

MEMORANDUM

Agenda Item No. 11(A)(26)

TO: Honorable Chairman Jose "Pepe" Diaz
and Members, Board of County Commissioners

DATE: October 5, 2021

FROM: Geri Bonzon-Keenan
County Attorney

SUBJECT: Resolution approving terms of settlement agreement with Key Colony Homeowners' Association, Inc.; authorizing County Mayor to execute such settlement agreement and take all actions in accordance with provisions thereof; and establishing Board policy that the Key Biscayne Branch Library property shall be used and preserved in perpetuity solely for the operation of a branch library and incidental purposes thereto

The accompanying resolution was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Raquel A. Regalado.



Geri Bonzon-Keenan
County Attorney

GBK/uw



MEMORANDUM
(Revised)

TO: Honorable Chairman Jose "Pepe" Diaz
and Members, Board of County Commissioners

DATE: October 5, 2021

FROM: 
Gen Bonzon-Keenan
County Attorney

SUBJECT: Agenda Item No. 11(A)(26)

Please note any items checked.

- "3-Day Rule" for committees applicable if raised
- 6 weeks required between first reading and public hearing
- 4 weeks notification to municipal officials required prior to public hearing
- Decreases revenues or increases expenditures without balancing budget
- Budget required
- Statement of fiscal impact required
- Statement of social equity required
- Ordinance creating a new board requires detailed County Mayor's report for public hearing
- No committee review
- Applicable legislation requires more than a majority vote (i.e., 2/3's present ____, 2/3 membership ____, 3/5's ____, unanimous ____, CDMP 7 vote requirement per 2-116.1(3)(h) or (4)(c) ____, CDMP 2/3 vote requirement per 2-116.1(3)(h) or (4)(c) ____, or CDMP 9 vote requirement per 2-116.1(4)(c)(2) ____) to approve
- Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 11(A)(26)
10-5-21

RESOLUTION NO. _____

RESOLUTION APPROVING TERMS OF SETTLEMENT AGREEMENT WITH KEY COLONY HOMEOWNERS' ASSOCIATION, INC.; AUTHORIZING COUNTY MAYOR OR DESIGNEE TO EXECUTE SUCH SETTLEMENT AGREEMENT AND TAKE ALL ACTIONS IN ACCORDANCE WITH PROVISIONS THEREOF; AND ESTABLISHING BOARD POLICY THAT THE KEY BISCAYNE BRANCH LIBRARY PROPERTY SHALL BE USED AND PRESERVED IN PERPETUITY SOLELY FOR THE OPERATION OF A BRANCH LIBRARY AND INCIDENTAL PURPOSES THERETO

WHEREAS, on July 17, 1979, the County acquired an approximately 1.17-acre parcel of land improved with a building, parking lot and other improvements on Key Biscayne for the establishment and operation of a branch library in Key Biscayne (the "Library Property"); and

WHEREAS, the Library Property is located at 299 Crandon Blvd. and is identified by Folio number 24-4232-002-0125; and

WHEREAS, pursuant to the terms of the 1979 deed of conveyance, the Library Property is to be "used solely for the operation of a branch library on Key Biscayne and for all purposes incidental thereto;" and

WHEREAS, consistent with the terms of the 1979 deed of conveyance, this Board desires to establish as Board policy that the Library Property shall be used and preserved in perpetuity for the operation of a branch library and incidental purposes thereto; and

WHEREAS, the deed of conveyance also provided that prior to proceeding with any changes to the exterior of the library, the grantor would participate, along with the County, in the selection of an architectural review committee to be tasked with reviewing any proposed changes to the exterior of the library; and

WHEREAS, the original grantor and its successor are both dissolved corporations; and

WHEREAS, the County seeks to construct a new and expanded Key Biscayne branch library on the Library Property to better serve the increased population on Key Biscayne and provide more modern amenities to the community; and

WHEREAS, accordingly, the County filed an action in court seeking to remove the requirement in the deed of conveyance that an architectural review committee be convened to review and approve the changes to the exterior appearance of the library structure on the Library Property to move forward with the Library Property improvements; and

WHEREAS, a neighboring homeowners' association, the Key Colony Homeowners' Association, Inc. ("Key Colony")- concerned as to the aesthetics, size and uses of the Library Property- sought to intervene in the pending court action; and

WHEREAS, concurrently with the action in court, the County, through the district Commissioner for Key Biscayne (Commission District 7), the director of the Miami-Dade County Public Library System, and the architect retained by the County for the renovations to the Library Property, have held numerous public and private meetings with the Council of the Village of Key Biscayne, Key Biscayne residents, and neighboring property owners, including with Key Colony, to present the newly developed detailed plans for the new library and to receive and thoughtfully consider all comments, concerns and suggestions ("Library meetings"); and

