



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

Village Manager
John C. Gilbert

DATE: August 27, 2013
TO: Honorable Mayor and Members of the Village Council
FROM: John C. Gilbert, Village Manager
RE: 971 Crandon Blvd. (L'Esplanade): Change of Zoning from Low Intensity Office District to C-1 Low Intensity Commercial District

RECOMMENDATION

It is recommended the Village Council approve the attached Ordinance based on the attached Building, Zoning, and Planning (BZP) Director's determination that the request is consistent with the Land Use designation in the Master Plan and the change of zoning criteria as set forth in the Zoning and Land Development Regulations.

BACKGROUND

When the property was constructed in 1980, the property was part of a BU-1 Special Business District. The establishment of the shopping center was approved by the County with "Restrictive Covenant for Use" which prohibits several uses at the property and a "Building Plans Covenant" that regulates the design of the building. These covenants remain in full force and affect. The covenants may be released by the Village's BZP Director as the successor to the Miami-Dade County Director of Building and Zoning. The covenants are attached to the BZP Director's report.

Upon incorporation, the property was listed in the Master Plan as Low Density Multiple Family and like all properties at that time, it retained the County zoning designation of BU -2 Special Business District. In 2000, the Village adopted a Zoning Ordinance for all properties east of Crandon Boulevard and designated the property as an O-1 Light Intensity Office District.

In 2012, the Village, based upon the recommendations in the Evaluation and Appraisal Report (EAR), changed the Master Plan designation to Commercial. By changing the zoning district to C-1 Light Intensity Commercial, property's zoning district designation will be consistent with the Master Plan.

The attached Ordinance was prepared by Chad Friedman from the Village Attorney's Office for legal form and sufficiency.

ORDINANCE NO. 2013 -

**AN ORDINANCE OF THE VILLAGE OF KEY BISCAIYNE,
FLORIDA, REZONING PROPERTY LOCATED AT 971
CRANDON BOULEVARD FROM O-1 LIGHT INTENSITY
OFFICE TO C-1 LIGHT INTENSITY COMMERCIAL; AND
PROVIDING FOR AN EFFECTIVE DATE.**

WHEREAS, the Village of Key Biscayne (the “Village”) Village Council desires to rezone property located at 971 Crandon Boulevard (the “Property”) so that it is consistent with the adopted Comprehensive Plan; and

WHEREAS, the Village Council, sitting in its capacity as the Local Planning Agency, has reviewed this Ordinance and recommends approval; and

WHEREAS, the Village Council finds that the changes within this Ordinance meet the applicable review criteria set forth in Section 30-71(b) of the Code; and

WHEREAS, the Village Council finds that the adoption of this Ordinance is in the best interest of the residents of the Village.

**NOW, THEREFORE, IT IS HEREBY ORDAINED BY THE VILLAGE COUNCIL
OF THE VILLAGE OF KEY BISCAIYNE, FLORIDA, AS FOLLOWS¹:**

Section 1. The preceding “Whereas” clauses are ratified and incorporated as the legislative intent of this Ordinance.

Section 2. **Rezoning Approved.** Zoning of the approximately 1.829 acre Property, as legally described on the attached Exhibit “A,” is changed as follows:

Existing: O-1 Light Intensity Office

New: C-1 Light Intensity Commercial

¹ Coding: underlined words are additions to existing text, ~~struck through~~ words are deletions from existing text. Highlighted words are changes made between First and Second Reading.

Section 3. **Severability.** The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 4. **Conflicts.** All ordinances or parts of ordinances, resolutions or parts of resolutions, in conflict herewith, are repealed to the extent of such conflict.

Section 5. **Effective Date.** That this Ordinance shall be effective immediately upon adoption on second reading.

PASSED on first reading this ____ day of _____, 2013.

PASSED AND ADOPTED on second reading this ____ day of _____, 2013.

MAYOR FRANKLIN H. CAPLAN

ATTEST:

CONCHITA H. ALVAREZ, MMC, VILLAGE CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

VILLAGE ATTORNEY

EXHIBIT "A"

Commence at the intersection of the north line of Tract 1 of Canoga Properties, Plat Book 65, page 88 of the public records of Maimi-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 Miami-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 the beginning of the parcel of the land herein described; thence continue South 00 degrees 07 minutes 5 seconds East for a distance of 320 feet; thence run south 89 degrees 52 minutes 40 seconds West for a distance of 30.00 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 Northwesternly, Northerly and Northeasterly along said circular curve concave to the East having a radius of 25 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 89 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.



