



# VILLAGE OF KEY BISCAYNE

Office of the Village Manager

*Village Council*  
Franklin H. Caplan, *Mayor*  
Mayra P. Lindsay, *Vice Mayor*  
Michael W. Davey  
Theodore J. Holloway  
Michael E. Kelly  
Ed London  
James S. Taintor

DATE: June 11, 2013  
TO: Honorable Mayor and Members of the Village Council  
FROM: John C. Gilbert, Village Manager  
RE: L'Esplanade: Request for a public hearing date to change the zoning district classification from Office to Commercial

## RECOMMENDATION

It is recommended that the Village Council set a public hearing date (August 27, 2013) to consider a change of zoning for the L'Esplanade Shopping Center from Office (O-1) to Commercial (C-1).

## BACKGROUND

On May 14, 2013, representatives from the L'Esplanade Shopping Center appeared before the Council and requested that a public hearing date be set to consider changing the zoning district classification from Office to Commercial. This change is consistent with the Council's March 13, 2012 action when it changed the Master Plan Land Use designation from Low Density Multiple Family to Commercial.

During the May 14, 2013 Council discussion, there were questions regarding the land use and zoning history of the property, the two covenants (attached) which limit the use and redevelopment of the site; and if a referendum was necessary in order to change the zoning district classification.

971 Crandon Boulevard  
L'Esplanade Land Use and Zoning District Chronology

- Date not known Miami-Dade County designates the property as "BU-2 Special Business District".
- February 28, 1978 Miami-Dade County approves a "Restrictive Covenant for Use" which prevents the property from having a list of uses (see attached). The covenant remains in full force and affect until it is released. The covenant may be released by the Village's BZP Director as the successor to the Miami-Dade County Director of Building and Zoning. The list of prohibited uses does not include retail, restaurants, or office.
- 1979-1980 L'Esplanade is constructed.
- May 1, 1980 Condominium documents recorded with a building containing 39 units and 145 parking spaces. Most if not all of the space, excluding the post office, is developed as retail spaces.
- August 16, 1994 Village adopts the Master Plan. The property has a land use designation of "Low Density Multiple Family". The County's underlying zoning district designation of "BU-2 Special Business District" was not changed.
- May 9, 2000 Village adopts a zoning ordinance which changes the County's "BU-2 Special Business District" zoning designation to the Village's "Office District". This change prevented unit spaces that did not have a retail use to be occupied in the future by a retail use. This zoning district change was made in order to be consistent with the Master Plan designation of "Low Density Multiple Family" designation.
- July 2006 The Master Plan Evaluation and Appraisal Report (EAR) recommends that the land use designation be changed from "Low Density Multiple Family" to "Commercial".
- March 13, 2012 The Village Council approves a change in the Master Plan Future Land Use Map from "Low Density Multiple Family" to "Commercial" as recommended in the EAR and by the Local Planning Agency.
- March 5, 2013 The L'Esplanade Condominium Board approves a motion to request the Village Council change the zoning district classification from Office to Commercial.

May 14, 2013

The Village Council Agenda includes a discussion item dealing with a change in the zoning district designation from "Office" to "C-1 Commercial". This change is consistent with the Master Plan and is supported by the L'Esplanade Condominium Board of Directors.

May 29, 2013

BZP receives e mail from the attorney for the L'Esplanade stating the rentable square footage is 32,385. The post office occupies 3,690 sq. ft., retail occupies 7,099 sq. ft. and office use occupies 21,596 sq. ft. The area of the common spaces that are open to the sky and the parking garage has not been calculated.

*L'Esplanade on Key Biscayne*

Condominium Association, Inc.

971 Crandon Blvd.

Key Biscayne, FL 33149

May 31, 2013

To Whom It May Concern:

The Board of Director's for the L'Esplanade Mall on Key Biscayne voted in favor of going forward with the changing of the zoning of the association property from office to commercial/retail. This was voted on at the Board of Director's meeting of March 5, 2013 and all members were in agreement.

Thank You.



L. Raul Cerna  
President

Enclosure

7SR 93860

1978 APR 12 11 09 47

OFF. REC. 10002 PG 318

5-55-41  
OK  
*Johnnie*

BUILDING PLANS COVENANT

THIS COVENANT entered into this 28th day of February, 1978, by M HOLDING CORP., a Florida corporation, hereinafter referred to as "OWNERS" and joined by The Bank of Miami, a Florida banking corporation, and by HOLYOAKE, N.V., a Netherlands Antilles Corporation, as Mortgagees.