WHEREAS, following the Library meetings, the Village of Key Biscayne indicated its support for the new library project, as evidenced by the resolution attached hereto without attachments as Exhibit A, and the neighboring residents were pleased with the County's presentations and proposed plans for the renovation of the Library Property; and

WHEREAS, Key Colony and the County desire to resolve Key Colony’s intervention in the litigation as set forth in the settlement agreement attached hereto as Exhibit B (“settlement agreement”); and

WHEREAS, pursuant to the terms of the settlement agreement, the library is to be no greater than two stories in height and Key Colony will have an opportunity to review conceptual designs and meet with the County’s architects and the Library Director to allow Key Colony to voice any concerns it may have with the conceptual designs; and

WHEREAS, this Board desires to approve the settlement agreement,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that the Board:

Section 1. Approves the settlement agreement with Key Colony in substantially the form attached hereto as Exhibit B and made a part thereof and authorizes the County Mayor or Mayor’s designee to execute same and take all actions in accordance with the provisions thereof.

Section 2. Establishes, as Board policy, that the property located at 299 Crandon Blvd., Key Biscayne, Florida and identified by Folio number 24-4232-002-0125 (the “Library Property”), shall be used and preserved in perpetuity solely for the operation of a branch library and incidental purposes thereto.

The Prime Sponsor of the foregoing resolution is Commissioner Raquel A. Regalado. It was offered by Commissioner _____, who moved its adoption. The motion was seconded by Commissioner _____ and upon being put to a vote, the vote was as follows:

Jose "Pepe" Diaz, Chairman	
Oliver G. Gilbert, III, Vice-Chairman	
Sen. René García	Keon Hardemon
Sally A. Heyman	Danielle Cohen Higgins
Eileen Higgins	Joe A. Martinez
Kionne L. McGhee	Jean Monestime
Raquel A. Regalado	Rebeca Sosa
Sen. Javier D. Souto	

The Chairperson thereupon declared this resolution duly passed and adopted this 5th day of October, 2021. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this resolution and the filing of this approval with the Clerk of the Board.

MIAMI-DADE COUNTY, FLORIDA
 BY ITS BOARD OF
 COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: _____
 Deputy Clerk

Approved by County Attorney as
 to form and legal sufficiency.

mjs

Melanie Spencer
 Monica Rizo Perez

RESOLUTION NO. 2021-30

A RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, SUPPORTING THE MIAMI-DADE PUBLIC LIBRARY SYSTEM'S INTENT TO CONSTRUCT A NEW LIBRARY BUILDING AT 299 CRANDON BOULEVARD; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Miami-Dade Public Library System (the "MDPLS") operates the Village of Key Biscayne ("Village") library located at 299 Crandon Boulevard (the "Library"); and

WHEREAS, the Library is an educational facility for residents of all ages to learn and study through traditional print media and digital technology; and

WHEREAS, on May 18, 2021, the MDPLS presented plans to construct a new expanded Library with modernized and improved library amenities to the Village Council, which presentation is attached hereto as Exhibit "A"; and

WHEREAS, the Village Council supports the MDPLS's intent to construct a new Library; and

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

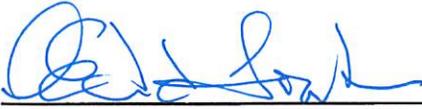
NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, AS FOLLOWS:

Section 1. Recitals. The above recitals are true and correct and are incorporated herein by this reference.

Section 2. Support. The Village Council hereby supports the MDPLS's intent to construct a new Library.

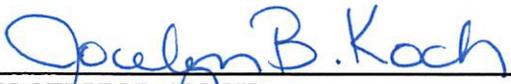
Section 3. **Effective Date.** This Resolution shall take effect immediately upon adoption.

PASSED and ADOPTED this 15th day of June, 2021.



for MICHAEL W. DAVEY, MAYOR

ATTEST:



JOCELYN B. KOCH
VILLAGE CLERK



APPROVED AS TO FORM AND LEGAL SUFFICIENCY:



WEISS SEROTA HELFMAN COLE & BIERMAN, P.L.
VILLAGE ATTORNEY

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (“Agreement”) is made between MIAMI-DADE COUNTY (the “**County**”) and KEY COLONY HOMEOWNERS’ ASSOCIATION, INC. (“**Key Colony**”) (collectively referred to as the “**Parties**” and individually referred to as “**Party**”) on this 22nd day of September, 2021 (“Effective Date”).

