subject property is located within Commission District 5, which is represented by Commissioner Eileen Higgins.

Fiscal Impact/Funding Source

The County will pay a nominal sum of \$10.00 for the Underground Utility Easement. The funding will be from the Information Technology Department's General Fund allocation.

Track Record/Monitor

The Information Technology Department will be responsible for this easement and the monitor will be Mr. Juan Aguirre, Division Director.

Delegated Authority

This item authorizes the County Mayor or County Mayor's designee to execute the easement and to exercise any and all rights conferred herein.

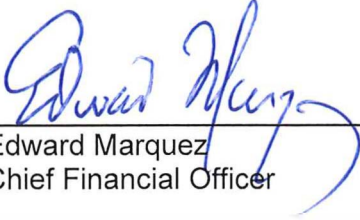
Background

In March of 2022, Miami-Dade County was contacted by Florida East Coast Industries (FECI) regarding unidentified handholes located on the south sidewalk near the park along NW 1 Avenue and NW 1 Street. The handholes conflicted with the NW 1 Avenue Road Re-Alignment project. The handholes belong to the County and were identified as part of the enterprise fiber optic plant infrastructure. This fiber optic plant services the following County facilities: Steven P. Clark Government Center, Miami-Dade Civil Court House, Clerk of the Courts, the New Civil Courthouse and Dade County District Courts. The County worked closely with FECI and reached an agreement to relocate and combine handholes into one location where the County could access the fiber optic plant that supports critical County infrastructure for any

Honorable Chairman Jose "Pepe" Diaz
and Members, Board of County Commissioners
Page 2

maintenance, replacement or repair needs. The Underground Utility Easement is attached to this memorandum as Attachment 1. It provides for a nonexclusive underground easement to the County within the property legally described in Exhibit A to Attachment 1.

In June of 2022, FECL informed the County that the property where the new handhole is located was for sale. The County and FECL discussed options for the potential buyer because the handhole was located 10 feet inside the property line. The County, FECL, and the potential buyer reached an agreement for an underground utility easement for the County to access its physical fiber optic plant. To avoid title work complications, the parties have agreed to the County executing the Underground Utility Easement prior to the closing of the property sale.



Edward Marquez
Chief Financial Officer

This instrument prepared by
and after recording return to:

Name: Kolleen Cobb, Esq.
Address: 700 NW 1st Avenue, Suite 1620
Miami, FL 33136

(Space Reserved for Clerk of the Court)

UNDERGROUND UTILITY EASEMENT

THIS UNDERGROUND UTILITY EASEMENT AGREEMENT (“**Easement Agreement**”) is made and entered into as of _____, 2022 by and between MIAMI SUPERTOWER A LLC, a Delaware limited liability company, successor by merger to MDT A LLC, a Delaware limited liability company whose address is 700 NW 1st Avenue, Suite 1620, Miami, Florida 33136, its successors and assigns (“**Grantor**”) and MIAMI-DADE COUNTY, a political subdivision of the State of Florida, whose address is 701 NW 1st Court, 17th floor, Miami, Florida 33135 (“**Grantee**” or “**County**”).

RECITALS:

A. Grantor is the owner of that certain tract of land located in Miami-Dade County, Florida legally described in **Exhibit “A”** attached hereto and made a part hereof (“**Grantor Property**”).

B. County is the owner of the following facilities in the vicinity of the Grantor Property which are being serviced by the Easement Facilities (as hereinafter defined): (Steven P Clark Government Center 111 NW 1 Street, Civil Courthouse 73 W Flagler Street, Clerk of The Courts 22 NW 1 Street, New Civil Courthouse NW Corner of NW 1st Ave & NW 1st Street, and Dade County District Courts 175 NW 1st Ave) (collectively, the “**County Facilities**”).

C. The Grantor Property is currently vacant land which is intended to be developed.

D. The Grantor Property was replatted to include certain closed and vacated portions of the former right of way for NW 1st Avenue. NW 1st Avenue was realigned and relocated outside of the Grantor Property (“**Road Re-Alignment**”).

E. Prior to the Road Re-Alignment, the County had underground fiber optic telecommunication lines serving the County Facilities (together with an at-grade hand-hole for access to the lines) within the former right-of-way for NW 1st Avenue

(“**Telecommunication Utilities**”). In connection with the Road Re-Alignment, the County relocated the Telecommunication Utilities outside of the Grantor Property, except for that portion of the Grantor Property described in **Exhibit “B”** attached hereto and made a part hereof (“**Easement Property**”).

