

**RESOLUTION NO. 642**

**A RESOLUTION OF THE BOARD OF SUPERVISORS OF THE CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT CREATING THE ENFORCEMENT CITATION PROGRAM, A SPECIAL MAGISTRATE POSITION AND APPEAL PROCEDURES; PROVIDING FOR SEVERABILITY, CONFLICTS AND AN EFFECTIVE DATE.**

**WHEREAS**, the Central Florida Tourism Oversight District (“District”) exists pursuant its enabling act codified at Chapter 2023-5, Laws of Florida becoming effective on February 27, 2023 (the “Charter”); and

**WHEREAS**, Section 7(2) of the Charter authorizes the Board of Supervisors to “adopt administrative rules and regulations with respect to the conduct of the business of the district” and “any of the projects of the district, on proper notice and public hearing”; and

**WHEREAS**, Section 7 (6) of the Charter authorizes the Board of Supervisors to “Establish and create such departments, boards, committees, or other entities as from time to time the board deems necessary, or that are otherwise authorized by general law or this act”; and

**WHEREAS**, Section 23(4) of the Charter authorizes the Board of Supervisors to “adopt, amend, supplement, or repeal codes regulating building safety...the operation of amusement and recreation parks and facilities...and such other safety or sanitary codes as the board of supervisors may determine to be necessary”; and

**WHEREAS**, Section 23(4)(e) of the Charter authorizes the Board of Supervisors to “Provide for the manner in which such...codes, regulations, and restrictions shall be determined, established, and enforced, and amended, supplemented, changed, or repealed, as the board of supervisors may determine, with notice and public hearing as required by law”; and

**WHEREAS**, Section 23(10) of the Charter authorizes the Board of Supervisors to adopt regulations “relating to safety, health, sanitation, or building safety,” prescribing “standards at least equivalent to the minimum standards in applicable statewide regulations protecting the general safety and welfare of the public”; and

**WHEREAS**, Section 13 of the Charter states, “The district shall have the power to exercise any of its rights, powers, privileges, and authorities in any and all portions of the district lying within the boundaries of Orange County, Osceola County, the City of Bay Lake, the City of Lake Buena Vista, and any other municipal corporation or other political subdivision, heretofore or hereafter created or organized, the boundaries of which lie wholly or partly within the geographic limits of the district, to the same extent and in the same manner as in areas of the district not incorporated as part of a county, municipality, or other political subdivision”; and

**WHEREAS**, Section 62 of the Charter States in part, “Enforcement and penalties (1) The board of supervisors or any aggrieved person may have recourse to such civil remedies as may be necessary to ensure compliance with the provisions of this act, including injunctive relief to enjoin or restrain any person violating the provisions of this act, and any bylaws, resolutions, regulations, rules, codes, and orders adopted under this act, and the court shall, upon proof of such violation, have the duty to issue forthwith such temporary and permanent injunctions as are necessary to prevent such further violation thereof.”; and

**WHEREAS**, the Board of Supervisors find and declare that an enforcement citation program is necessary to enforce the District’s resolutions, regulations, rules, codes, and ordinances; and

**WHEREAS**, the Charter provides for regulations and codes of the District enacted pursuant to power and authority of the District are to be adopted by resolution of the Board of

Supervisors upon a single reading and public meeting, with at least ten (10) days' notice of an intent to adopt such resolution being published; and

**WHEREAS**, notice of intent to adopt this Resolution was published in the Orlando Sentinel on April 29, 2023 and a public hearing on this Resolution was held on May 10, 2023.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF SUPERVISORS OF THE CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT, THAT:**

**SECTION 1. RECITALS.** The foregoing recitals are incorporated herein by reference and made a part hereof.

**SECTION 2. ENFORCEMENT CITATION PROGRAM.** The enforcement citation program is hereby created as follows.

***ENFORCEMENT CITATION PROGRAM***

**Section 1. Authorization.**

The District hereby creates a supplemental and additional method of enforcing its resolutions, regulations codes and ordinances by the issuance of citations for violation of District resolutions, regulations, rules, codes, and ordinances. Nothing contained herein shall prohibit District's enforcement by any other means.

