



CFN 2011R0876626
OR Bk 27946 Pgs 3391 - 3402; (12pgs)
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HARVEY RUVIN, CLERK OF COURT
MIAMI-DADE COUNTY, FLORIDA

RESOLUTION NO. 2011-25

A RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, APPROVING A SITE PLAN CONSISTING OF AN 154 UNIT RESIDENTIAL DEVELOPMENT WITH ACCESSORY FACILITIES FOR PROPERTY LOCATED AT 350 OCEAN DRIVE, AS FURTHER LEGALLY DESCRIBED IN EXHIBIT "A;" PROVIDING FOR FINDINGS; PROVIDING FOR ACCEPTANCE OF A VOLUNTARY COVENANT; PROVIDING FOR RECORDING; PROVIDING FOR THE AFFECT ON RESOLUTION 2007-16; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Consultatio Key Biscayne LLC (the "Applicant") is the owner of approximately 10.11 acres of real property located at 350 Ocean Drive, Key Biscayne, Florida, and legally described on Exhibit "A" (the "Property"); and

WHEREAS, pursuant to Section 30-73 of the Village Code of Ordinances (the "Village Code"), the Applicant has submitted a Planning & Zoning Application seeking approval of a site plan for the development of an 154 unit residential development with accessory facilities bearing Public Hearing # SP-19 (the "Application"); and

WHEREAS, after proper public notice, the Village Council has conducted a public hearing and considered all testimony and other evidence presented and otherwise made part of the record.

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

Section 1. Recitals Adopted. The recitals set forth above are hereby adopted and confirmed.

Section 2. Findings. The Village Council, based upon the competent substantial evidence presented, finds that the Application is consistent with Village of Key Biscayne Master Plan and that

the Applicant has met all of the applicable requirements within the Village's Zoning Code, and in particular Section 30-73 of the Village Code.

Section 3. Site Plans Approved. The site plan prepared by Arquitectonica International Corporation, entitled "Proposed Site Plan," dated July 15, 2011, and consisting of 39 pages (the "Site Plan") is hereby approved.

Section 4. Conditions. The approval granted by this Resolution is subject to compliance with the following conditions, to which the Applicant stipulated and agreed to at the public hearing:

1. Pursuant to the Village of Key Biscayne Master Plan and the Village Code, this approval is subject to the condition that the necessary parks and recreation facilities of 2.5 acres per 1,000 permanent population are in place and available either: 1) prior to the issuance of the first certificate of occupancy for the principle building on the Property; or 2) construction of the facilities may begin up to one year after the issuance of the first certificate of occupancy for the principle building on the Property if the facilities are subject to a binding executed contract for the construction of the facilities to be completed within one year of the time the certificate of occupancy is issued. For purposes of this Resolution, the term "principle building" shall mean the 15 story residential tower in the Site Plan;
2. A detailed landscape plan, substantially in accordance with the Site Plan, for all landscaping for the Property shall be submitted to and approved by the Village Building, Zoning, and Planning Director prior to the issuance of the building permit for the principle building. In order to meet the recreational needs of younger residents, a "tot lot" shall be included in the landscape plan. The landscaping shall thereafter be installed and approved by the Director prior to the issuance of the first certificate of occupancy for the principle building on the Property;
3. A detailed plan for all pedestrian walkways (with finishes) shall be submitted to and approved by the Village Building, Zoning, and Planning Director prior to the issuance of the building permit for the principle building on the Property. All walkways shall be constructed prior to the issuance of the first certificate of occupancy for the principle building on the Property;
4. The Applicant shall provide written documentation from the appropriate regulatory agencies that domestic water and fire protection needs (flows) have been satisfied. This documentation shall be approved by the Village prior to the issuance of the first building permit for any building on the Property;

