

CITY OF CORAL GABLES, FLORIDA

ORDINANCE NO. 2011-03

AN ORDINANCE OF THE CITY COMMISSION OF CORAL GABLES PURSUANT TO ZONING CODE ARTICLE 3, DIVISION 12, "ABANDONMENT AND VACATIONS", PROVIDING FOR THE ABANDONMENT AND VACATION OF NON-FEE INTERESTS OF THE CITY FOR THE FOLLOWING PUBLIC RIGHTS-OF-WAY IDENTIFIED AS: THEO. DICKINSON DRIVE, WM. E. WALSH AVENUE, GEORGE E. MERRICK STREET, HENRY KING STANFORD DRIVE, PAVIA STREET AND LEVANTE AVENUE, ALL WITHIN THE UNIVERSITY OF MIAMI CAMPUS, CORAL GABLES, FLORIDA; PROVIDING FOR A REPEALER PROVISION, SEVERABILITY CLAUSE AND AN EFFECTIVE DATE.

WHEREAS, Application No. 09-10-120-P was submitted requesting the abandonment and vacation of non-fee interests of the City for the following public rights-of-way identified as: Theo. Dickinson Drive, Wm. E. Walsh Avenue, George E. Merrick Street, Henry King Stanford Drive, Pavia Street and Levante Avenue, all within the University of Miami campus, Coral Gables, Florida (All mapping and legal descriptions are on file in the Planning Department); and

WHEREAS, the procedures and requirements for the abandonment and vacation of non-fee interests are provided in Zoning Code, Article 3, Division 12, entitled "Abandonment and Vacations" and in City Code Chapter 62, Article 8, entitled "Vacation, Abandonment and Closure of Streets, Easements and Alleys by Private Owners; Application Process"; and

WHEREAS, the application in compliance with City Code Section 62-262 on November 19, 2010 was considered by the Development Review Committee to solicit comments from City departments; and

WHEREAS, comments were solicited from affected utility companies and no objections were received from any of the utility companies; and

WHEREAS, a Memorandum of Understanding by the University of Miami, requesting all abutting property owners quit claim deed their interest in the rights-of-way to the University in exchange for a perpetual easement to access their respective properties; and

WHEREAS, after notice of public hearing duly published and notifications of all property owners of record within one thousand five hundred (1500) feet, public hearings were held before the Planning and Zoning Board of the City of Coral Gables on November 30, 2010, at which hearings all interested persons were afforded the opportunity to be heard; and

WHEREAS, at the Planning and Zoning Board's November 30, 2010 meeting, the Board recommended unanimous approval (vote: 5-0) with conditions of the abandonment and vacation of non-fee interests of the City for the following public rights-of-way identified as: Theo. Dickinson Drive, Wm. E. Walsh Avenue, George E. Merrick Street, Henry King Stanford Drive, Pavia Street and Levante Avenue, all within the University of Miami campus and

WHEREAS, pursuant to the City Code an additional public hearing notice was provided via Certified Mail to all property owners within 1500 feet of entire University campus advising of the December 14, 2010 public hearing; and

WHEREAS, the City Commission held a public hearing on December 14, 2010 at which hearing all interested persons were afforded an opportunity to be heard and this application for the abandonment and vacation of non-fee interests as referenced herein was approved with conditions, on first reading (vote: 4-0); and

WHEREAS, public hearings have been completed as indicated herein by the Coral Gables City Commission in consideration of a request for the abandonment and vacation of non-fee interests as required by the Zoning Code City Code, and including careful consideration of written and oral comments by members of the public;

NOW, THEREFORE, BE IT RESOLVED BY THE COMMISSION OF THE CITY OF CORAL GABLES:

SECTION 1. The foregoing "WHEREAS" clauses are hereby ratified and confirmed as being true and correct and hereby made a specific part of this Ordinance upon adoption hereof.