**Section 2. Applicable resolutions, regulations, rules, codes, and ordinances.**

District resolutions, regulations, rules, codes, and ordinances shall be enforceable by citation in any amount which is determined by the District to be just and proper. There shall be four classes of violations as follows:

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<u>Class</u>	<u>Fine Amount</u>
Class I	\$75
Class II	\$150
Class III	\$250
Class IV	\$500

Resolutions, regulations, rules, and codes may delineate a specific class of fine. Should the resolution, regulation, rule, or code not delineate a specific class of fine then violation of the resolution, regulation, rule, code or ordinance may be enforced with a Class II fine. Where a chapter or part of a chapter is referenced, all sections within that chapter or part are subject to enforcement by citation. If a section within a referenced chapter has a specific penalty identified therein, that more-specific penalty shall prevail, and such specific penalty does not have to match one of the fine amounts set forth in the four classes above in order to be enforceable. The schedule of District resolutions, regulations, rules, codes, and ordinances shall include, such as they may be from time to time amended, renumbered, codified, or recodified including District resolutions, regulations, rules, codes, and ordinances enacted subsequent to the adoption of this article.

**Section 3. Enforcement officers.**

- (a) The District Administrator is hereby authorized to designate certain employees or agents of the District as "enforcement officers." Enforcement officers so designated shall have the powers and limitations as prescribed herein and by the District Charter.

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- (b) The training and/or qualifications of enforcement officers shall be established by the human resources division and approved by the District Administrator or the District Administrator's designee.
- (c) An enforcement officer may issue a citation alleging a violation of any of the District resolutions, regulations, rules, codes, and ordinances. District resolutions, regulations, rules, codes, and ordinances for which a citation is issued pursuant to this article shall be deemed a civil infraction.

**Section 4. Procedures; investigation of violations; issuance of citations.**

- (a) An enforcement officer is hereby authorized to issue a citation to any person for violation of any District resolutions, regulations, rules, codes, and ordinances when, based upon personal investigation, the enforcement officer has reasonable cause to believe that a violation has occurred. The word "person" shall extend and be applied to individuals, children, firms, associations, joint ventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations and all other groups and legal entities or combinations thereof.
- (b) Except as provided by subsection (c) below, the enforcement officer shall provide notice to the person that the person has committed a violation of such District resolutions, regulations, rules, codes, and ordinances and may establish a reasonable time period within which the person must correct the violation. This may be done through a written warning notice or any other means. Such time period to correct the violation shall not exceed thirty (30) days. The enforcement officer may in the alternative not provide a reasonable time period to correct the violation and may immediately issue a citation in their absolute discretion.

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- (c) An enforcement officer is not required to provide the person with a reasonable time period to correct the violation prior to issuing a citation and may immediately issue a citation if a repeat violation is found or if the enforcement officer has reason to believe that the violation presents a serious threat to the public health, safety or welfare, or if the violation is irreparable or irreversible. Every repeat citation issued shall be a continuing violation that imposes a fine for each day until the person contacts the enforcement officer and the enforcement officer determines that the violation has been remedied.
  - (d) Written warning notices, if applicable, and citations shall be provided to the alleged violator by hand delivery by the enforcement officer. In the absence of the alleged violator, issuance of a written warning notice or citation may be accomplished by leaving a copy at the alleged violator's residence with any person residing therein who is fifteen (15) years of age or older and informing the person of the contents, or by registered or certified mail, return receipt requested.
  - (e) Issuance of a written warning notice or citation to a business may be accomplished by leaving a copy at the business during regular business hours with any employee and informing the employee of the contents, or by registered or certified mail, return receipt requested. Each employee of the business shall be deemed to be an agent of the business for service of warning notices and citations.
  - (f) The citation will be in such form as approved by the District Administrator.
  - (g) Each violation of resolutions, regulations, rules, and codes is a separate civil infraction. Each day such violation continues shall be deemed to constitute a separate civil infraction.
  - (h) After issuing a citation to an alleged violator, the enforcement officer shall:
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- (1) Deposit the original citation and one (1) copy of the citation with the district manager;
  - (2) Provide the person cited with one (1) copy; and
  - (3) Retain one (1) copy in the enforcement officer's department or division file.