RECITALS:

WHEREAS, on July 17, 1979, the County acquired from Fininvest Ltd. (“grantor”) via Warranty Deed an approximately 1.17-acre parcel of land improved with a building, parking lot, and other improvements on Key Biscayne for the establishment and operation of a branch library in Key Biscayne, located at Crandon Boulevard and identified by Folio number 24-4232-002-0125 (the “**Library Property**”); and

WHEREAS, the terms of the 1979 deed of conveyance provided that the Library Property is to be “used solely for the operation of a branch library on Key Biscayne and for all purposes incidental thereto” (the “**Library Restriction**”); and

WHEREAS, the deed of conveyance also provided that prior to proceeding with any changes to the exterior of the library, the grantor would participate, along with the County, in the selection of an architectural review committee to be tasked with reviewing any proposed changes to the exterior of the library (the “**Architectural Review Committee Requirement**”); and

WHEREAS, the County commenced an action against the grantor, Case No. 2019-023798-CA-01 (the “**Litigation**”), which seeks a declaration that it is no longer bound by the Architectural Review Committee Requirement in order to move forward with improvements to the Library Property, and Key Colony intervened in the Litigation; and

WHEREAS, the Parties desire to resolve Key Colony’s intervention in the Litigation.

NOW, THEREFORE, in consideration of the aforesaid Recitals (which are hereby incorporated into and shall be deemed a part of this Agreement), the covenants and conditions hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by all Parties to this Agreement, it is agreed by and among the Parties as follows:

1. The term of this Agreement shall commence on the Effective Date and shall automatically expire when a Certificate of Occupancy (“CO”) is issued for the proposed improvements to the Library Property (the “**Term**”). The County shall issue a notice to Key Colony notifying Key Colony of the issuance of a CO.

2. During the Term, the County agrees as follows:

(a) The future library constructed on the Library Property shall not be taller than two stories in height.

(b) The County shall notify Key Colony of all material modifications to the Library Property as follows:

- i. Within thirty (30) days of the Effective Date, the County shall share with Key Colony its conceptual design for the improvements to the Library Property.
- ii. The County, through the Director of the Miami-Dade Public Library System (“the Director”), shall arrange at least one conference between Key Colony’s designated representatives and the architects currently working for the County on the improvements to the Library Property, so that Key Colony can discuss with the Director and the County’s architects any design features which may be of concern to Key Colony. The conference shall be held within ninety (90) days of the Effective Date.
- iii. If the County procures a new set of architects to render new, or amend the current, architectural drafts for the improvements to the Library Property, the County shall, within ten (10) business days of the issuance of any award recommendation for the new architects, notify Key Colony of the names of the architectural firm(s) and current work addresses. The County shall arrange at least one conference, through the Director, between Key Colony’s designated representatives and any potential new architectural firm. The conference shall be held within ninety (90) days of the effective date of the contract between the County and the new architectural firm(s).
- iv. Following the approval by the County of the conceptual design for the improvements to the Library Property, the County shall notify Key Colony, through the Director, of any material modifications to the conceptual design for the improvements to the Library Property so that Key Colony can inform the County of any relevant impacts on Key Colony (inclusive of its architecture, or its grounds).

3. Within five (5) days of the Effective Date of this Agreement, counsel for Key Colony shall file with the Court a Stipulation of Dismissal with Prejudice of Intervenor-Defendant, Key Colony Homeowners’ Association, Inc., in the form attached as Exhibit A.

4. The County represents and warrants that it seeks in this Litigation only a declaration that it is no longer bound by the Architectural Review Committee Requirement, and that the County is not seeking nor shall it seek in this Litigation to avoid or otherwise challenge the Library Restriction. Key Colony reserves any and all rights, if any, to enforce the deed of conveyance with regard to the Library Restriction, or any other provision of the deed of conveyance, with the exception of the Architectural Review Committee Requirement, and this reservation of rights shall survive the expiration of this Agreement.

5. The Parties represent and warrant that they have the full legal right, capacity, and authority to execute this Agreement and to make the promises, representations, and warranties contained herein. The Parties further represent and warrant that they have not sold, assigned, transferred, conveyed or otherwise disposed of any of the claims, demands, obligations or causes of action referred to in this Agreement.

6. This Agreement shall be binding on all successors or assigns of the Parties.

7. This Agreement may be executed in counterparts and transmission of email signatures shall, for purposes of the enforcement of this Agreement, be deemed sufficient.

8. The terms of this Agreement are to be governed according to the laws of the State of Florida. The Parties acknowledge and agree that the terms of this Agreement and any other document or agreement executed and delivered in connection herewith shall be enforced in Miami-Dade County, Florida. The Parties hereby consent to the exercise by any such court of jurisdiction of any matter arising under this Agreement.

9. The Parties agree that if any term in this Agreement is held to be void, voidable, unlawful or unenforceable, the remaining portion of the Agreement shall remain in full force and effect.

