



VILLAGE OF KEY BISCAYNE

Village Council
Mayra P. Lindsay, *Mayor*
Franklin H. Caplan, *Vice Mayor*
Luis F. de la Cruz
Theodore Holloway
Michael E. Kelly
Edward London
James Taintor

MEMORANDUM

DATE: December 2, 2014

TO: Honorable Mayor and Members of the Village Council

FROM: John C. Gilbert, Village Manager

RE: Modification of Deed Restriction with the Archdiocese of Miami for the Calusa Park Path

RECOMMENDATION

It is recommended that the Village Council approve the attached Resolution authorizing the Village Manager to modify the Deed Restriction (attached as Exhibit "A-1"). The Modification to the Deed Restriction relates to the use of an easement adjacent to St. Agnes Catholic Church from Harbor Drive. The easement was previously conveyed to Miami-Dade County by the Archdiocese of Miami.

BACKGROUND

The easement leading to Calusa Park located adjacent to the St. Agnes Catholic Church allowed the use of bicycles and pedestrian traffic only. The Modification of the Deed Restriction would allow golf carts, bicycles and pedestrians to travel on the public pathway to and from Calusa Park.

Reviewed by Ms. Lillian Arango from Weiss Serota Helfman Pastoriza Cole & Boniske as to form and legal sufficiency.

RESOLUTION NO. 2014 - _____

A RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, APPROVING AND ACCEPTING A MODIFICATION OF DEED RESTRICTION WITH THE MOST REVEREND THOMAS G. WENSKI, ARCHBISHOP OF THE ARCHDIOCESE OF MIAMI, FOR THE CALUSA PARK PATH; PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, by Right-of-Way Deed dated January 10, 1964, Coleman Carrol, as Bishop of the Diocese of Miami (“Archdiocese”) previously conveyed to Miami-Dade County, and its successors in interest, a public pathway adjacent to St. Agnes Church from Harbor Drive to the northern limits of the Village at Calusa Park (the “Calusa Park Path”), which deed was recorded in Official Records Book 4038, Page 580, of the Public Records of Miami-Dade County, Florida (the “Deed”); and

WHEREAS, the Deed provided for conveyance of the property to Miami-Dade County for use as a public pathway for purposes incidental to bicycle and pedestrian traffic only; and

WHEREAS, the Village is the successor in interest to Miami-Dade County pursuant to the Deed and owns and maintains the Calusa Park Path; and

WHEREAS, the Archdiocese and the Village have agreed to a modification of the Deed as set forth in the Modification of Deed Restriction attached hereto as Exhibit “A-1” (the “Modification”) to allow unrestricted use of the Calusa Park Path as a public pathway and for all purposes incidental thereto, without any limitation to bicycle and pedestrian traffic only; and

WHEREAS, the Village Council finds that this Resolution is in the best interest of the Village.

NOW, THEREFORE, BE IT RESOLVED BY THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, AS FOLLOWS:

Section 1. Recitals Adopted. Each of the above stated recitals are hereby adopted, confirmed and incorporated herein.

Section 2. **Modification Approved and Accepted.** The Village Council hereby approves and accepts the Modification, in substantially the form attached hereto as Exhibit “A-1,” subject to the Village Attorney’s approval as to form, content and legal sufficiency. The Village Mayor is hereby authorized to execute the Modification.

Section 3. **Implementation.** The Village Manager and Village Attorney are hereby authorized to take all action necessary to implement the intent and purposes of the Modification and this Resolution, including recording of the Modification in the public records of Miami-Dade County, Florida.

Section 4. **Effective Date.** This Resolution shall be effective immediately upon adoption.

PASSED AND ADOPTED this day of ___ day of December, 2014.

MAYOR MAYRA PEÑA LINDSAY

ATTEST:

VILLAGE CLERK

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

VILLAGE ATTORNEY

Exhibit "A-1"

(Attach Modification to Deed Restriction)

UPON RECORDING RETURN TO:

Lillian M. Arango, Esq.
Weiss Serota Helfman Cole Bierman & Popok, P.L.
2525 Ponce de Leon Blvd., Suite 700
Coral Gables, FL 33134

Folio Number: _____

ABOVE THIS LINE FOR RECORDER'S USE _____

MODIFICATION OF DEED RESTRICTION

THIS MODIFICATION OF DEED RESTRICTION (“Modification”) is made and entered into on _____, 2014 by **THE MOST REVEREND THOMAS G. WENSKI, ARCHBISHOP OF THE ARCHDIOCESE OF MIAMI**, his successors in office, a corporation sole, whose mailing address is 9401 Biscayne Boulevard, Miami Shores, Florida 33138, (hereinafter the “**Grantor**”), and the **VILLAGE OF KEY BISCAYNE, FLORIDA**, a Florida municipal corporation, whose mailing address is 88 West McIntyre Street, Key Biscayne, Florida 33149 (hereinafter the “**Grantee**”).