**Section 5. Payment of fines; special magistrate hearings.**

- (a) If the person elects not to contest the citation, the person shall pay in full the applicable reduced civil penalty as set forth in the citation within fourteen (14) days after issuance of the citation.
  - (b) If the person cited elects to pay the applicable reduced civil penalty set forth in citation, the person shall be deemed to have admitted the infraction and waived the right to a hearing. If the person cited fails to pay the civil penalty by the fourteenth day after issuance of the citation or fails to request a hearing within the time prescribed, the person shall have waived any right to contest the citation, and a judgment shall be entered by the special magistrate against the person cited in an amount up to the maximum civil penalty, which shall not exceed five hundred dollars (\$500.00) per infraction or per day.
  - (c) If the person elects to contest the citation the person shall within fourteen (14) days contact the district manager in writing and request a hearing before the Special Magistrate. The district manager shall schedule a hearing before the Special Magistrate at the next available Special Magistrate hearing, which will not be sooner than 21 days from issuance of the citation.
  - (d) The Special Magistrate, after a hearing on the citation, shall make a determination whether or not a violation of this article has been committed and remedied. If a violation is found to have
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occurred and/or not been remedied, the Special Magistrate may impose a civil penalty up to the maximum civil penalty in an amount not to exceed five hundred dollars (\$500.00) plus all applicable hearing costs per infraction for every day the infraction continued to exist. If the violation has not been remedied, after a hearing on the citation has occurred, the Special Magistrate may impose a civil penalty up to the maximum civil penalty in an amount not to exceed five hundred dollars (\$500.00) plus all applicable hearing costs, per day until the person comes into compliance and requests an enforcement officer to inspect and confirm compliance. The Special Magistrate shall be provided evidence by the District at a hearing and shall rule whether compliance of all ongoing repeat violations has occurred.

- (e) The Special Magistrate may provide for the civil penalty to be paid within such time as the Special Magistrate determines to be appropriate. If the person found to be in violation fails to pay the fine within the time provided, a civil judgment shall be entered against that person in the amount up to the maximum civil penalty not to exceed five hundred dollars (\$500.00) plus applicable hearing costs. The judgement shall be filed with the Clerk of the Court and shall constitute a lien against all property owned by the person, regardless of whether the property was the subject of the violation. The judgement may also be collected in any other way as allowed by law.
- (f) Should the person cited schedule a hearing as provided for herein, and thereafter fail to appear at such hearing, the person shall be deemed to have waived the right to contest the citation, and a civil judgment shall be entered against the person in an amount up to the maximum civil penalty. Provided, however, that the special magistrate shall have the discretion to continue or reschedule any hearing when it determines that doing so will further the interest



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of justice. In such an event, the district shall notify the enforcement officer and the person cited of the date and time of the new hearing.

**Section 6. Procedures for payment of civil penalty.**

Payment of any civil penalty imposed by this article shall be made to the District. If a judgment has been entered for the civil penalty, and a lien has been filed, upon payment, the District, shall record a satisfaction of lien with the county clerk.

**Section 7. Appointment of a Special Magistrate**

The Board of Supervisors will appoint a Special Magistrate to hear appeals of citations and other matters as assigned by resolution, regulation, rule, and code.

**Section 8. Intent.**

It is the intent of this article to promote, protect, and improve the health, safety, and welfare of the citizens of the District by creating a special magistrate with authority to impose administrative fines and other noncriminal penalties to provide an equitable, expeditious, effective, and inexpensive method of enforcing any resolutions, regulations, rules, codes, and ordinances in force in the district, where a pending or repeated violation continues to exist.