SECTION 2. The proposed the abandonment and vacation of non-fee interests of the City for the following public rights-of-way identified as: Theo. Dickinson Drive, Wm. E. Walsh Avenue, George E. Merrick Street, Henry King Stanford Drive, Pavia Street and Levante Avenue, all within the University of Miami campus, Coral Gables, Florida shall be and is hereby approved with the following conditions:

1. The vacation of the rights-of-way shall be subject to continued enforcement of all public utility easements within the rights-of-way.
2. Provisions shall be made for 24-hour access for utility owners and City personnel to enter upon these easements.
3. The public rights-of-way to be abandoned are not considered an integral part of the overall City street system.
4. The proposed vacations will not impact properties and traffic movements of the geographic area within 2,500 feet of the proposed vacations.
5. The proposed vacations shall not impede emergency vehicular access to adjacent easement properties or solid waste pick-up arrangements within the street vacations.
6. Within 180 days of City Commission approval for the vacation of the streets, the University shall produce plans and drawings to the Fire Department identifying all roadways within the campus as being dedicated "fire access roads" per Florida Fire Prevention Code NFPA 1-18.1.1.1. Further, said plans need to identify all roads, parking lot lanes, and fire apparatus staging lanes per Florida Fire Prevention Code NFPA 1-18.2.3.1.2.
7. All future traffic control devices and designs shall be submitted to the Fire Department for approval prior to any installation per Florida Fire Prevention Code NFPA 1-18.2.3.4.7.

8. All fire access roads and lanes shall be maintained and prohibited from any obstructions thereafter per Florida Fire Prevention Code NFPA 1-18.2.3.5.1.
(All mapping and legal descriptions are on file in the Planning Department).

SECTION 3. All rights, actions, proceedings and Contracts of the City, including the City Commissioners, the City Manager, or any of its departments, boards or officers undertaken pursuant to the existing code provisions, shall be enforced, continued, or completed, in all respects, as though begun or executed hereunder.

SECTION 4. All ordinance or parts of ordinances that are inconsistent or in conflict with the provisions of this Ordinance are repealed.

SECTION 5. If any section, part of session, paragraph, clause, phrase or word of this Ordinance is declared invalid, the remaining provisions of this Ordinance shall not be affected.

SECTION 6. It is the intention of the City Commission that the provisions of this Ordinance shall become and be made a part of the Code of the City of Coral Gables, Florida, as amended, which provisions may be renumbered or relettered and that the word ordinance be changed to "section", "article", or other appropriate word to accomplish such intention.

SECTION 7. This ordinance shall become effective when the perpetual easements attached hereto as Attachments A and B are duly executed by the University of Miami and filed with the City Clerk of the City of Coral Gables.

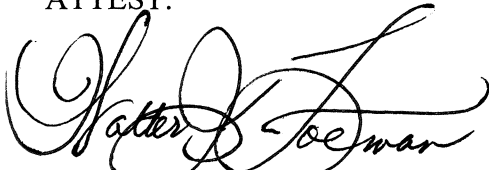
PASSED AND ADOPTED THIS TWENTY-FIFTH DAY OF JANUARY, A.D., 2011.
(Moved: Kerdyk / Seconded: Withers)
(Yeas: Withers, Anderson, Kerdyk, Slesnick)
(Majority: (4-0) Vote)
(Absent: Cabrera)
(Agenda Item: E-2)

APPROVED:



DONALD D. SLESNICK II
MAYOR

ATTEST:



WALTER J. FOEMAN
CITY CLERK

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:



LOURDES ALFONSIN RUIZ
INTERIM CITY ATTORNEY

EASEMENT OF ACCESS

This Easement of Access Agreement ("Agreement") made this ____ day of January, 2011, by and among the University of Miami, a Florida nonprofit corporation ("Grantor" or "UM") and the City of Coral Gables, a Florida municipal corporation ("Grantee" or "City").