F. Grantor has agreed to provide the County a nonexclusive underground easement within the Easement Property for location of the Telecommunication Utilities, and for the location of an at-grade hand hole for access to the Telecommunication Utilities, subject to the terms and conditions set forth herein.

G. Except for the easement provided to the County in this Easement Agreement, the County shall have no easement rights, or rights to maintain utilities in, on or under the Grantor Property.

NOW, THEREFORE, in consideration of the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Grantor and the County, by the acceptance hereof, hereby agree as follows:

1. **Recitals**. The Recitals to this Easement Agreement are true and correct and are hereby incorporated by reference and made a part hereof.

2. **Grant of Easement**. Grantor hereby grants to the County a perpetual non-exclusive underground easement (“**Easement**”) under the Easement Property for the location, repair, replacement and maintenance of telecommunication lines, conduits and related underground facilities (together with an at grade hand hole (“**Hand Hole**”) for access) (“**Easement Facilities**”) within the Easement Property to service the County Facilities. Although the Easement shall be only for that underground portion of the Easement Property, together with the right to locate and maintain the Hand Hole at the surface level for access to the underground Easement Facilities, Grantor agrees not to construct any building over the Easement Property lower than twenty (20) feet above 7.9 N.G.V.D. 29 (“**Minimum Vertical Building Elevation**”) to allow access from time to time to the Easement Facilities as necessary for the repair, replacement and maintenance of the Easement Facilities. The County shall only have the right to utilize the above ground portion of the Easement Property below the Minimum Vertical Building Elevation for the location and maintenance of the at grade Hand Hole and for the repair, replacement and maintenance of the underground Easement Facilities. Notwithstanding anything to the contrary, no rights are granted or created whatsoever by this Easement Agreement in or to any portion of the Easement Property above the Minimum Vertical Building Elevation or in or to any portion of the Grantor Property outside of the Easement Property. The rights to the Easement Property granted herein shall be nonexclusive; provided however that the County’s use of the Easement Area shall in no way interfere with the Grantor’s construction, operation or use of the Grantor Property.

3. **Maintenance and Repair**. County shall be responsible for all maintenance and repair of the Easement Facilities within the Easement Property, and for all repairs or

damage to the Grantor Property resulting from the County's use of the Easement, subject to the limitations contained in Section 768.28, Florida Statutes.

4. **Termination.** It is expressly provided that if and whenever the use of the Easement is permanently discontinued, the Easement shall automatically terminate.

5. **Retention of Rights.** Grantor retains all rights not specifically conveyed herein. No uses of the Easement Area, other than those set forth herein, will be permitted without the express written consent of Grantor. At the request of Grantor, the County agrees to cooperate with Grantor in connection with functionally and aesthetically integrating the Hand Hole into improvements located from time to time on the Grantor Property, including walkways.

6. **Other Utility Easement.** A portion of the Easement Property is or will be subject to an easement in favor of Florida Power & Light Company ("FP&L").

7. **No Assignment.** The Easement may not be assigned, transferred, or conveyed, in whole or in part, by Grantee without the prior written consent of Grantor which may be withheld in its sole and absolute discretion. The Easement may only be used to service the County Facilities.

8. **Notices.** Any notices which may be permitted or required hereunder shall be in writing and shall be deemed to have been duly given as of the date and time the same are received at the addressee's address set forth below, whether same are personally delivered, mailed by United States Postal Service, postage prepaid by registered or certified mail, return receipt requested, delivered by Federal Express or other overnight delivery service from which a receipt may be obtained, and addressed as follows:

To Grantee: Miami Dade County
701 NW 1st Court, 17th Floor,
Miami, Florida 33136
Attn: Director, Information Technology Department

To Grantor: Miami Supertower A, LLC
700 NW 1st Avenue, Suite 1620,
Miami, Florida 33136
Fax: (305) 520-2400
Attention: Kolleen Cobb

9. **General Provisions.**

A. **Severability.** In the event that any part, term, or provision of this Easement Agreement is found to be illegal or unenforceable by a court of competent jurisdiction, the validity of the remaining portions and provisions shall not be affected and the rights and obligations of the parties shall be construed and enforced as if this Easement Agreement did not contain the particular party, term, or provision held to be invalid or unenforceable.

B. Successors and Assigns. This Easement Agreement shall be binding upon, and inure to the benefit of, Grantor and the County and their heirs, legal representatives, successors and assigns.