**Section 9. Office of Special Magistrate Created.**

There is hereby created the office of special magistrate. A person appointed as a special magistrate should be a licensed Florida attorney who is not the District General Counsel or an attorney with the District General Counsel's office.

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**Section 10. Special Magistrate.**

- (a) The Board of Supervisors is authorized and hereby provides for the designation of one (1) or more special magistrates for the purposes of conducting administrative hearings regarding alleged violations of resolutions, regulations, rules, and codes and other assigned cases brought by enforcement officers, by resolution.
- (b) Special magistrates shall avoid ex parte communications, when identifiable, with any person who is a party to an enforcement proceeding. The foregoing however does not prohibit discussions between the special magistrate and district staff that pertain solely to scheduling and other administrative matters unrelated to the merits of the proceeding. If an ex parte communication occurs between a party and a special magistrate, the special magistrate shall disclose, and make a part of the record, the subject of the communication and the identity of the person, group, or entity with whom the communication took place, before final action on the matter. Any written communication received by a special magistrate that relates to a pending enforcement proceeding shall be made a part of the record before final action on the matter.

**Section 11. Legal counsel and case presentation.**

An enforcement officer inspector and/or a member of the District General Counsel's office or other attorney chosen by the District General Counsel will represent the District by presenting cases before the special magistrate. If the District prevails in prosecuting a case before the special magistrate, it shall be entitled to recover all costs incurred by prosecuting the case before the special magistrate, including, but not limited to, any fees paid to the special magistrate.

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**Section 12. Jurisdiction.**

- (a) The special magistrate shall have jurisdiction to hear and decide alleged violations of district resolutions, regulations, rules, codes, and ordinances in force in the district and any other duties assigned by the Board of Supervisors.
- (b) The jurisdiction of the special magistrate shall not be exclusive. It is the legislative intent of this article to provide an additional or supplemental means of obtaining compliance with district resolutions, regulations, rules, codes, and ordinances. Nothing contained in this article shall prohibit the Board of Supervisors from enforcing such district resolutions, regulations, rules, codes, and ordinances by any other means. The Board of Supervisors may appoint one (1) or more special magistrates to hear any, or all district resolutions, regulations, rules, codes, and ordinances violations or other assigned duties in accordance with the procedure shown herein or other procedure as adopted by the Board of Supervisors. Any alleged violation of district resolutions, regulations, rules, codes, and ordinances may be pursued by appropriate remedy in court, or as may otherwise be provided by law.

**Section 13. Conduct of hearing.**

- (a) Upon request of the enforcement officer/inspector, or at such other times as may be necessary, the special magistrate may call a hearing of the special magistrate. A hearing also may be called by written notice signed by the special magistrate.
- (b) Minutes shall be kept of all hearings by the special magistrate, and all hearings and proceedings shall be open to the public. The Board of Supervisors shall provide clerical and administrative personnel as may be reasonably required by the special magistrate for the proper performance of its duties.

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- (c) The special magistrate shall proceed to hear the cases on the agenda for that day. All testimony shall be under oath and shall be recorded. The special magistrate shall take testimony from the enforcement officer, alleged violator and any witnesses. Formal rules of evidence shall not apply, but fundamental due process shall be observed and shall govern the proceedings.
- (d) Irrelevant, immaterial, or unduly repetitious evidence shall be excluded, but all other evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs shall be admissible, whether or not such evidence would be admissible in a trial in the courts of this state. The burden of proof shall be upon the District, through its counsel, staff and enforcement officers to show, by a preponderance of the evidence that a violation exists.
- (e) The special magistrate may inquire of any witness before the special magistrate. The alleged violator or his attorney, the enforcement officer/inspector, or member of the District General Counsel's office shall be permitted to inquire of any witness before the special magistrate and present brief opening and closing statements.
- (f) At the conclusion of the hearing, the special magistrate shall issue findings of fact, based on evidence of record and conclusions of law, and shall issue an order upholding the citation or denying the citation and affording the proper relief consistent with powers granted by this resolution. The order by the special magistrate may include a notice that it must be complied with by a specified date, and that a fine may be imposed, and include a statement that any person aggrieved by the order who was a party below may appeal the order to circuit court. The special magistrate may choose to impose a fine amount which is of a different class than the citation. A certified copy of such order may be recorded in the public records of the county and shall constitute notice to any subsequent purchasers, successors and assigns if the violation concerns real property, and the findings therein shall be binding upon the violator