WITNESSETH:

WHEREAS, the OWNERS are fee simple title owners of the following described property, lying, being and situate in Dade County, Florida, to wit:

PARCEL "A" Commence at the intersection of the North line of Tract 1 of Canoga Properties, Plat Book 65, at Page 88 of the Public Records of Dade County, Florida, with the Northeasterly right-of-way line of Crandon Boulevard, as the same is shown on the plat of Cape Florida Subdivision, Section 1, Plat Book 68, at Page 81 of the Public Records of Dade County, Florida; thence run North 89 degrees 52 minutes 45 seconds East along the North line of said Tract 1 for a distance of 515.93 feet; thence run South 00 degrees 07 minutes 15 seconds East for a distance of 30.00 feet to the Point of Beginning of the parcel of land herein described; thence continue South 00 degrees 07 minutes 15 seconds East for a distance of 320.00 feet; thence run South 89 degrees 52 minutes 45 seconds West for a distance of 30.68 feet to a point on the Northeasterly right-of-way line of Crandon Boulevard; thence run North 54 degrees 19 minutes 08 seconds West along the Northeasterly right of way line of Crandon Boulevard for a distance of 469.63 feet to the beginning of a tangential circular curve; thence run Northwesterly, Northerly and North-easterly along said circular curve, concave to the East having a radius of 25.00 feet through a central angle of 144 degrees 11 minutes 53 seconds for an arc distance of 62.92 feet to the end of said curve; thence run North 39 degrees 52 minutes 45 seconds East for a distance of 396.94 feet to the Point of Beginning, containing 1.829 acres, more or less.

WHEREAS, the OWNERS are desirous of giving assurance to the COUNTY that the property will be developed substantially in accordance with the spirit and intent of the plans submitted to the COUNTY for a public hearing wherein the zoning and use of the subject property has been approved, unless said plans are modified and/or changed as a result of a public hearing, or other appropriate action by the COUNTY.

NOW, THEREFORE, for good and valuable consideration, the parties have agreed to Covenant as follows:

For copy  
of plan  
see  
4-200-195-78

1. That said property shall be developed strictly in accordance with the schedule of plans shown in the attached Exhibit "A", prepared by SARILLE-RODRIGO-TARAFÁ, JOINT VENTURE, Architects entitled KEY BISCAYNE SHOPS dated the 22nd day of February 1978, as per revision dated the 17th day of March 1978.

2. Where construction has occurred on said property, pursuant to a permit issued by the County, and inspections made and approval of occupancy given by the County, the same shall create a conclusive presumption that the buildings thus constructed comply with the intent and spirit of the master-plan, and this Covenant shall not be construed as clouding the title to any of said property on which such development has occurred.

3. That this Covenant on the part of the OWNERS shall constitute a covenant running with the land and will be recorded in the Public Records of Dade County, Florida, and shall remain in full force and effect and be binding upon the heirs, successors, and assigns of the respective parties hereto, until such time as the same is released in writing by the Director of the Metropolitan Dade County Building and Zoning Department, or the executive officer of the successor of such department, or, in the absence of such director or executive officer, by his assistant in charge of the office of his absence.

4. The parties further agree that the terms and covenants of that certain Restrictive Covenant for Usage dated the 28th day of February, 1978, is hereby incorporated herein by reference, in total.

IN WITNESS WHEREOF, the parties hereto have executed this Covenant the day and year first above set forth.

SIGNED, SEALED, EXECUTED AND ACKNOWLEDGED on this 28th day of February, 1978.

Witnesses:

*Mariano Blum*  
*Zolena Perseaud*

M HOLDING CORP.  
A Florida corporation

By: *[Signature]*  
RAUL MASVIDAL, President



STATE OF FLORIDA }  
COUNTY OF DADE }

I HEREBY CERTIFY that on this 28th day of February, 1978, before me, personally appeared RAUL MASVIDAL, President, M HOLDING CORP., a Florida corporation, to me known to be the person described in and who executed the foregoing instrument, 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, the County and State aforesaid, the day and year first above written.

*[Signature]*  
Notary Public



My Commission Expires:

~~NOTARY PUBLIC, State of FLORIDA at LARGE~~  
~~My Commission Expires October 20, 1980~~

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY  
*[Signature]*  
Notary Public

JOINDER BY MORTGAGEE

THE UNDERSIGNED, HOLYOAKE, N.V. a Netherlands Antilles Corporation, Mortgagee, under that certain mortgage from M HOLDING CORP., a Florida corporation, dated the 7th day of July 1977, and recorded in Official Records Book 9745, at Page 85, of the Public Records of Dade County, Florida, in the original amount of Two Hundred Fifty Thousand Dollars (\$250,000.00) covering a portion of the property described in the foregoing Covenant do hereby acknowledge that the terms of this Covenant are and shall be binding upon the undersigned and its successors in title.

IN WITNESS WHEREOF, these presents have been executed this 28th day of February, 1978.



Witnesses:  
Maria Colon  
Zolanda Rosand  
Maria Colon  
Zolanda Rosand

HOLYOAKE, N.V. a Netherlands Antilles Corporation  
By: [Signature]  
JOSE CASTRO, Vice President  
M HOLDING CORP., a Florida corp.