5. The Applicant shall grant the Village, as shown on the Site Plan, an improved 25 ft. wide publicly dedicated beach access easement, in a form acceptable to the Village Attorney, on the north side of the Property from Ocean Drive to the public beach prior to the issuance of the first certificate of occupancy for the principle building on the Property. Improvements in said easement shall be constructed and maintained by the Applicant pursuant to plans approved by the Village Building, Zoning, and Planning Director. All of the improvements shall be constructed and approved by the Director prior to the issuance of the first certificate of occupancy for the principle building on the Property;

6. The Applicant shall grant to the Village, as shown on the Site Plan, an improved 25 ft. wide publicly dedicated beach access easement, in a form acceptable to the Village Attorney, on the south side of the Property from the East Heather Property line to the public beach prior to the issuance of the first certificate of occupancy for the principle building on the Property. Improvements in said easement and in the 7.5 ft. easement adjacent to the south lot line shall be constructed and maintained by the Applicant pursuant to plans approved by the Village Building, Zoning, and Planning Director. All of the improvements shall be constructed and approved by the Director prior to the issuance of the first certificate of occupancy for the principle building on the Property;

7. Prior to the issuance of the building permit for the principle building on the Property, the Applicant shall construct a six foot high finished CBS wall or finished prefabricated concrete wall generally along the west Property line;

8. The Applicant shall reconstruct the improvements, including sidewalk, paving, drainage, and landscaping on Sonesta Drive and Ocean Drive from the Property's main entrance to Crandon Boulevard. The design of such improvements shall be submitted to and approved by the Village Building, Zoning, and Planning Director no later than the issuance of the building permit for the principle building on the Property. The Applicant shall construct the improvements and obtain approval by the Village prior to the issuance of the first certificate of occupancy for the principle building on the Property;

9. During the period of construction, Sonesta Drive shall be primarily used for construction vehicles, deliveries, guests, and employees as the means of accessing the Property. The Village Manager may authorize the use of East Heather Drive on those occasions when Sonesta Drive cannot reasonably be used;

10. During the period of construction, a six (6) ft. high construction fence with dust screening shall be erected along each Property boundary prior to the issuance of the first building permit and shall remain in place until the first certificate of occupancy is issued for the principle building on the Property or other perimeter fences or walls are erected. Said fence may be temporarily moved or removed to allow for construction of improvements or landscaping to be placed along the Property lines as required by the approved plans or these conditions;

11. Non-material modifications of the Site Plan, which do not increase the density or intensity of development, and are substantially in accordance with the Site Plan, may be administratively approved by the Building, Zoning, and Planning Director. All other changes shall be approved by the Village Council after a public hearing;

12. As provided in Section 30-73(e) of the Village Code, the approval of the Site Plan shall automatically become null and void unless the appropriate development order has been issued within 12 months of the date that this Resolution was approved by the Village Council;

13. Whenever the term “approved by” or “substantially in accordance with” is used in this Resolution said determination shall be made by the Building, Zoning, and Planning Director in his/her reasonable discretion;

14. The use of the temporary sales center, as shown on Page A7.3 within the Site Plan, shall be permitted to continue until such time as the first dwelling/residence is completed on the Property (at which time all sales activity shall be conducted therein) but in no event later than 24 months from the effective date of this Resolution by which time said sales center shall be removed from the Property.

15. In the event there is damage or destruction caused by a windstorm/hurricane event to any of the improvements or portions thereof constructed on the Property, the improvements may be repaired/rebuilt in accordance with the Site Plan.

16. All residents, employees (including household employees) as well as all contract vendors and contract service providers to the Property shall be required to utilize the Ocean Drive driveway as the exclusive point of ingress and egress for the Property.

Section 5. Acceptance of Voluntary Covenant. The Voluntary Covenant that was proffered by the Applicant on August 22, 2011, attached as Exhibit “B” to this Resolution, is hereby accepted by the Village.

Section 6. Recording. This Resolution shall be recorded, prior to the issuance of a building permit, by the Applicant at its expense in the public records of Miami-Dade County. A copy of the proof of recordation shall be submitted to the Building, Zoning and Planning Department prior to the issuance of any building permits.