WHEREAS, Grantor and Grantee are parties to a certain Development Agreement dated September 28, 2010 ("Development Agreement"); and

WHEREAS, pursuant to the Development Agreement, the City agreed to abandon and vacate the City's non-fee interests in certain streets within UM's campus located at Coral Gables, Florida, which streets are described in Exhibit "A" attached hereto ("Internal Streets"); and

WHEREAS, the Development Agreement provides the City's agreement to abandon and vacate the Internal Streets is subject to a reservation of access in favor of the City for law enforcement, fire and life safety, code enforcement and any and all other municipal purposes; and

WHEREAS, the City has solicited comments as to the abandonment of the Internal Streets from affected utility companies ("Utility Companies"), and no objections were received from any of the utility companies; and

WHEREAS, by Ordinance No. _____, the City has abandoned and vacated the Internal Streets;

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth herein, the Parties agree as follows:

1. RECITALS. The recitals set forth above are hereby ratified and confirmed as being true and correct, and are incorporated herein by this reference.

2. UTILITY COMPANY ACCESS EASEMENTS. Nothing in this Access Easement shall abrogate any existing utility easement and access thereto.

3. GRANT OF ACCESS EASEMENT TO THE CITY. Grantor does hereby create, grant, declare and convey to the City a non-exclusive perpetual easement over, across, upon and through the Internal Streets for the purposes of vehicular ingress and egress on, upon and through the Internal Streets to provide access to the City for law enforcement, fire and life safety, parking, code enforcement and any and all other municipal purposes.

4. **RELOCATION OF INTERNAL STREETS.** In the event UM modifies or relocates the Internal Streets pursuant to a modification of the approved Campus Master Plan and such modification and/or relocation is approved by the City in accordance with the Code of Ordinances of the City, the perpetual easement granted hereunder shall be deemed to be modified and relocated to such modified or relocated street(s).

5. **FIRE ACCESS ROADS.** Within 180 days from the date hereof, UM shall produce plans and drawings to the City and its Fire Department identifying and setting forth all roadways within the UM campus as dedicated "fire access roads" pursuant to Florida Fire Prevention Code NFPA 1-18.1.1, and identifying all roads, parking lot lanes, and fire apparatus staging lanes pursuant to Florida Fire Prevention Code NFPA 1-18.2.3.1.2. Further, UM agrees to maintain the fire access roads free from all obstruction pursuant to Florida Fire Prevention Code NFPA 1-18.2.3.5.1.

6. **TRAFFIC CONTROL.** UM agrees to and shall submit to the City and its Fire Department plans and designs for all traffic control devices to be installed on the UM campus as required by Florida Fire Prevention Code NFPA 1-18.2.3.4.7.

7. **POLICING AGREEMENTS.** The provisions of the policing agreement between the parties dated December 1, 1969, as modified on February 11, 1977, shall continue to be in full force and effect and are reiterated and incorporated herein by this reference.

8. **HOLD HARMLESS.** In consideration of the City's agreement to abandon and vacate the Internal Streets, UM agrees that UM, at all times, will indemnify and hold harmless the City from all claims, demands, fines, suits, actions, proceedings, order, decrees and judgments of any kind or nature by, or in favor of, anyone whomsoever, and against and from any and all costs, damages and expenses, losses, liabilities, including, without limitation, attorney's fees and court costs (at trial and all other levels) resulting from, or in connection with, loss of life, bodily or personal injury or property damage arising, directly or indirectly, out of, or from, or on account of, any accident or other occurrence in, upon, at or from the Internal Streets, or by any act or omission of UM, or its employees, agents, contractors, invitees, guests or patrons, upon, at or from the Internal Streets. The City shall not be liable to UM for any damages, losses or injuries to the employees, agents, contractors, invitees, guests or patrons of UM or property of UM which may be caused by the act, neglect, omissions or faults of any persons or entities, except when such injury, loss or damage results from the gross negligence of the City, its agents or employees. All personal property placed or moved onto the Internal Streets shall be at the risk of UM or the owner thereof, and the City shall not be liable to UM for any damage to said personal property. UM agrees to waive any rights of subrogation against the City for any injury or damage to persons or property. If the City shall be made a party to any litigation commenced against UM,

then UM shall protect and hold the City harmless and shall pay all costs, expenses and reasonable attorneys' fees incurred or paid by the City in connection with such litigation and any appeal thereof.