By: [Signature]  
RAUL BASVIDAL, President

STATE OF FLORIDA )  
COUNTY OF DADE )

BEFORE ME, the undersigned authority personally appeared RAUL MASVIDAL, President, M HOLDING CORP., a Florida corporation, to me known to be the person described in and who executed the foregoing instrument, 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, in the County and State aforesaid, this 30th day of February, 1978.

*Ross Gaud*  
Notary Public



My Commission Expires:

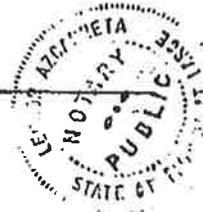
NOTARY PUBLIC, State of FLORIDA at LARGE.  
My Commission Expires October 20, 1980

STATE OF FLORIDA )  
COUNTY OF DADE )

BEFORE ME, the undersigned authority personally appeared JOSE CASTRO, Vice President, HOLYOAKE, N.V., a Netherlands Antilles corporation, to me known to be the person described in and who executed the foregoing instrument, 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, in the County and State aforesaid, this 30th day of February, 1978.

*Ross Gaud*  
Notary Public



My Commission Expires:

NOTARY PUBLIC, State of FLORIDA at LARGE.  
My Commission Expires October 20, 1980

JOINDER BY MORTGAGEE

The Undersigned, THE BANK OF MIAMI, a Florida banking corporation, Mortgagee, under that certain mortgage from M HOLDING CORP., a Florida corporation, dated the 10th day of November, 1977, and recorded in Official Records Book 9860 at Page 330, of the Public Records of Dade County, Florida, in the original amount of Five Hundred Fifty Thousand Dollars (\$550,000.00) covering ~~part of~~ the property described in the foregoing Covenant do hereby acknowledge that the terms of this Covenant are and shall be binding upon the undersigned and its successors in title.

IN WITNESS WHEREOF, these presents have been executed this 21 day of March, 1978.

Witnesses:

Juan Serrano  
Tomás Rodriguez  
Maria Colman  
Zulema Rosend

THE BANK OF MIAMI, a Florida Banking Corporation

BY Manuel Ex-ec V.P.

M HOLDING CORP., a Florida Corporation

BY: Raul Masvidal President



STATE OF FLORIDA:  
COUNTY OF DADE : ss

BEFORE ME, the undersigned authority personally appeared RAUL MASVIDAL, President, M HOLDING CORP., a Florida corporation, to me known to be the person described in and who executed the foregoing instrument, and he acknowledge to me the execution thereof to be his free act and deed for the purposes therein mentioned.

WITNESS my signature and official seal at Miami, in the County and State aforesaid, this 21 day of March, 1978.

*[Signature]*  
NOTARY PUBLIC



My Commission Expires:

NOTARY PUBLIC, State of FLORIDA at LARGE.  
My Commission Expires October 20, 1980

STATE OF FLORIDA:  
COUNTY OF DADE : ss

BEFORE ME, the undersigned authority personally appeared on behalf of THE BANK OF MIAMI, a Florida Banking Corporation, to me known to be the person described in and who executed the foregoing instrument, and he acknowledge to me the execution thereof to be his free act and deed for the purposes therein mentioned.

WITNESS my signature and official seal at Miami, in the County and State aforesaid, this 21 day of March, 1978.

*[Signature]*  
NOTARY PUBLIC



My Commission Expires:

NOTARY PUBLIC, State of FLORIDA at LARGE.  
My Commission Expires October 20, 1980

EXHIBIT "A"  
SCHEDULE OF PLANS

A-1	Landscaping Plan
A-2	Site Plan
A-3	Parking Level
A-4	Plaza Level
A-6	Elevations

All of the above plans have been prepared by SARILLE-RODRIGO-TARAFÁ, A Joint Venture, Architects, and are dated February 22, 1978 as revised March 17, 1978. The Landscaping Plan has been prepared by SASAKI & ASSOCIATES, INC., Landscape Architects dated February 22, 1978 and revised March 17, 1978.

RECORDED IN OFFICIAL RECORDS BOOK  
OF DADE COUNTY, FLORIDA.  
RECORD VERIFIED  
RICHARD P. BRINKER.  
CLERK CIRCUIT COURT

EXHIBIT "A"

SCHEDULE OF PLANS

A-1	Landscaping Plan
A-2	Site Plan
A-3	Parking Level
A-4	Plaza Level
A-6	Elevations

All of the above plans have been prepared by SARILLE-RODRIGO-TARAF, A Joint Venture, Architects, and are dated February 22, 1978 as revised March 17, 1978. The Landscaping Plan has been prepared by SASAKI & ASSOCIATES, INC., Landscape Architects dated February 22, 1978 and revised March 17, 1978.