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and, if the violation concerns real property, any subsequent purchasers, successors and assigns. If an order is recorded in the public records pursuant to this subsection and the order is complied with by the date specified in the order, the special magistrate shall issue an order acknowledging compliance that shall be recorded in the public records. A hearing is not required to issue such an order acknowledging compliance.

- (g) If the district prevails in a case before the special magistrate, the district shall be entitled to recover all costs incurred in bringing or defending the case before the special magistrate, and such costs may be included in the lien authorized.

**Section. 14. Powers of the Special Magistrate.**

The special magistrate shall have the power to:

- (1) Adopt rules for the conduct of its hearings.
- (2) Subpoena alleged violators and witnesses to its hearings.
- (3) Subpoenas may be served by the sheriff or any deputy sheriff of the county.
- (4) Take testimony under oath.
- (5) Hear appeals of citations and issue orders having the force of law upholding or overturning any citation and assessing costs of the hearing and to command whatever steps are necessary to bring a violation into compliance.
- (6) Hear any other matters and take whatever action is necessary as assigned by the Board of Supervisors.

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**Section. 15. Administrative fines; costs of repair; liens.**

(a) (1) A certified copy of an order may be recorded in the public records of the county and thereafter shall constitute a lien against the land on which the violation exists and upon any other real or personal property owned by the violator. Upon petition to the circuit court, such order shall be enforceable in the same manner as a court judgment by the sheriffs of this state, including execution and levy against the personal property of the violator, but such order shall not be deemed to be a court judgment except for enforcement purposes. After three (3) months from the filing of any such lien which remains unpaid, the Board of Supervisors may authorize the District's attorney to foreclose on the lien. After the suit for foreclosure has been filed, any offer of settlement must be forwarded to the Board of Supervisors must be obtained prior to acceptance of an offer of settlement. No lien created pursuant to the provision of this article may be foreclosed on real property which is a homestead under Fla. Const., Art. X, § 4.

(2) Unless a lien foreclosure suit has been filed by the district, an interested party may request a reduction in a lien imposed by an administrative order of the special magistrate. The request must be submitted in writing, on a form prescribed by the district, to the enforcement division. The Board of Supervisors shall decide whether to approve the request. In deciding whether to approve a lien reduction, the Board of Supervisors shall review the written submission and listen to any corresponding oral presentation by the requesting party. Lien amounts may be reduced in cases in which a violator has come into compliance but due to hardship is unable to pay the full amount necessary to satisfy and release the lien. Lien amounts may also be reduced in cases in which the violator has not come into compliance but there is a contract to sell the property to a purchaser who intends to bring the property into compliance. Any decision to reduce a lien for the

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benefit of a prospective purchaser must include a timetable for the property to come into compliance and a stipulation acknowledging that liens are not released until all violations are cured and the property is in compliance. In determining a new amount to satisfy a lien, the Board of Supervisors shall recover costs incurred by the district. Enforcement liens are an asset of the district. Accordingly, any decision to reduce a lien is a discretionary decision and does not constitute a final administrative order for purposes of appeal.

**Section 16. Duration of lien.**

No lien provided under this article shall continue for a period longer than twenty (20) years after the certified copy of an order imposing a fine has been recorded, unless within that time an action to foreclose on the lien is commenced in a court of competent jurisdiction. In an action to foreclose on a lien, the prevailing party is entitled to recover all costs, including a reasonable attorney's fees incurred in the foreclosure. The district shall be entitled to all costs incurred in recording and satisfying a valid lien. The continuation of the lien effected by the commencement of the action shall not be good against creditors or subsequent purchasers for valuable consideration without notice, unless a notice of lis pendens is recorded.