RECITALS

1. Pursuant to that certain Right-of-Way Deed to Dade County dated January 10, 1964, and recorded February 28, 1964, in Official Records Book 4038, Page 580, of the Public Records of Miami-Dade County, Florida (the “**Deed**”), Grantor conveyed to the County of Dade, a body corporate and a political subdivision of the State of Florida, and its successors in interest, certain real property located in Miami-Dade County, Florida, as more particularly described on **Exhibit A** attached hereto and by this reference made a part hereof (“**Property**”). The Property consists of a public pathway within the municipal boundaries of the Village of Key Biscayne Florida.

2. Grantee is the successor in interest to the County of Dade and the fee simple owner of the Property.

3. The conveyance of the Property from Grantor to Grantee’s predecessor, the County of Dade, was made subject to certain restrictions as set forth in the Deed (“**Deed Restrictions**”).

4. Grantor and Grantee desire to modify the Deed Restrictions in certain respects as set forth in this Modification in order to accurately reflect the current uses of the Property as a public pathway and for all purposes incidental thereto without any limitations.

NOW THEREFORE, in consideration of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto and hereby agree as follows:

1. **Recitals**. The recitals set forth above are true and correct and are incorporated herein by this reference. Except as modified herein, the parties acknowledge that the Deed remain unmodified and in full force and effect.

2. **Modification of Deed Restriction**. Paragraph 3 of the Deed is hereby modified and replaced with the following and shall read as follows:

It is the intention of the party of the first part by this instrument to convey to the Village of Key Biscayne, Florida, said County, and its successors in interest, the land above-described for use as a public pathway and for all purposes and uses incidental thereto ~~to bicycle and pedestrian traffic only.~~¹

3. **Deed Ratified; Modification Controls**. Except as amended and modified by this Modification, all of the terms, covenants and conditions of the Deed shall remain in full force and effect. In the event of any conflict between the provisions of the Deed and the provisions of this Modification, this Modification shall control.

4. **Counterparts**. This Modification may be executed in one or more counterparts each of which shall constitute an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, Grantor and Grantee have caused this Modification of Deed Restriction to be executed as of the day and year first above written.

[SIGNATURES AND ACKNOWLEDGEMENTS ON FOLLOWING PAGES]

¹ Additions to the Deed are reflected in underline. Deletions to the Deed are reflected in ~~strike through~~.

WITNESSES:

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:



Print Name: Janet Rancani



Print Name: PAWEŁ KOBZYŃSKI

GRANTOR:

IN **THE MOST REVEREND THOMAS G.
WENSKI, ARCHBISHOP OF THE
ARCHDIOCESE OF MIAMI**, his successors in
office, a corporation sole

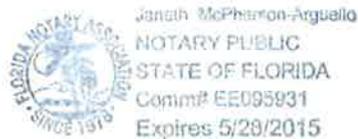


Date Executed: _____

STATE OF FLORIDA
COUNTY OF MIAMI-DADE

The foregoing instrument was acknowledged before me this 14th day of November,
2014, by **The Most Reverend Thomas G. Wenski, Archbishop of the Archdiocese of Miami**,
his successors in office, a corporation sole, as Grantor, who (check one) [] is personally known
to me or [] has produced _____ as identification.

My commission expires:





Notary Public, State of Florida
Print Name: Janeth McPherson-Arguello

Serial Number, if any: _____
My Commission Expires: 5/28/2015

[NOTARIAL SEAL]

ATTEST:

Village Clerk

GRANTEE:

**VILLAGE OF KEY BISCAYNE,
FLORIDA**, a Florida municipal corporation

By: _____
John C. Gilbert, Village Manager

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

Weiss Serota Helfman Cole Bierman & Popok, P.L.
Village Attorney

STATE OF FLORIDA
COUNTY OF MIAMI-DADE

The foregoing instrument was acknowledged before me this ____ day of _____, 2014, by **John C. Gilbert, as Village Manager, of Village of Key Biscayne, Florida**, a Florida municipal corporation, on behalf of the corporation, who (check one) [] is personally known to me or [] has produced a Florida driver's license as identification.