10. The Parties hereto shall execute all documents necessary and appropriate to finally settle this matter. The Parties further agree to execute all documents necessary and appropriate to effectuate the Parties' intentions hereunder.

11. The Parties represent that they are represented by counsel of their own choice who have explained the entire contents and legal consequences of this Agreement. The Parties further represent and warrant that they have read this Agreement completely and thoroughly and have had the opportunity to consult with their counsel about the meaning and effect of this Agreement.

12. This Agreement shall not be construed as an admission of liability or wrongdoing and may not be offered or received in evidence in any action or proceeding as evidence or an admission of liability or wrongdoing. By entering into this Agreement, the Parties acknowledge no liability or wrongdoing. All such liability or wrongdoing is expressly denied.

13. The Parties acknowledge that the drafting of this Agreement is a mutual effort among the Parties and their counsel and that this Agreement is not to be construed against either Party as the drafter.

14. All required notifications under this Agreement shall be made to the President of the Key Colony Homeowners' Association, Inc. at 235 Crandon Boulevard, Suite 6, Key Biscayne, Florida 33149, manager@keycolonyhoa.org, and to the Director of the Miami-Dade County Public Library System at 101 West Flagler Street, 2nd Floor, Miami, Florida 33130, director@mdpls.org, with a copy to Miami Dade County Attorney's Office, 111 NW 1st Street, #2810, Miami, Florida 33128.

IN WITNESS WHEREOF, Miami-Dade County and Key Colony Homeowners' Association, Inc. have caused their duly authorized representatives to execute this Agreement.

MIAMI-DADE COUNTY

By: _____ Date: _____

_____ (print name)

_____ (title)

STATE OF FLORIDA)
) ss.
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me by means of physical presence or online notarization this _____ day of September, 2021, by _____ as _____ of Miami-Dade County. He/she is personally known to me or has produced _____ as identification.

Notary Public
My Commission Expires: _____

KEY COLONY HOMEOWNERS' ASSOCIATION, INC.

By: David McDanal

Date: 9/22/2021

David McDanal (print name)
President (title)

STATE OF FLORIDA)
) ss.
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me by means of physical presence or online notarization this 22 day of September, 2021, by David McDanal as President of Key Colony Homeowners' Association, Inc. He is personally known to me or has produced _____ as identification.

Antonio Rodriguez
Notary Public
My Commission Expires: Dec 9, 2025

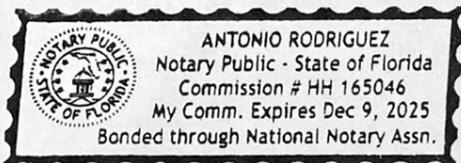


EXHIBIT A

IN THE CIRCUIT COURT OF THE
11TH JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO. 2019-023798-CA-01 (13)

MIAMI-DADE COUNTY, a political
subdivision of the State of Florida,

Plaintiff,

v.

FININVEST LTD., a Canadian dissolved
Canadian corporation,

Defendant,

and

KEY COLONY HOMEOWNERS'
ASSOCIATION, INC., a Florida
not-for-profit corporation,

Intervenor.

_____ /

**KEY COLONY HOMEOWNERS' ASSOCIATION'S
NOTICE OF VOLUNTARY DISMISSAL**

Intervenor Key Colony Homeowners' Association ("Key Colony") voluntarily dismisses with prejudice its intervention in this litigation pursuant to the terms of the Settlement Agreement executed between Key Colony and Plaintiff Miami-Dade County on September __, 2021.

Dated: September __, 2021

Respectfully submitted,

CARLTON FIELDS, P.A.
2 MiamiCentral, Suite 1200
700 NW 1st Avenue
Miami, Florida 33136
Telephone: (305) 530-0050
Facsimile: (305) 530-0055

By: /s/

Enrique D. Arana
Florida Bar No. 189316
earana@carltonfields.com
Secondary emails:
cpratt@carltonfields.com
dkatz@carltonfields.com

*Attorneys for Intervenor
Key Colony Homeowners' Association*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this _____ day of September, 2021, a true and correct copy of the foregoing document was filed electronically with the Clerk of Court through the Florida Courts E-Filing Portal, which electronically served all counsel of record including:

Melanie J. Spencer, Esq.
Monica Rizo Perez, Esq.
ABIGAIL PRICE-WILLIAMS
Miami-Dade County Attorney
Stephen P. Clark Center
Suite 2810
111 Northwest First Street
Miami, Florida 33128-1993
Telephone: (305) 375-5151
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monica.rizo@miamidade.gov
Secondary emails:
yohana.ramos@miamidade.gov
madalis.gonzalez@miamidade.gov

Attorneys for Plaintiff

/s/

127228713