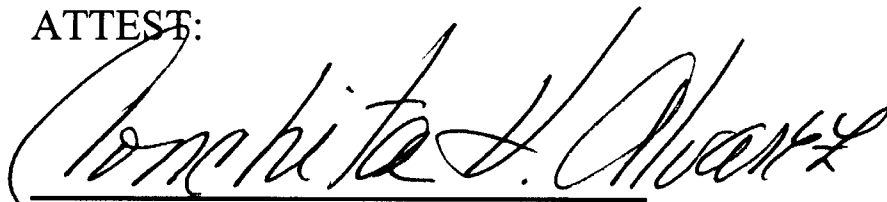
Section 7. Affect on Resolution 2007-16. The approval of this Resolution does not affect the status of Resolution 2007-16, and shall serve as an alternative approval of development for the Property, subject to all the provisions herein including the Voluntary Covenant attached as Exhibit "B."

Section 8. Effective Date & Binding Effect. This Resolution shall become effective immediately upon adoption. This Resolution and all conditions shall be binding upon the Applicant and all successors in title including any mortgagees.

PASSED AND ADOPTED this 22nd day of August, 2011.


MAYOR FRANKLIN H. CAPLAN

ATTEST:



CONCHITA H. ALVAREZ, MMC, VILLAGE CLERK



APPROVED AS TO FORM AND LEGAL SUFFICIENCY


VILLAGE ATTORNEY

EXHIBIT "A"

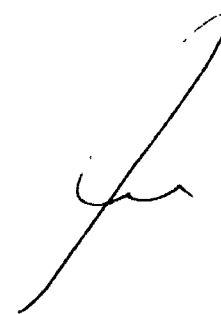
LEGAL DESCRIPTION

PARCEL I

ALL THAT PIECE, PARCEL OR LOT OF LAND SITUATE, LYING AND BEING IN THE SW $\frac{1}{4}$, SECTION 32 AND FRACTIONAL SECTION 33, TOWNSHIP 54 SOUTH, RANGE 42 EAST, IN THE CITY OF KEY BISCAYNE, COUNTY OF MIAMI-DADE, STATE OF FLORIDA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE S.W. CORNER OF TRACT 6, SUBDIVISION OF THE PORTION OF MATHESON ESTATE ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 46 PAGE 86 OF THE PUBLIC RECORDS OF DADE COUNTY, FLORIDA; THENCE RUN ALONG THE SOUTH LINE OF TRACT 6, EAST FOR A DISTANCE OF 1200.00 FEET TO THE POINT OF BEGINNING OF THE FOLLOWING DESCRIBED PARCEL OF LAND, SAID POINT OF BEGINNING ALSO BEING THE S.E. CORNER OF THE PLAT OF HOLIDAY COLONY AS RECORDED IN PLAT BOOK 50 AT PAGE 87, OF THE PUBLIC RECORDS OF DADE COUNTY, FLORIDA, THENCE CONTINUE EAST FOR A DISTANCE OF 761.0 FEET MORE OR LESS TO THE MEAN HIGH WATER LINE OF THE ATLANTIC OCEAN; THENCE MEANDER NORTHWESTERLY, NORTHERLY AND NORTHEASTERLY ALONG THE MEAN HIGH WATER LINE OF THE ATLANTIC OCEAN FOR A DISTANCE OF 518.3 FEET MORE OR LESS TO A POINT LYING 500.00 FEET NORTH OF THE SOUTH LINE OF TRACT 6 EXTENDED EAST AS MEASURED AT RIGHT ANGLES; THENCE RUN WEST ALONG A LINE 500.00 FEET NORTH OF, AND PARALLEL TO, THE SOUTH LINE OF SAID TRACT 6, AS MEASURED AT RIGHT ANGLES, FOR A DISTANCE OF 631.9 FEET MORE OR LESS TO A POINT; THENCE RUN SOUTH $0^{\circ}38'55''$ WEST FOR A DISTANCE OF 327.79 FEET TO A POINT; THENCE RUN NORTH $89^{\circ}24'30''$ WEST FOR A DISTANCE OF 157.55 FEET TO A POINT OF NON-TANGENCY WITH A CIRCULAR CURVE CONCAVE TO THE WEST, THE CENTER OF WHICH BEARS NORTH $89^{\circ}51'26''$ WEST FROM THE AFOREMENTIONED POINT OF NON-TANGENCY; SAID POINT ALSO BEING A POINT ON THE EASTERLY LINE OF BLOCK 5 OF THE PLAT OF HOLIDAY COLONY, AS RECORDED IN PLAT BOOK 50, PAGE 87 OF THE PUBLIC RECORDS OF DADE COUNTY, FLORIDA, THENCE RUN SOUTHERLY ALONG THE ARC OF SAID CIRCULAR CURVE HAVING FOR ITS ELEMENTS A CENTRAL ANGLE OF $3^{\circ}14'04''$ AND A RADIUS OF 3081.59 FEET FOR A DISTANCE OF 173.96 FEET TO THE POINT OF BEGINNING.