My commission expires:

Notary Public, State of Florida
Print Name: _____

Serial Number, if any: _____
My Commission Expires: _____

[NOTARIAL SEAL]

EXHIBIT "A"

LEGAL DEESCRPTION OF PROPERTY

Beginning at the Northeast corner of Tract 9 of the Subdivision of a PORTION OF MATHESON ESTATE, according to the record plat thereof as recorded in Plat Book 46 at Page 86 of the Public Records of Miami-Dade County, Florida; thence run S 26° 41' 30" W along the Easterly boundary of said Tract 9 for a distance of 318.58 feet to a point of curvature of a circular curve to the left; thence run along the arc of said circular curve, being the Easterly boundary of said Tract 9 and having a radius of 2635.0 feet, through a central angle of 0° 58' 12.1" for an arc distance of 44.61 feet to the point of intersection with the North right-of-way line of Harbor Drive, said North right-of-way line being 324.66 feet South of, as measured at right angles, and parallel to the North line of said Tract 9; thence run West along the North right-of-way line of Harbor Drive for a distance of 13.86 feet to a point; thence run N 26° 41' 30" E for a distance of 363.38 feet to a point on the North line of Tract 9, said point being 13.43 feet West of the Northeast corner of said Tract 9; thence run East along the North line of Tract 9 for a distance of 13.43 feet to the Point of Beginning.

RIGHT-OF-WAY DED TO DADE COUNTY

STATE OF FLORIDA:

COUNTY OF DADE :

THIS INDENTURE, Made this 10th day of January, 1964, by and between COLEMAN F. CARROLL, as Bishop of the Diocese of Miami, and his successors and assigns, of the County of Dade, State of Florida, party of the first part and the County of Dade, a body corporate and a political subdivision of the State of Florida, and its successors in interest, party of the second part.

WITNESSETH:

That the said party of the first part, for and in consideration of the sum of One Dollar to him in hand paid by the party of the second part, receipt whereof is hereby acknowledged, and for other and further good and valuable considerations, does hereby grant, bargain and sell to the party of the second part, and its successors in interest, for the purpose of a public pathway and purposes incidental thereto, the following described land, situate, lying and being in the County of Dade, State of Florida, to-wit:

Beginning at the Northeast corner of Tract 9 of the Subdivision of A PORTION OF MATHESON ESTATE, according to the record plat thereof as recorded in Plat Book 46 at Page 86 of the Public Records of Dade County, Florida; thence run S 26° 41' 30" W along the Easterly boundary of said Tract 9 for a distance of 318.58 feet to a point of curvature of a circular curve to the left; thence run along the arc of said circular curve, being the Easterly boundary of said Tract 9 and having a radius of 2635.0 feet, through a central angle of 0° 58' 12.1" for an arc distance of 44.61 feet to the point of intersection with the North right-of-way line of Harbor Drive, said North right-of-way line being 324.66 feet South of, as measured at right angles, and parallel to the North line of said Tract 9; thence run West along the North right-of-way line of Harbor Drive for a distance of 13.86 feet to a point; thence run N 26° 41' 30" E for a distance of 363.38 feet to a point on the North line of Tract 9, said point being 13.43 feet West of the Northeast corner of said Tract 9; thence run East along the North line of Tract 9 for a distance of 13.43 feet to the Point of Beginning.

It is the intention of the party of the first part by this instrument to convey to the said County, and its successors in interest, the land above-described for use as a public pathway for purposes incidental to bicycle and pedestrian traffic only.

It is expressly provided that if and when the said pathway shall be lawfully and permanently discontinued, the title to the said above-described land shall immediately revert to the party of the first part, his heirs and assigns, and he shall have the right to immediately re-possess the same.

And the said party of the first part does hereby fully warrant the title to said land, and will defend the same against the lawful claims of all persons whomsoever, claiming by, through and under him.

IN WITNESS WHEREOF, the said party of the first part does hereunto set his hand and seal, the day and year above written.

Signed, Sealed and Delivered in our presence:

James F. Helan
Josephine W. Helan

Coleman Carroll (SEAL)
COLEMAN F. CARROLL, as Bishop of the Diocese of Miami

STATE OF FLORIDA:
COUNTY OF DADE :

I HEREBY CERTIFY, That on this 10th day of JANUARY, 1964, before me personally appeared, COLEMAN F. CARROLL, as Bishop of the Diocese of Miami, and his successors and assigns, to me known to be the person described in and who executed the foregoing conveyance to the County of Dade, a body Corporate, and a political subdivision of the State of Florida, and he acknowledged to me the execution thereof to be his free act and deed for the uses and purposes therein mentioned.

WITNESS my signature and official seal at Miami, Dade County, Florida, the day and year last aforesaid.

Coleman Carroll
Notary Public
State of Florida
My Commission Expires:

State of Florida, County of Dade. 28 Feb
This instrument was filed for record the 28 day of Feb, 1964 at 10:30 A.M., and duly recorded in OFFICIAL RECORDS Book 2032 as P. 2 380 34070
JAN 28 1964
E. B. LEATHERMAN
Clerk of said Court
E. B. Leatherman
Clerk

The foregoing declaration was read and approved on the 10th day of JANUARY, 1964 by Commissioners of Dade County
E. B. Leatherman
Chairman of said Board
ATTEST: E. B. LEATHERMAN
Clerk of said Board
By: W. J. [Signature]
Deputy Clerk

DADE COUNTY
STATE OF FLORIDA
DOCUMENTARY STAMP TAX
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