C. Captions. Captions are included for convenience only and shall be given no legal effect whatsoever.

D. Applicable Law. This Easement Agreement and all questions of interpretation, construction, and enforcement shall be governed by and construed in accordance with the laws of the State of Florida without regard to conflicts of law principles. Venue for any action arising out of this Easement shall be Miami-Dade County, Florida.

E. Successors and Assigns. Any references herein to Grantor shall include Grantor's successors and assigns after the Easement Property is conveyed.

F. Amendments; Termination. Subject to the other provisions hereof, this Easement Agreement may not be amended, modified or terminated except by written agreement of all of the then custodial or fee owners of the Easement Property and the holders of any mortgages of record encumbering same. Further, no modification or amendment shall be effective unless in writing, duly executed, acknowledged and recorded in the Public Records of Miami-Dade County, Florida. In addition, the failure or delay of any party at any time to require performance by another party of any provision of this agreement, even if known, shall not affect the rights of such party to require performance of that provision or to exercise any right, power or remedy hereunder, and any waiver by any party of any breach of any provision of this Easement Agreement should not be construed as a waiver of the provision itself, or a waiver of any right, power or remedy under this Easement Agreement. No notice to or demand on any party in any case shall, of itself, entitle such party to any other or further notice or demand in similar or other circumstances.

G. Recording. This Easement Agreement shall be recorded in the Public Records of Miami-Dade County, Florida, at the sole cost of Grantor. A copy of the recorded instrument shall be provided to the Director of the Information Technology Department of Miami-Dade County within thirty (30) days of recording.

[SIGNATURE PAGES TO FOLLOW]

GRANTEE:

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

By: _____
Name: _____
MAYOR OR DEPUTY MAYOR

Approved by Assistant County Attorney
as to form and legal sufficiency

Print Name: _____

EXHIBIT "A"