RECORDED IN OFFICIAL RECORDS BOOK  
OF DADE COUNTY, FLORIDA.  
RECORDS VERIFIED  
RICHARD P. BRINKER.  
CLERK CIRCUIT COURT

*file subject  
Covenants*

78R 93865

1978 APR 12 11 3 47

REC-100027 387

~~5-55~~

*OK  
F. Brinkley*

RESTRICTIVE COVENANT FOR USAGE

THIS COVENANT entered into this 25th day of February, 1978, by M HOLDING CORP., a Florida corporation, hereinafter referred to as "OWNERS" and joined by The Bank of Miami, a Florida banking corporation, and by HOLYOAKE, N.V., a Netherlands Antilles Corporation, as Mortgagees.

W I T N E S S E T H:

WHEREAS, the OWNERS are fee simple title owners of the following described property, lying, being and situate in Dade County, Florida, to wit:

PARCEL "A" Commence at the intersection of the North line of Tract 1 of Canoga Properties, Plat Book 65, at Page 88 of the Public Records of Dade County, Florida, with the Northeasterly right-of-way line of Crandon Boulevard, as the same is shown on the plat of Cape Florida Subdivision, Section 1, Plat Book 68, at Page 81 of the Public Records of Dade County, Florida; thence run North 89 degrees 52 minutes 45 seconds East along the North line of said Tract 1 for a distance of 515.93 feet; thence run South 00 degrees 07 minutes 15 seconds East for a distance of 30.00 feet to the Point of Beginning of the parcel of land herein described; thence continue South 00 degrees 07 minutes 15 seconds East for a distance of 320.00 feet; thence run South 89 degrees 52 minutes 45 seconds West for a distance of 30.68 feet to a point on the Northeasterly right-of-way line of Crandon Boulevard; thence run North 54 degrees 19 minutes 08 seconds West along the Northeasterly right of way line of Crandon Boulevard for a distance of 469.63 feet to the beginning of a tangential circular curve; thence run Northwesterly, Northerly and Northeasterly along said circular curve, concave to the East having a radius of 25.00 feet through a central angle of 144 degrees 11 minutes 53 seconds for an arc distance of 62.92 feet to the end of said curve; thence run North 39 degrees 52 minutes 45 seconds East for a distance of 396.94 feet to the Point of Beginning, containing 1.829 acres, more or less.

WHEREAS, the OWNERS are desirous of giving assurance to the COUNTY that the property will be developed and used substantially in accordance with the spirit and intent of the plans submitted to the COUNTY for a public hearing wherein the zoning and use of the subject property has been approved, unless said plans are modified and/or changed as a result of a PUBLIC HEARING, or other appropriate action by the COUNTY.

NOW, THEREFORE, for good and valuable consideration, the parties have agreed as follows:

For copy of plan see 4-2-80-195-78

1. That said property shall be developed strictly in accordance with the schedule of plans shown in the attached Exhibit "A", prepared by SARILLE-RODRIGO-TARAFKA, JOINT VENTURE, Architects entitled KEY BISCAYNE SHOPS dated the 22nd day of February, 1978, as per revision dated the 17th day of March 1978.

2. OWNERS hereby agree that no night club, night bar or fast food chain will be allowed to use the aforescribed property.

3. OWNERS warrant that the property will not be used for any BU-2 use which will create a parking demand in excess of the spaces provided as set forth in the plan described in Paragraph 1 of this Agreement.

The OWNERS hereby agree that the property will not be used for any purpose enumerated in Paragraphs 4 thru 30 as follows:

4. Bath and massage parlors.

5. Confectionary and ice cream stores, including walk-up trade, curb service or drive-in use shall require approval after public hearing. This item shall mean any method of dispensing the commodity other than wholly within the building.

6. Drugstores containing a fountain or lunch counter, it being the intention hereof that a drugstore without fountain or lunch counter is permitted.

7. Fruit stores, retail.

8. Grocery stores and meat markets, except those dealing in live poultry. Beer and wine may be sold for consumption off the premises, within hours permitted by laws enacted by the legislature of Florida or regulations heretofore or hereafter adopted by the County Commission whichever hours may be the more restrictive, and shall be considered as grocery items and may be sold in the BU-1 district in grocery stores but in no other store, shop or establishment whatsoever within a BU-1 district, except as otherwise permitted by these regulations.

9. Hat cleaning and blocking.

10. Soft drink stands.

11. Automobile new parts and equipment or accessory stores.

12. Automobile sales; new car agency; including used cars from open lot in connection therewith;

a. That a plot use plan be submitted to and meet with the approval of the director; said plan to include among other things, but be not limited thereto, location of building or buildings, type and location of signs, parking areas, exits and entrances, drainage, walls, fences, landscaping, car display area, etc.

b. That the use be established and maintained in accordance with the approved plan.

c. That the type and location of lights and signs meet with the approval of the director, so that the installation of the same shall not be detrimental to the adjacent areas, and shall not become a traffic hazard on the adjacent streets.

d. That no repair work of any type be permitted on the premises in connection with the used car lot.

e. That the used car lot be of a high-class type, exhibiting only late model cars of good appearance and salable condition.

f. That the permit be subject to cancellation upon twenty-four hour notice for non-compliance with the conditions approved.

g. That said permit be automatically renewable yearly upon compliance with all terms and conditions applicable.