**Section 17. Enforcement fines account.**

All administrative fines and liens collected pursuant to this article shall be deposited in a separate revenue account, which is hereby created and designated as the "enforcement fines account."

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**Section 18. Appeals.**

An aggrieved party, including the Board of Supervisors, may appeal a final administrative order of the special magistrate to the circuit court. Such an appeal shall not be a hearing de novo, but shall be limited to appellate review of the record created before the special magistrate. An appeal shall be filed within thirty (30) days of the execution of the order to be appealed.

**Section 19. Notices.**

- (a) All notices required by this article shall be provided to the alleged violator by certified mail, return receipt requested, provided if such notice is sent under this paragraph to such violators in question at the address listed in the tax collector's office for tax notices, and at any other address provided to the district by such entities and is returned as unclaimed or refused, notice may be provided by posting as described in subparagraphs (b)(2) and by first class mail directed to the addresses furnished to the local government with a properly executed proof of mailing or affidavit confirming the first class mailing; or by hand delivery by the sheriff or other law enforcement officer, enforcement officer or other person designated by the Board of Supervisors, or by leaving the notice at the violator's usual place of residence with any person residing therein who is above fifteen (15) years of age and informing such person of the contents of the notice or in the case of commercial premises, leaving the notice with the manager or other person in charge.
- (b) In addition to providing notice as set forth in subsection (a), at the option of the enforcement officer, notice may also be served by publication or posting as follows:
  - (1) Such notice shall be published once during each week for four (4) consecutive weeks (four (4) publications being sufficient) in a newspaper of general circulation in the



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county. The newspaper shall meet such requirements as are prescribed under F.S. ch. 50, for legal and official advertisements. Proof of publication shall be made as provided in F.S. §§ 50.041 and 50.051.

(2) In lieu of publication as described in subparagraph (1) above, such notice may be posted for at least ten (10) days prior to the hearing, or prior to the expiration or any deadline contained in the notice in at least two (2) locations, one (1) of which shall be the property upon which the violation is alleged to exist and the other of which shall be at the front door of the courthouse in the county. Proof of posting shall be by affidavit of the person posting the notice, which affidavit shall include a copy of the notice posted and the date and places of its posting.

(c) Notice by publication or posting may run concurrently with, or may follow, an attempt or attempts to provide notice by hand delivery or by mail as required under subsection (a). Evidence that an attempt has been made to hand deliver or mail notice as provided in subsection (a), together with proof of publication or posting as provided in subsection (b), shall be sufficient to show that the notice requirements of this article have been met, without regard to whether or not the alleged violator actually received such notice.

**SECTION 3. SEVERABILITY.** If any section, subsection, sentence, clause, phrase, word or provision of this Resolution is for any reason held invalid or unconstitutional by any court of competent jurisdiction, whether for substantive, procedural, or any other reason, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions of this Resolution.

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**SECTION 4. CONFLICTS.** Section 2 of this Resolution shall constitute regulations of the Central Florida Tourism Oversight District with the full weight, authority and force of law. In the event of a conflict or conflicts between this Resolution and any other resolution, ordinance/resolution or provision of law, this Resolution controls to the extent of the conflict, as allowable under the law. This Resolution shall apply to and be enforced throughout the unincorporated and incorporated areas of the Central Florida Tourism Oversight District, including within the jurisdictional boundaries of the City of Lake Buena Vista and City of Bay Lake.

**SECTION 5. EFFECTIVE DATE.** After its adoption, this Resolution will take effect on August 1, 2023.

**ADOPTED** at a regular meeting of the Board of Supervisors of the Central Florida Tourism Oversight District, held on this 10th day of May, 2023.

**CENTRAL FLORIDA TOURISM  
OVERSIGHT DISTRICT**

[SEAL]

By: \_\_\_\_\_  
Martin Garcia, Chair of the Board of Supervisors

ATTEST:

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Tina Graham, District Clerk