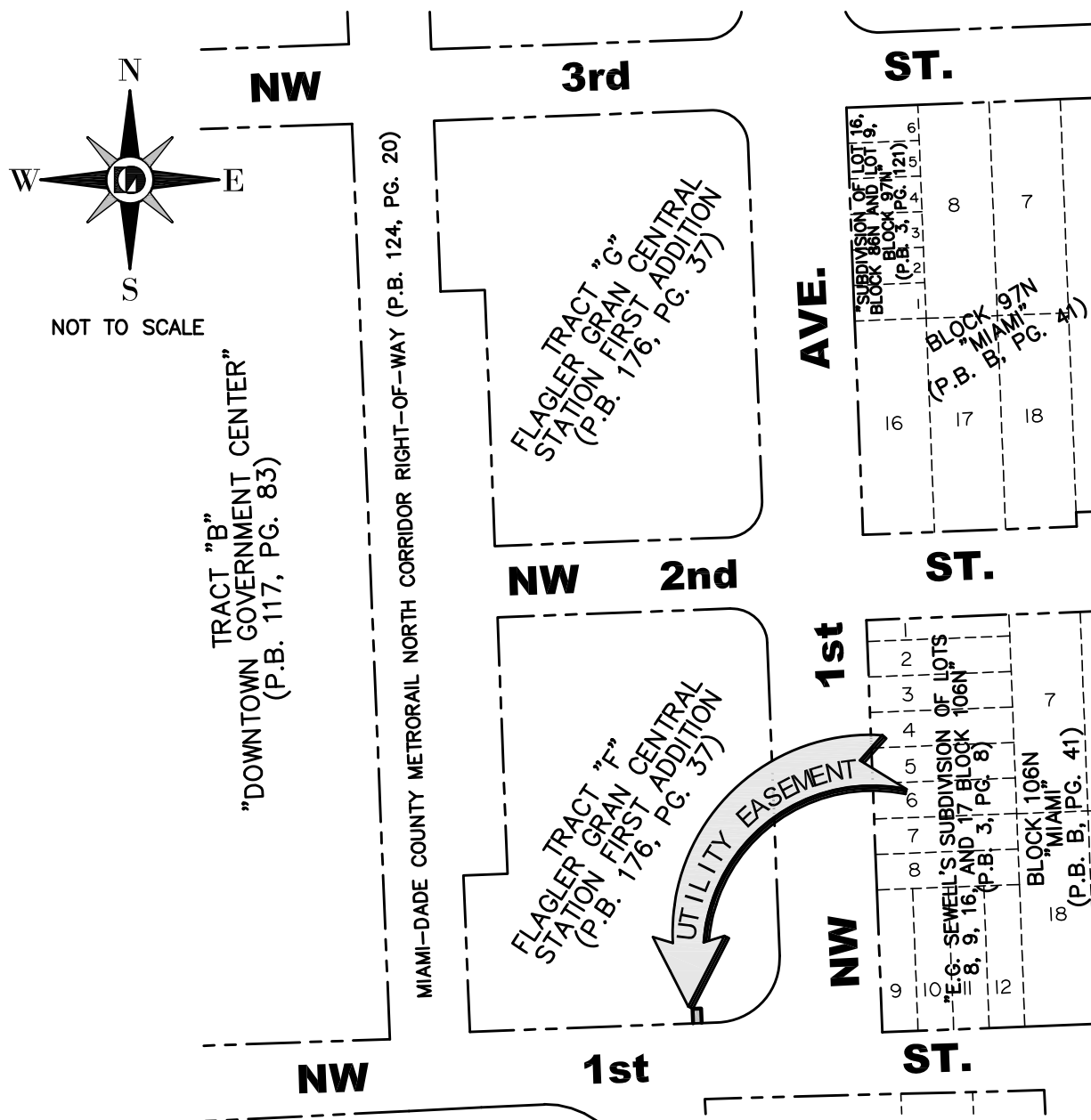
GRANTOR PROPERTY

Tract F of FLAGLER GRAN CENTRAL STATION FIRST ADDITION, according to the Plat thereof recorded in Plat Book 176, Page 37, of the Public Records of Miami-Dade County, Florida.

EXHIBIT “B”
EASEMENT PROPERTY

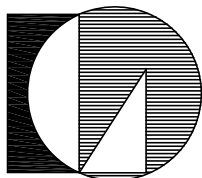
[See attached legal description and sketch]

(THIS IS NOT A SURVEY)



A PORTION OF SECTION 37 (JAMES HAGAN DONATION),
TOWNSHIP 54 SOUTH, RANGE 41 EAST, CITY OF MIAMI,
MIAMI-DADE COUNTY, FLORIDA.

This document consists of three (3) sheets and each sheet will not be considered full, valid and complete unless attached to the others.



LUDOVICI & ORANGE
CONSULTING ENGINEERS, INC.
CERTIFICATE OF AUTHORIZATION NO. LB 1012
13501 SW 128th Street, Suite 211, Miami, FL 33186
Phone: 305-448-1600 | info@ludovici-orange.com

PROJ. #: 2000 16L

OF 3 SHEETS

LEGAL DESCRIPTION (6 FOOT UTILITY EASEMENT)

LEGAL DESCRIPTION:

(THIS IS NOT A SURVEY)

A portion of Tract "F" of FLAGLER GRAN CENTRAL STATION FIRST ADDITION, according to the Plat thereof, as recorded in Plat Book 176, Page 37 of the Public Records of Miami-Dade County, Florida, lying and being in Section 37 (James Hagan Donation), Township 54 South, Range 41 East, City of Miami, Miami-Dade County, Florida, being more particularly described as follows:

A strip of land 6.00 feet in width, lying 3.00 feet to the left and 3.00 feet to the right of the following described centerline:

COMMENCE at the SW corner of said Tract "F"; thence N87°46'57"E as a basis of bearings along the South line of said Tract "F" for a distance of 159.66 feet to the POINT OF BEGINNING of said strip of land; thence N02°13'03"W for a distance of 10.10 feet to the POINT OF TERMINATION.

The side lines of the described 6 foot wide easement are to be lengthened or shortened as necessary to maintain a continuous strip of land in described width and to intersect existing rights-of-way and/or property boundaries of record as may be applicable. Containing 61 square feet, more or less.

Said described land known as The Easement Area, including rights of access, is vertically limited to twenty (20) feet above 7.9 NGVD 29.

SURVEYOR'S REPORT:

-The survey map and report or the copies thereof are not valid without the signature and the original raised seal of a Florida licensed surveyor and mapper.

-Additions or deletions to survey maps or reports by other than the signing party or parties is prohibited without written consent of the signing party or parties.

-This document consists of three (3) sheets and each sheet will not be considered full, valid and complete unless attached to the others.