13. Automobile tires (now) retail sale only.

14. Automobile washing (steam cleaning not permitted).

15. Bait and tackle shops.

16. Bicycle stores and repairs shops.

17. ~~Billiard~~ rooms and poolrooms.

18. Curb service or drive-in use, in connection with confectionery stores and ice cream stores, and restaurants, subject to the approval of a plot-use plan by the director, including driveways, lights, signs to eliminate traffic hazards and nuisances.

19. Dancing halls or dancing academies, provided no intoxicating beverages of any type are served.

20. Dry cleaning establishments, using noninflammable solvents in self-contained dry cleaning units of the Prosperity type or Dedrick type, or an equal approved by the director.

21. Laundries, hand and self-service, provided that a laundry in this area shall provide a sanitary and safe disposal of waste water and operate without producing smoke.

22. Lawnmower rental sales and service.

23. Mortuaries or funeral parlors (crematory not permitted).

24. Motor fuel and oil filling service stations. Service station structure may be of a metal provided that the same is equal to the "SKF" building of the Columbian Steel Tank Corporation in appearance and construction and meets the following requirements:

a. Is designed to meet the requirements of the South Florida Building Code. The use of timber framing to be specifically excluded.

b. General appearance to be attractive with architectural design to conform to accepted practice for service stations.

c. Exterior surface to be of flat panelled construction, painted or porcelainized, with architectural tile, if desired. The use of standard corrugated sheet metal surfacing to be specifically excluded.

25. Show and salesrooms, including the display of new automobiles for the purpose of sale by an authorized dealer, provided that automobile show and salesrooms may have limited service departments incidental thereto, provided such work is carried on altogether within the building.

26. Skating rinks, provided no intoxicating beverages of any type are served.

27. Waiting rooms for common carriers.

28. Rental of single-axle luggage trailers (or U-Haul type) from open lots; total of five trailers permitted on the premises, one of which may be exhibits for display purposes, balance of which may be stores on premises, provided they are suitably screened on all sides by a CBS wall, a landscape screen or other method to be approved by the director. This use shall be subject to the approval of a plot-use plan to be submitted to the director. The use shall be approved only if the same does not interfere with traffic conditions, entrance and exit drive-ways to the service station. This regulation shall not be interpreted to mean that more than five trailers cannot be kept within an enclosed building.

29. Bowling alleys and skating rinks, dance halls and dancing academies.

30. Dressed poultry and sea food stores, retail, located not closer than fifty feet to a residential building.

31. That this Covenant on the part of the OWNERS, shall constitute a covenant running with the land and will be recorded in the Public Records of Dade County, Florida and shall remain in full force and effect and be binding upon the heirs, successors, and

assigns of the respective parties hereto, until such time as the same is released in writing by the Director of the Metropolitan Dade County Building and Zoning Department, or the executive officer of the successor of such department, or, in the absence of such director or executive officer, by his assistant in charge of the office in his absence.

32. The parties further agree that the terms and covenants of that certain Building Plans Covenant dated the 28th day of February, 1978, is hereby incorporated herein by reference, in total.

IN WITNESS WHEREOF, the parties hereto have executed this Covenant the day and year first above set forth.

SIGNED, SEALED, EXECUTED AND ACKNOWLEDGED on this 28th day of February, 1978.

Witnesses:  
Maria Colson  
Zolene Perout

M HOLDING CORP.  
A Florida Corporation

By: [Signature]  
RAUL MASVIDAL, President

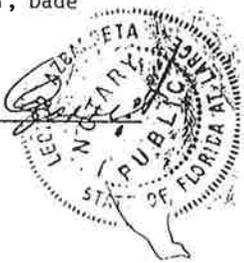


STATE OF FLORIDA }  
COUNTY OF DADE }

I HEREBY CERTIFY that on this 28th day of February, 1978, before me, personally appeared RAUL MASVIDAL, President, M HOLDING CORP., a Florida corporation, to me known to be the person described in and who executed the foregoing instrument, 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.

[Signature]  
Notary Public



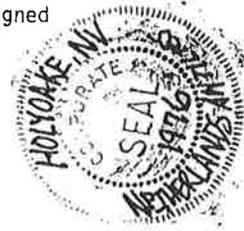
My Commission Expires:  
NOTARY PUBLIC, STATE OF FLORIDA at LARGE  
My Commission Expires October 20, 1980

APPROVED AS TO FORM AND LEGAL SUFFICIENCY  
[Signature]  
Notary

JOINDER BY MORTGAGEE

THE UNDERSIGNED, HOLYOAKE, N.V. a Netherlands Antilles Corporation, Mortgagee, under that certain mortgage from M HOLDING CORP., a Florida corporation, dated the 7th day of July 1977, and recorded in Official Records Book 9745, at Page 85, of the Public Records of Dade County, Florida, in the original amount of Two Hundred Fifty Thousand Dollars (\$250,000.00) covering a portion of the property described in the foregoing Covenant do hereby acknowledge that the terms of this Covenant are and shall be binding upon the undersigned and its successors in title.