AND

A handwritten signature in black ink, appearing to be a stylized name, located in the bottom right corner of the page.

PARCEL 2

ALL THAT PIECE, PARCEL OR LOT OF LAND SITUATE, LYING AND BEING IN THE SW $\frac{1}{4}$, SECTION 32, TOWNSHIP 54 SOUTH, RANGE 42 EAST, IN THE CITY OF KEY BISCAYNE, COUNTY OF MIAMI-DADE, STATE OF FLORIDA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE S.W. CORNER OF TRACT 6, SUBDIVISION OF THE PORTION OF MATHESON ESTATE ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 46 PAGE 86 OF THE PUBLIC RECORDS OF DADE COUNTY, FLORIDA; THENCE RUN ALONG THE SOUTH LINE OF TRACT 6, EAST FOR A DISTANCE OF 1200.00 FEET TO A POINT OF NON-TANGENCY WITH A CIRCULAR CURVE CONCAVE TO THE WEST THE CENTER OF WHICH BEARS NORTH $86^{\circ}37'22''$ WEST FROM THE AFOREMENTIONED POINT OF NON-TANGENCY, SAID POINT ALSO BEING THE SE CORNER OF THE PLAT OF HOLIDAY COLONY, AS RECORDED IN PLAT BOOK 50, PAGE 87 OF THE PUBLIC RECORDS OF DADE COUNTY, FLORIDA; THENCE RUN NORTHERLY ALONG THE ARC OF SAID CIRCULAR CURVE, HAVING FOR ITS ELEMENTS A CENTRAL ANGLE OF $3^{\circ}14'04''$ AND A RADIUS OF 3081.59 FEET FOR A DISTANCE OF 173.96 FEET TO THE POINT OF BEGINNING OF THE FOLLOWING DESCRIBED PARCEL OF LAND; THENCE CONTINUE NORTHERLY AND NORTHWESTERLY ALONG THE ARC OF SAID CIRCULAR CURVE HAVING FOR ITS ELEMENTS A CENTRAL ANGLE OF $10^{\circ}46'23''$ AND A RADIUS OF 3081.59 FEET FOR A DISTANCE OF 579.42 FEET TO A POINT ; SAID POINT ALSO BEING A POINT ON THE SOUTHERLY RIGHT OF WAY LINE OF EAST DRIVE; THENCE RUN ALONG THE SAID RIGHT WAY LINE, EAST FOR A DISTANCE OF 160.62 FEET TO A POINT OF CURVATURE WITH A CURVE CONCAVE TO THE SOUTHWEST; THENCE RUN ALONG THE ARC OF SAID CURVE HAVING FOR ITS ELEMENTS A CENTRAL ANGLE OF $80^{\circ}19'47''$ AND RADIUS OF 25.00 FEET FOR A DISTANCE OF 53.03 FEET TO A POINT OF COMPOUND CURVATURE WITH A CIRCULAR CURVE CONCAVE TO THE WEST, SAID POINT ALSO BEING A POINT ON THE WESTERLY RIGHT OF WAY LINE OF OCEAN BOULEVARD; THENCE RUN SOUTHERLY ALONG THE SAID WESTERLY RIGHT OF WAY LINE ON THE ARC OF THE CIRCULAR CURVE HAVING FOR ITS ELEMENTS A CENTRAL ANGLE OF $4^{\circ}03'53''$ AND A RADIUS OF 3260.29 FEET FOR A DISTANCE OF 231.29 FEET TO A POINT; THENCE LEAVING THE SAID RIGHT OF WAY LINE, RUN WEST 1.87 FEET TO A POINT; THENCE RUN SOUTH $0^{\circ}38'55''$ WEST FOR A DISTANCE OF 327.79 FEET TO A POINT ; THENCE RUN NORTH $89^{\circ}24'30''$ WEST FOR A DISTANCE OF 157.55 FEET TO THE POINT OF BEGINNING.