9. DATE. This Agreement shall become effective as of the date hereof.

10. AMENDMENT. This Agreement may be amended from time to time by mutual written consent of the parties.

11. COVENANT RUNNING WITH THE LAND. This Agreement and all conditions, obligations and covenants set forth herein are intended to be and shall be construed as covenants running with the land, binding upon and inuring to the benefit of Grantor and Grantee, as the case may be, and their respective successors and assigns.

12. NO PUBLIC DEDICATION. Nothing contained in this Agreement shall, in any way, be deemed to constitute a gift of or dedication of any portion of any lands described herein to the general public or for the benefit of the general public whatsoever, it being the intention of the Parties that this Agreement shall be limited to and used for the purposes expressed in this Agreement and only for the benefit of the Grantee and Grantor.

In witness whereof, the parties hereto have caused the execution of this Agreement by their duly authorized officials as of the day and year first above written.

Signed, sealed and delivered
in presence of:

UNIVERSITY OF MIAMI,
a Florida non-profit corporation

Print Name

By:_____

Its _____

Print Name

Signed, sealed and delivered
in presence of:

CITY OF CORAL GABLES, a municipal
corporation of the State of Florida

Print Name

By:_____

Its _____

Print Name

ATTEST:

APPROVED AS TO FORM AND LEGAL
SUFFICIENCY

Walter Foeman, City Clerk

By: _____
Its City Attorney

STATE OF FLORIDA :

: ss

COUNTY OF MIAMI-DADE :

Acknowledged before me this _____ day of January, 2011, by _____
_____, the _____ of _____ the
University of Miami, a Florida nonprofit corporation, who _____ is personally known to me
or _____ produced a driver's license as identification.

Notary Public, State of Florida

STATE OF FLORIDA :

: ss

COUNTY OF MIAMI-DADE :

Acknowledged before me this _____ day of January, 2011, by Patrick
Salerno, the City Manager of the City of Coral Gables, a municipal corporation of the
State of Florida, who _____ is personally known to me or _____ produced a driver's
license as identification.

Notary Public, State of Florida

EASEMENT AS TO PARKING METERS

This Easement of Access Agreement ("Agreement") made this ____ day of January, 2011, by and among the University of Miami, a Florida nonprofit corporation ("Grantor" or "UM") and the City of Coral Gables, a Florida municipal corporation ("Grantee" or "City").

WHEREAS, Grantor and Grantee are parties to a certain Development Agreement dated September 28, 2010 ("Development Agreement"); and

WHEREAS, pursuant to the Development Agreement, the City agreed to abandon and vacate the City's non-fee interests in certain streets within UM's campus located at Coral Gables, Florida, which streets are described in Exhibit "A" attached hereto ("Internal Streets"); and

WHEREAS, the Development Agreement provides the City's agreement to abandon and vacate the Internal Streets is subject to a reservation of access in favor of the City for the purposes of owning, maintaining and operating sixty (60) metered parking spaces which are located on and are a part of UM's campus, and subject to certain other provisions; and

WHEREAS, by Ordinance No. _____, the City has abandoned and vacated the Internal Streets;

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth herein, the Parties agree as follows:

1. RECITALS. The recitals set forth above are hereby ratified and confirmed as being true and correct, and are incorporated herein by this reference.

2. GRANT OF EASEMENT. Grantor does hereby create, grant, declare and convey to the City a non-exclusive perpetual easement over, across, upon and through the Internal Streets for the purposes of ingress and egress on, upon and through the Internal Streets to allow the City to maintain and operate sixty (60) metered parking spaces which are located on and are a part of the Internal Streets.

3. RIGHT OF RELOCATION. At any time after December 31, 2011 during which the amount of annual net revenue generated by the existing meters will be established, the University may relocate the sixty (60) metered parking spaces to other locations on roads within the UM Campus. The relocation of the metered parking spaces shall be subject to a determination by the City Manager, in the City Manager's discretion, that the relocated parking spaces will generate revenue equal to or greater than the revenues generated by the meters at the original location. In the event that the

parking meters are relocated, the City and the University agree that if after one (1) year of operations, the annual revenue from the parking meters is less than the annual revenue from the original sixty (60) meters, the University shall install additional parking meters to increase the annual revenue to the revenue generated by the original meters. The location of the additional metered parking spaces shall be subject to a determination by the City Manager, in the City Manager's discretion, that the additionally located parking spaces will generate sufficient revenue to be greater than the revenues generated by the meters at the original location.