IN WITNESS WHEREOF, these presents have been executed this 28th day of February, 1978.



Witnesses:  
Maria Colina  
Zolena Penant  
Maria Colina  
Zolena Penant

HOLYOAKE, N.V. a Netherlands Antilles Corporation

By: [Signature]  
JOSE CASTRO, Vice President

M HOLDING CORP., a Florida corp.

By: [Signature]  
RAUL MASVIDAL, President



STATE OF FLORIDA )  
COUNTY OF DADE )

BEFORE ME, the undersigned authority personally appeared RAUL MASVIDAL, President, M HOLDING CORP., a Florida corporation, to me known to be the person described in and who executed the foregoing instrument, 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, in the County and State aforesaid, this 28th day of February, 1978.

*Gerardo Casar*  
Notary Public



My Commission Expires:

NOTARY PUBLIC, State of FLORIDA at LARGE  
My Commission Expires October 20, 1980

STATE OF FLORIDA )  
COUNTY OF DADE )

BEFORE ME, the undersigned authority personally appeared JOSE CASTRO, Vice President of HOLYOAKE, N.V, a Netherlands Antilles Corporation, to me known to be the person described in and who executed the foregoing instrument, 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, in the County and State aforesaid, this 28th day of February, 1978.

*Gerardo Casar*  
Notary Public



My Commission Expires:

NOTARY PUBLIC, State of FLORIDA at LARGE  
My Commission Expires October 20, 1980

JOINDER BY MORTGAGEE

The Undersigned, THE BANK OF MIAMI, a Florida banking corporation, Mortgagee, under that certain mortgage from M HOLDING CORP., a Florida corporation, dated the 10th day of November, 1977, and recorded in Official Records Book 9860 at Page 330, of the Public Records of Dade County, Florida, in the original amount of Five Hundred Fifty Thousand Dollars (\$550,000.00) covering ~~portion of~~ the property described in the foregoing Covenant do hereby acknowledge that the terms of this Covenant are and shall be binding upon the undersigned and its successors in title.

IN WITNESS WHEREOF, these presents have been executed this 21 day of March, 1978.

Witnesses:

Luigi Astein  
Tejima Rodriguez  
Marsel Colman  
Galina Perend

THE BANK OF MIAMI, a  
Florida Banking Corporation  
BY M. Garcia Exec. V.P.

M HOLDING CORP., a  
Florida Corporation  
BY: Raul Masvidal  
RAUL MASVIDAL, Pres.



STATE OF FLORIDA:  
COUNTY OF DADE : ss

BEFORE ME, the undersigned authority personally appeared RAUL MASVIDAL, President, M HOLDING CORP., a Florida corporation, to me known to be the person described in and who executed the foregoing instrument, and he acknowledge to me the execution thereof to be his free act and deed for the purposes therein mentioned.

WITNESS my signature and official seal at Miami, in the County and State aforesaid, this 31<sup>st</sup> day of March, 1978.

*Leon Azambuja*  
NOTARY PUBLIC



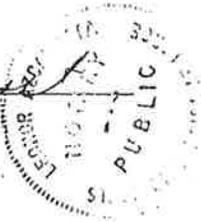
My Commission Expires:  
NOTARY PUBLIC, State of FLORIDA at LARGE.  
My Commission Expires October 20, 1980

STATE OF FLORIDA:  
COUNTY OF DADE : ss

BEFORE ME, the undersigned authority personally appeared on behalf of THE BANK OF MIAMI, a Florida Banking Corporation, to me known to be the person described in and who executed the foregoing instrument, and he acknowledge to me the execution thereof to be his free act and deed for the purposes therein mentioned.

WITNESS my signature and official seal at Miami, in the County and State aforesaid, this 21<sup>st</sup> day of March, 1978.

*Leon Azambuja*  
NOTARY PUBLIC



My Commission Expires:  
NOTARY PUBLIC, State of FLORIDA at LARGE.  
My Commission Expires October 20, 1980

EXHIBIT "A"

SCHEDULE OF PLANS

- A-1 Landscaping Plan
- A-2 Site Plan
- A-3 Parking Level
- A-4 Plaza Level
- A-6 Elevations

All of the above plans have been prepared by SARILLE-RODRIGO-TARAFÁ, A Joint Venture, Architects, and are dated February 22, 1978 as revised March 17, 1978. The Landscaping Plan has been prepared by SASAKI & ASSOCIATES, INC., Landscape Architects dated February 22, 1978 and revised March 17, 1978.