VILLAGE OF KEY BISCAYNE

Department of Building, Zoning and Planning

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: August 27, 2013
TO: John C. Gilbert, Village Manager
FROM: Jud Kurlancheek, AICP, Director
Building, Zoning, and Planning Department
RE: 971 Crandon Blvd. (L'Esplanade): Change of Zoning
from Office to C-1 Light Intensity Commercial

Director
Jud Kurlancheek, AICP
Chief Building Official
Eugenio M. Santiago, P.E., CFM

APPLICATION SUMMARY

Site Address	971 Crandon Blvd.
Request	Change the zoning district classification from Office to C-1 Light Intensity Commercial
Master Plan Land Use	Commercial
File Number	MAP - 5
Recommendation	Approval

EXPLANATION AND ANALYSIS

Variance Review Criteria: The Village's Zoning and Land Development Regulations provide for a change in the zoning district classification subject to a finding that the petition meets the following criteria:

- Criteria 1** The proposed amendment (change of zoning) is consistent with the Comprehensive Plan (a.k.a. Master Plan).
- Analysis** The Future Land Use Map contained in the Master Plan designates the property as "Commercial". The request changes the zoning district classification from "Office" to "Commercial".
- Finding** Consistent

Criteria 2 The proposed change will result in buildings that are consistent in scale and otherwise compatible with those within a 300 ft. of the site.

Analysis Both the current Office and proposed C-1 Light Intensity Commercial District have a height limit of 35 ft. and a floor area ratio of .50. The property to the east is a condominium and contains five (5) floors of apartments and one story of parking. The property to the north is Ocean Club which has high rise buildings. As such, the proposed C-1 Light Intensity Commercial District's 35 ft. height limit is compatible with the adjacent property which is substantially taller than the shopping center.

Finding Consistent

Criteria 3 The resulting boundaries of the zoning district are logically drawn.

Analysis The configuration of the existing Office District is the same as the proposed C-1 Light Intensity Commercial District. The boundary lines form a triangle and comprise the entire the lot.

Finding Consistent

Criteria 4 The proposed change will enhance property values in the Village.

Analysis The Office District only permits offices throughout the building. If a space had a commercial use that was previously approved, then a new commercial use can occupy that space. The proposed C-1 Light Intensity District permits offices and commercial uses. As such, each space in the building has a significantly greater number of uses that can be permitted. This will improve the value of the shopping center, permit improvements to the building, increase the tax base and provide for the opportunity of new businesses to locate in the Village. All of these impacts will enhance property values.

Finding Consistent

Criteria 5 The proposed change will enhance the quality of life in the Village.

Analysis As the C-1 Light Intensity Commercial District permits offices and commercial uses, the quality of life in the Village will be enhanced as more shops open in the shopping center. It is widely recognized that shopping is a form of recreation and enjoyed by many residents. As such, the quality of life in the Village will be enhanced.

Finding Consistent

Criteria 6 There are substantial and compelling reasons why the proposed change is in the best interests of the Village.

Analysis Approximately two years ago, the BZP Department inspected the property and found multiple violations which were adjudicated in favor of the Village. The Condominium Association submitted, and the Department, approved an improvement program which remedied the violations and improved the appearance of the building. Because the property is presently zoned "Office", it cannot compete in the market place for commercial uses. As such, there is a severe limit on which uses can locate in the building that in turn reduces property values and rents which make it difficult for the condominium association to upgrade the building and permit it to compete with other shopping centers for tenants.

Because the property is zoned "Office" and some of the spaces are permitted to have commercial uses and others are not, there is confusion among realtors, property owners, and prospective tenants of what is permitted in the building. This confusion reduces the marketability of the building.

Finding Consistent

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 prohibits a uses at the property. 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 did 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 "O-1 Light Intensity Office District". This change prevented the establishment of new retail uses in spaces that did not have them.
- July 2006 The Master Plan Evaluation and Appraisal Report (EAR) recommended that the land use designation be changed from "Low Density Multiple Family" to "C-1 Light Intensity 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 "O-1 Light Intensity Office" to "C-1 Light Intensity Commercial".
- May 14, 2013 The Village Council Agenda includes a discussion item dealing with a change in the zoning district designation from "Office" to "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 sq. ft. 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.
- June 11, 2013 Council sets a public hearing on August 27, 2013 to consider a change of zoning district from Office to Commercial.
- June 14, 2013 BZP receives an e mail from the attorney for the L'Esplanade correcting the breakdown of the rentable square footage as 32,385 sq. ft. with retail occupying 18,064 sq. ft. (includes the Post Office at 7,099 sq. ft.) and office at 14,321 sq. ft. That means that 56% of the building is retail and 44% is office.