VOLUNTARY COVENANT

Consultatio Key Biscayne, LLC, a Florida limited liability company, (“Owner”) hereby voluntarily makes, declares, and imposes on the property described below (the “Property”), these covenants running with the title to the land, which shall be binding on the Owner, its heirs, successor and assigns, personal representatives, mortgages, lessees, and against all persons claiming by, through, or under them until such time as this instrument is released in writing as hereinafter provided; and

WHEREAS, Owner holds the fee simple title to the property in Dade County, Florida, describes as follows:

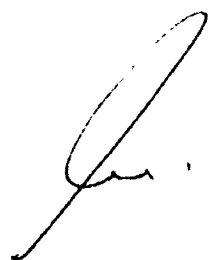
See Exhibit “A”

WHEREAS, Owner intends to develop the Property with 154 residential units (the “Project”); and

WHEREAS, the Owner has filed an application for site plan approval (the “Site Plan”) with the Village of Key Biscayne (the “Village”), which application has been designated with Public Hearing No. SP-19 (the “Application”); and

WHEREAS, the Owner in a spirit of community support and as a gesture of good will has offered to make certain voluntary donations and other commitments for the benefit of the Village and general public, all as more particularly set forth in this Voluntary Covenant (the “Covenant”).

NOW THEREFORE, in consideration of the premises and as an inducement for the approval of the Application, the Owner covenants as follows:

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1. **SITE PLAN.**

Notwithstanding Section 7 of Resolution 2011-25 and any rights secured under Resolution 2007-16, the Owner hereby covenants and agrees to develop the Property in accordance with Resolution 2011-25, the Site Plan approved therein and the terms of this Covenant, unless: (a) there is an appeal, suit or other judicial or administrative challenge filed by a third party (i.e. other than the Village or Consultatio) against the Village and/or Consultatio which seeks to invalidate the Site Plan approval granted under Resolution 2011-25 or challenge any development pursuant to the Site Plan, and (b) within 30 days of receiving notice from the Village of the filing of such challenge, the Owner notifies the Village, in writing, of its intent to proceed with development of the Property under Resolution 2007-16; however, prior to issuance of said notice, the Owner shall confer with the Village and its counsel and undertake reasonable good faith efforts to resolve any such challenge.

As an absolute condition of the foregoing option to proceed under Resolution 2007-16, the Owner agrees to submit a complete application for a building permit for the principle building within the Site Plan no later than 180 days from the rendition of Resolution 2011-25 unless prior to that time both (a) and (b) above have occurred. Further, the option to proceed with development under Resolution 2007-16 shall expire upon the issuance of the building permit by the Village for the principle building under Resolution 2011-25. For purposes of this Covenant, the term "principle building" shall mean the 15 story residential tower shown on the Site Plan. The parties agree that should the Owner elect to proceed under Resolution 2007-16 in accordance with this paragraph then this covenant shall be void and of no effect, shall not be recorded, and, if recorded, the Village agrees to release it.

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2. CONTRIBUTIONS.