-Bearings shown hereon are based on an assumed value of N87°46'57"E along the South line of Tract "F" of FLAGLER GRAN CENTRAL STATION FIRST ADDITION, according to the Plat thereof, as recorded in Plat Book 176, Page 37 of the Public Records of Miami-Dade County, Florida, City of Miami, Miami-Dade County, Florida.

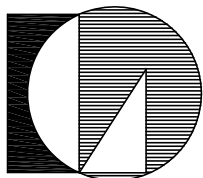
SURVEYOR'S CERTIFICATE:

I HEREBY CERTIFY: that the SKETCH AND LEGAL DESCRIPTION of the property described hereon was made under my supervision and that the SKETCH AND LEGAL DESCRIPTION meets the Standard of Practice set forth by the Florida Board of Professional Land Surveyors and Mappers in Chapter 5J-17 Florida Administrative Code pursuant to Section 472.027, Florida Statutes. And, that the sketch hereon is true and correct to the best of my knowledge and belief. Subject to notes and notations shown hereon.

LUDOVICI AND ORANGE CONSULTING ENGINEERS INC. LB1012

Digitally signed by Arturo A Sosa
Date: 2022.08.22 12:19:13 -04'00'

Arturo A. Sosa
Professional Surveyor and Mapper No. 2629
State of Florida
art@ludovici-orange.com



LUDOVICI & ORANGE
CONSULTING ENGINEERS, INC.
CERTIFICATE OF AUTHORIZATION NO. LB 1012
13501 SW 128th Street, Suite 211, Miami, FL 33186
Phone: 305-448-1600 | info@ludovici-orange.com

DRAWN: A.J.
CHECKED: A.J.
SCALE: N/A
DATE: 08-19-2022
PROJ. #: 2000 16L

SHEET:
2
OF 3 SHEETS

14



MEMORANDUM

(Revised)

TO: Honorable Chairman Jose "Pepe" Diaz
and Members, Board of County Commissioners

DATE: October 6, 2022

FROM: 
Gen Bonzon-Keenan
County Attorney

SUBJECT: Agenda Item No. 9(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
- ☐ 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 *Daniella Lorie Carr* Mayor
Veto _____
Override _____

Agenda Item No. 9(A)(1)
10-6-22

RESOLUTION NO. R-866-22

RESOLUTION APPROVING AN UNDERGROUND UTILITY EASEMENT AGREEMENT BETWEEN MIAMI-DADE COUNTY AND MIAMI SUPERTOWER A LLC FOR A NOMINAL SUM OF \$10.00; AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE THE UNDERGROUND UTILITY EASEMENT AND TO EXERCISE ALL RIGHTS CONFERRED THEREIN

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 Underground Utility Easement agreement between Miami-Dade County and Miami Supertower A LLC, for a nominal sum of \$10.00, in substantially the form attached to the County Mayor's Memorandum as Attachment 1.

Section 2. This Board authorizes the County Mayor or County Mayor's designee to take all actions necessary to execute the Underground Utility Easement Agreement, in substantially the form attached to the County Mayor's Memorandum as Attachment 1, for and on behalf of Miami-Dade County, and to exercise the provisions contained therein, and to take all actions necessary to effectuate same.

Section 3. Pursuant to Resolution No. R-974-09, the County Mayor or County Mayor's designee shall: (a) provide a recorded copy of the Underground Utility Easement to the Clerk of the Board within 30 days of execution and final acceptance of such instrument; and (b) the Clerk of the Board shall attach and permanently store a recorded copy together with this Resolution.

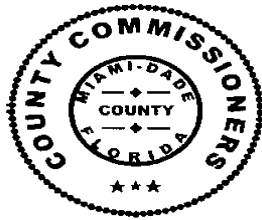
The foregoing resolution was offered by Commissioner **Sally A. Heyman**, who moved its adoption. The motion was seconded by Commissioner **Keon Hardemon** and upon being put to a vote, the vote was as follows:

Jose "Pepe" Diaz, Chairman	aye		
Oliver G. Gilbert, III, Vice-Chairman	absent		
Sen. René García	aye	Keon Hardemon	aye
Sally A. Heyman	aye	Danielle Cohen Higgins	aye
Eileen Higgins	aye	Kionne L. McGhee	aye
Jean Monestime	aye	Raquel A. Regalado	aye
Rebeca Sosa	aye	Sen. Javier D. Souto	aye

The Chairperson thereupon declared this resolution duly passed and adopted this 6th day of October, 2022. 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: **Basia Pruna**
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

Lauren E. Morse