4. The City and the University agree that the parking rates to be charged for the metered parking spaces shall be as established by the City Commission from time to time. The perpetual easement for the metered parking spaces may be released at any time if the University and City agree to a buyout of the metered parking spaces for the net present value of the revenue generated by the original meters.

5. **HOLD HARMLESS.** In consideration of the City's agreement to abandon and vacate the Internal Streets, UM agrees that UM, at all times, will indemnify and hold harmless the City from all claims, demands, fines, suits, actions, proceedings, order, decrees and judgments of any kind or nature by, or in favor of, anyone whomsoever, and against and from any and all costs, damages and expenses, losses, liabilities, including, without limitation, attorney's fees and court costs (at trial and all other levels) resulting from, or in connection with, loss of life, bodily or personal injury or property damage arising, directly or indirectly, out of, or from, or on account of, any accident or other occurrence in, upon, at or from the Internal Streets, or by any act or omission of UM, or its employees, agents, contractors, invitees, guests or patrons, upon, at or from the Internal Streets. The City shall not be liable to UM for any damages, losses or injuries to the employees, agents, contractors, invitees, guests or patrons of UM or property of UM which may be caused by the act, neglect, omissions or faults of any persons or entities, except when such injury, loss or damage results from the gross negligence of the City, its agents or employees. All personal property placed or moved onto the Internal Streets shall be at the risk of UM or the owner thereof, and the City shall not be liable to UM for any damage to said personal property. UM agrees to waive any rights of subrogation against the City for any injury or damage to persons or property. If the City shall be made a party to any litigation commenced against UM, then UM shall protect and hold the City harmless and shall pay all costs, expenses and reasonable attorneys' fees incurred or paid by the City in connection with such litigation and any appeal thereof.

6. **EFFECTIVE DATE.** This Agreement shall become effective as of the date hereof.

7. **AMENDMENT.** This Agreement may be amended from time to time by mutual written consent of the parties.

8. RELEASE OF EASEMENT. The perpetual easement granted herein may be released at any time, if UM and the City agree to a buyout of the metered parking spaces for the net present value of the revenue generated by the original meters. The amount of annual net revenue shall be established by no later than March 1, 2011.

9. COVENANT RUNNING WITH THE LAND. This Agreement and all conditions, obligations and covenants set forth herein are intended to be and shall be construed as covenants running with the land, binding upon and inuring to the benefit of Grantor and Grantee, as the case may be, and their respective successors and assigns.

In witness whereof, the parties hereto have caused the execution of this Agreement by their duly authorized officials as of the day and year first above written.

Signed, sealed and delivered
in presence of:

UNIVERSITY OF MIAMI,
a Florida non-profit corporation

Print Name

By: _____

Print Name

Its: _____

Signed, sealed and delivered
in presence of:

CITY OF CORAL GABLES, a municipal
corporation of the State of Florida

Print Name

By: _____

Print Name

Its: _____

ATTEST:

APPROVED AS TO FORM AND LEGAL
SUFFICIENCY

Walter Foeman, City Clerk

By: _____
Its City Attorney

STATE OF FLORIDA :
 : ss
COUNTY OF MIAMI-DADE :

Acknowledged before me this _____ day of January, 2011, by _____
_____, the _____ of _____ the
University of Miami, a Florida nonprofit corporation, who _____ is personally known to me
or _____ produced a driver's license as identification.

Notary Public, State of Florida

STATE OF FLORIDA :
 : ss
COUNTY OF MIAMI-DADE :

Acknowledged before me this _____ day of January, 2011, by Patrick
Salerno, the City Manager of the City of Coral Gables, a municipal corporation of the
State of Florida, who _____ is personally known to me or _____ produced a driver's
license as identification.

Notary Public, State of Florida