RECORDED IN OFFICIAL RECORDS BOOK  
OF DADE COUNTY, FLORIDA.  
RECORD VERIFIED  
**RICHARD P. BRINKER,**  
CLERK CIRCUIT COURT

78R 93866

1978 APR 12 11 9 47

OFF REC 10002 PG 318

5-55-41  
OK  
Florida

BUILDING PLANS COVENANT

THIS COVENANT entered into this 28th day of February, 1978, by M HOLDING CORP., a Florida corporation, hereinafter referred to as "OWNERS" and joined by The Bank of Miami, a Florida banking corporation, and by HOLYOAKE, N.V., a Netherlands Antilles Corporation, as Mortgagees.

W I T N E S S E T H:

WHEREAS, the OWNERS are fee simple title owners of the following described property, lying, being and situate in Dade County, Florida, to wit:

PARCEL "A" Commence at the intersection of the North line of Tract 1 of Canoga Properties, Plat Book 65, at Page 88 of the Public Records of Dade County, Florida, with the Northeasterly right-of-way line of Crandon Boulevard, as the same is shown on the plat of Cape Florida Subdivision, Section 1, Plat Book 68, at Page 81 of the Public Records of Dade County, Florida; thence run North 89 degrees 52 minutes 45 seconds East along the North line of said Tract 1 for a distance of 515.93 feet; thence run South 00 degrees 07 minutes 15 seconds East for a distance of 30.00 feet to the Point of Beginning of the parcel of land herein described; thence continue South 00 degrees 07 minutes 15 seconds East for a distance of 320.00 feet; thence run South 89 degrees 52 minutes 45 seconds West for a distance of 30.68 feet to a point on the Northeasterly right-of-way line of Crandon Boulevard; thence run North 54 degrees 19 minutes 08 seconds West along the Northeasterly right of way line of Crandon Boulevard for a distance of 469.63 feet to the beginning of a tangential circular curve; thence run Northwesterly, Northerly and North-easterly along said circular curve, concave to the East having a radius of 25.00 feet through a central angle of 144 degrees 11 minutes 53 seconds for an arc distance of 62.92 feet to the end of said curve; thence run North 39 degrees 52 minutes 45 seconds East for a distance of 396.94 feet to the Point of Beginning, containing 1.829 acres, more or less.

PREPARED BY

WHEREAS, the OWNERS are desirous of giving assurance to the COUNTY that the property will be developed substantially in accordance with the spirit and intent of the plans submitted to the COUNTY for a public hearing wherein the zoning and use of the subject property has been approved, unless said plans are modified and/or changed as a result of a public hearing, or other appropriate action by the COUNTY.

NOW, THEREFORE, for good and valuable consideration, the parties have agreed to Covenant as follows:

For copy  
of plan  
see  
4-20-195-78

1. That said property shall be developed strictly in accordance with the schedule of plans shown in the attached Exhibit "A", prepared by SARILLE-RODRIGO-TARAF, JOINT VENTURE, Architects entitled KEY BISCAYNE SHOPS dated the 22nd day of February 1978, as per revision dated the 17th day of March 1978.

2. Where construction has occurred on said property, pursuant to a permit issued by the County, and inspections made and approval of occupancy given by the County, the same shall create a conclusive presumption that the buildings thus constructed comply with the intent and spirit of the master-plan, and this Covenant shall not be construed as clouding the title to any of said property on which such development has occurred.

3. That this Covenant on the part of the OWNERS shall constitute a covenant running with the land and will be recorded in the Public Records of Dade County, Florida, and shall remain in full force and effect and be binding upon the heirs, successors, and assigns of the respective parties hereto, until such time as the same is released in writing by the Director of the Metropolitan Dade County Building and Zoning Department, or the executive officer of the successor of such department, or, in the absence of such director or executive officer, by his assistant in charge of the office of his absence.

4. The parties further agree that the terms and covenants of that certain Restrictive Covenant for Usage dated the 28th day of February, 1978, is hereby incorporated herein by reference, in total.

IN WITNESS WHEREOF, the parties hereto have executed this Covenant the day and year first above set forth.

SIGNED, SEALED, EXECUTED AND ACKNOWLEDGED on this 28th day of February, 1978.

Witnesses:

*Maria Coluca*  
*Zolena Pensaul*

M HOLDING CORP.  
A Florida corporation

By: *[Signature]*  
RAUL MASVIDAL, President



STATE OF FLORIDA }  
COUNTY OF DADE }

I HEREBY CERTIFY that on this 28th day of February, 1978, before me, personally appeared RAUL MASVIDAL, President, M HOLDING CORP., a Florida corporation, to me known to be the person described in and who executed the foregoing instrument, 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, the County and State aforesaid, the day and year first above written.