L'Esplanade on Key Biscayne

Condominium Association, Inc.

971 Crandon Blvd.

Key Biscayne, FL 33149

May 30, 2013

To Whom It May Concern:

The Board of Director's for the L'Esplanade Mall on Key Biscayne are in full support of the changing of zoning of this property from office to commercial/retail.

Thank You,



Patricia Riestra Peraita
Director



Patricia Romano
Director

Enclosure

*File Subject
Covenant*

78K 93865

1978 APR 12 11 3 47
11-100027-307

*OK
Fleming*

5-55

RESTRICTIVE COVENANT FOR USAGE

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 01 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 4-20-78 - 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 driveways 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:

Marisa Cohen
Zola Pearl

M HOLDING CORP.
A Florida Corporation

By: *[Signature]*
RAUL MASVIDAL, President

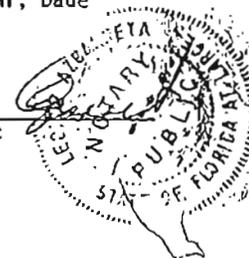


STATE OF FLORIDA
COUNTY OF DADE

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 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 Colwan
Zolene Rosend
Maria Colwan
Zolene Rosend

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 20th day of February, 1978.

Leon Gasset
Notary Public



My Commission Expires:

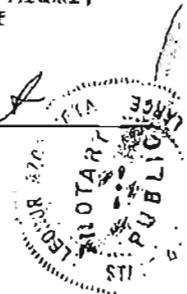
NOTARY PUBLIC, State of FLORIDA at LARGE
My Commission Expires October 20, 1980

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 20th day of February, 1978.

Leon Gasset
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 ~~the~~ ~~portion~~ 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.

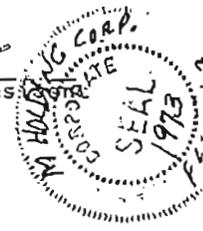
IN WITNESS WHEREOF, these presents have been executed this 21 day of March, 1978.

Witnesses:

Miguel Aptier
Tigiana Rodriguez
Marcos Colman
Galena Rosend

THE BANK OF MIAMI, a
Florida Banking Corporation
BY Orlando EXEC. V.P.

M HOLDING CORP., a
Florida Corporation
BY: 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 21st day of March, 1978.

Signature of Notary Public and circular seal for the State of Florida, Notary Public, Commission Expires October 20, 1980.

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 21st day of March, 1978.

Signature of Notary Public and circular seal for the State of Florida, Notary Public, Commission Expires October 20, 1980.

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

OFF REC 10002 PC 317

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-TARAFIA, 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 RECORD BOOK
OF DADE COUNTY, FLORIDA
SECOND VESTIBLE
RICHARD P. BRINKER,
CLERK CIRCUIT COURT

7SR 93866

1978 APR 12 11 0 47

OFF REC 10002 PG 318

5-55-47

OK
Febrinlio

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:

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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:

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.

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

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:

Marian Colura
Zolene Perouad

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:
Marion Colman
Zolna Peroult
Marion Colman
Zolna Peroult

HOLYOAKE, N.V. a Netherlands Antilles Corporation

By: [Signature]
JOSE CASTRO, Vice President

M HOLDING CORP., a Florida corp.

By: [Signature]
RAUL MASVIDAL, President

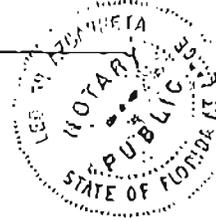


STATE OF FLORIDA)
COUNTY OF DADE)

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.

James Grant
Notary Public



My Commission Expires:

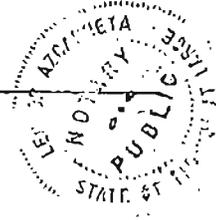
NOTARY PUBLIC, State of FLORIDA at LARGE
My Commission Expires October 20, 1980

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.

James Grant
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~~ ^{3/21} 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:

José Serrano
Tomás Rodríguez
Martina Colón
Zuleta Pineda

THE BANK OF MIAMI, a Florida Banking Corporation
BY Manuel Ex. 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 thersin 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

[Handwritten mark]

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-TARAFIA, 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. BRUNKER
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

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RECORDED IN OFFICIAL RECORDS BOOK
OF DALLAS COUNTY, TEXAS.
RECORDS VERIFIED
RICHARD P. BRINKER.
CLERK DALLAS COUNTY