The Owner commits to make the following monetary contributions to the Village:

2.1 Land Acquisition Trust. The Owner shall contribute the sum of \$7,000,000.00 to the Village to be placed in the Village Land Acquisition Trust Fund to be used solely for the purpose of the Village acquiring land for public recreation and open space purposes. This contribution shall be made immediately upon the issuance of the first certificate of use or occupancy, for any permanent building on the Property; however, in no event will said contribution be made later than four (4) years from the effective date of Resolution 2011-25.

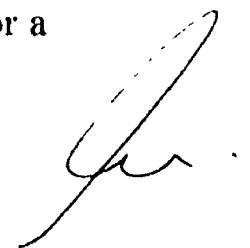
2.2 Community Center. The Owner further agrees that it shall contribute \$1,500,00.00 to the Village to be used in its sole discretion for the (i) acquisition of land, or (ii) design and physical construction of improvements to the Village's Community Center or facilities directly related thereto. This contribution shall be made immediately upon the issuance of the building permit for the first principle building.

3. TERM OF DECLARATION.

Term. The provisions of this instrument shall become effective in accordance with the terms contained herein. This Covenant shall be recorded in the public records of Miami-Dade County, Florida, and shall be a covenant running with the land binding upon the Owner and its successors and assigns, and shall continue in effect for a period of thirty (30) years after the date of such recordation. The Village agrees to release this Covenant in writing upon the satisfaction of the obligations or upon the election to proceed under Resolution 2007-16.

4. MODIFICATION.

The provisions of this instrument may be amended, added to, derogated, deleted, modified, or changed from time to time by recorded instrument executed by the then Owner or a

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majority of the owners of all of the Property, or in the event a property owners association or other similar entity has been created by that entity, provided that such modification, amendment or release is also approved by the Village Council, after public hearing.

Should this Covenant be so modified, amended, or released, the Village Manager, or his/her successor, shall forthwith execute a written instrument effectuating and acknowledging such modifications, amendment, or release.

5. ENFORCEMENT.

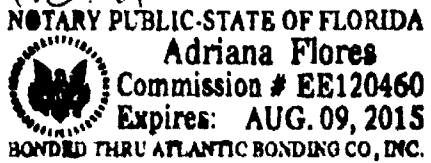
Enforcement shall be by action at law or in equity against any parties or persons violating or attempting to violate any covenants, either to restrain violation or to recover damages. The prevailing party in the action or suit shall be entitled to recover, in addition to costs and disbursements allowed by law, such sum as the court may adjudge to be reasonable for the services of his attorney.

IN WITNESS WHEREOF, these presents have been executed this Tuesday day 6 (six) of September, 2011.

By: Consultatio Key Biscayne, LLC, a Florida limited liability company

By: [Signature]
Name: MARCOS FORTI MADRUGA
Title: Manager
Date: 9.6.11

STATE OF FLORIDA)
) SS:
COUNTY OF MIAMI-DADE)



Signature of Applicant Sworn to (or affirmed) and subscribed before me this 10 day of 09, 2011, by Adriana Flores, who is personally known _____ or produced _____ as identification.

[Signature]
Signature of Notary Public-State of Florida
AUG. 9. 2015
Commissioned Name of Notary Public



V I L L A G E O F K E Y B I S C A Y N E

Office of the Village Clerk

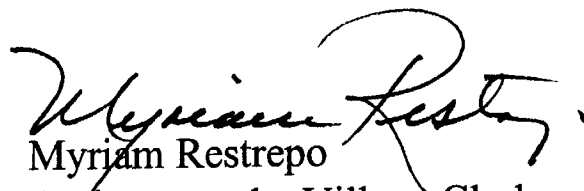
Village Council

Franklin H. Caplan, *Mayor*
Michael E. Kelly, *Vice Mayor*
Michael W. Davey
Enrique Garcia
Robert Gusman
Mayra P. Lindsay
James S. Taintor

Village Clerk

Conchita H. Alvarez, *MMC*

I, Myriam Restrepo, hereby certify that Resolution 2011-25 was filed in the official records of the Village of Key Biscayne on September 14, 2011.


Myriam Restrepo
Assistant to the Village Clerk
Village of Key Biscayne