*[Signature]*  
Notary Public



My Commission Expires:

~~Notary Public, State of Florida~~  
~~My Commission Expires October 20, 1980~~

APPROVED AS TO FORM AND LEGAL SUFFICIENCY  
*[Signature]*

JOINDER BY MORTGAGEE

THE UNDERSIGNED, HOLYOAKE, N.V. a Netherlands Antilles Corporation, Mortgagee, under that certain mortgage from M HOLDING CORP., a Florida corporation, dated the 7th day of July 1977, and recorded in Official Records Book 9745, at Page 85, of the Public Records of Dade County, Florida, in the original amount of Two Hundred Fifty Thousand Dollars (\$250,000.00) covering a portion of the property described in the foregoing Covenant do hereby acknowledge that the terms of this Covenant are and shall be binding upon the undersigned and its successors in title.

IN WITNESS WHEREOF, these presents have been executed this 28th day of February, 1978.



Witnesses:  
Marisa Colman  
Zolena Pasaul  
Marisa Colman  
Zolena Pasaul

HOLYOAKE, N.V. a Netherlands Antilles Corporation  
By: [Signature]  
JOSE CASTRO, Vice President  
M HOLDING CORP., a Florida corp.

By: [Signature]  
RAUL BASVIDAL, President

STATE OF FLORIDA )  
COUNTY OF DADE )

BEFORE ME, the undersigned authority personally appeared RAUL MASVIDAL, President, M HOLDING CORP., a Florida corporation, to me known to be the person described in and who executed the foregoing instrument, 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, in the County and State aforesaid, this 28th day of February, 1978.

*[Signature]*  
Notary Public



My Commission Expires:

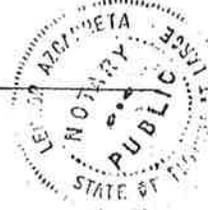
NOTARY PUBLIC, State of FLORIDA at LARGE.  
My Commission Expires October 20, 1980

STATE OF FLORIDA )  
COUNTY OF DADE )

BEFORE ME, the undersigned authority personally appeared JOSE CASTRO, Vice President, HOLYOAKE, N.V., a Netherlands Antilles corporation, to me known to be the person described in and who executed the foregoing instrument, 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, in the County and State aforesaid, this 28th day of February, 1978.

*[Signature]*  
Notary Public



My Commission Expires:

NOTARY PUBLIC, State of FLORIDA at LARGE.  
My Commission Expires October 20, 1980

JOINDER BY MORTGAGEE

The Undersigned, THE BANK OF MIAMI, a Florida banking corporation, Mortgagee, under that certain mortgage from M HOLDING CORP., a Florida corporation, dated the 10th day of November, 1977, and recorded in Official Records Book 9860 at Page 330, of the Public Records of Dade County, Florida, in the original amount of Five Hundred Fifty Thousand Dollars (\$550,000.00) covering ~~position of~~ the property described in the foregoing Covenant do hereby acknowledge that the terms of this Covenant are and shall be binding upon the undersigned and its successors in title.

*32*

IN WITNESS WHEREOF, these presents have been executed this 21 day of March, 1978.

Witnesses:

Jeani Saraydas  
Torres Rodriguez  
Maria Colman  
Zuleta Ponsell

THE BANK OF MIAMI, a Florida Banking Corporation  
BY Raul Masvidal Ex. V. P.

M HOLDING CORP., a Florida Corporation  
BY: Raul Masvidal  
RAUL MASVIDAL, President



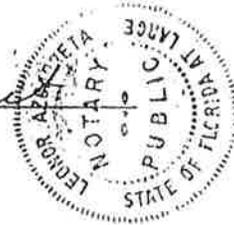
*1*

STATE OF FLORIDA:  
COUNTY OF DADE : ss

BEFORE ME, the undersigned authority personally appeared RAUL MASVIDAL, President, M HOLDING CORP., a Florida corporation, to me known to be the person described in and who executed the foregoing instrument, and he acknowledge to me the execution thereof to be his free act and deed for the purposes therein mentioned.

WITNESS my signature and official seal at Miami, in the County and State aforesaid, this 21 day of March, 1978.

*Raul Masvidal*  
NOTARY PUBLIC



My Commission Expires:

NOTARY PUBLIC, State of FLORIDA at LARGE.  
My Commission Expires October 20, 1980

STATE OF FLORIDA:  
COUNTY OF DADE : ss

BEFORE ME, the undersigned authority personally appeared on behalf of THE BANK OF MIAMI, a Florida Banking Corporation, to me known to be the person described in and who executed the foregoing instrument, and he acknowledge to me the execution thereof to be his free act and deed for the purposes therein mentioned.

WITNESS my signature and official seal at Miami, in the County and State aforesaid, this 21 day of March, 1978.

*Raul Masvidal*  
NOTARY PUBLIC



My Commission Expires:

NOTARY PUBLIC, State of FLORIDA at LARGE.  
My Commission Expires October 20, 1980

EXHIBIT "A"

SCHEDULE OF PLANS

A-1	Landscaping Plan
A-2	Site Plan
A-3	Parking Level
A-4	Plaza Level
A-6	Elevations

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EXHIBIT "A"

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- A-2 Site Plan
- A-3 Parking Level
- A-4 Plaza Level
- A-6 Elevations

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