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**RESOLUTION NO. 08-104**

**A RESOLUTION OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO REAL PROPERTY; RESCINDING COUNCIL ACTION OF APRIL 7, 2008, WHICH AUTHORIZED THE EXECUTION OF AN ACCESS EASEMENT TO VILLAGE OWNED RIGHT-OF-WAY FOR THREE PORTIONS OF ROADS LOCATED WITHIN THE CHARLES DEERING ESTATE: ROAD SECTION 1: 72 AVENUE BETWEEN SW 156 STREET AND SW 164 TERRACE, ROAD SECTION 2: 72 AVENUE BETWEEN SW 168 STREET AND SW 169 STREET, AND ROAD SECTION 3: SW 169 STREET BETWEEN SW 72 AVENUE AND BISCAYNE BAY AS THE EASEMENT WAS NEVER ACCEPTED BY EEL, MIAMI-DADE COUNTY OR THE STATE; PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the State of Florida acquired interest in the Deering Estate property through purchase of the Estate there already being a dedication made pursuant to "Charles Deering Estate" Plat (PB 34-30) and conveyed such interest through a Sub-Lease Agreement, FL DNR to Miami-Dade County, through its Park and Recreation Department, to manage and maintain the property under MDC Resolution 594-87.

**WHEREAS**, Miami-Dade County Park and Recreation Department received approval in 1999 for the most recent General Plan for the property that included, among many enhancements, planned improvements to SW 72<sup>nd</sup> Avenue and SW 169 Street for bicycle and pedestrian uses; and,

**WHEREAS**, the three roadway areas were transferred to the Village of Palmetto Bay; and,

**WHEREAS**, in 2007-2008 Miami-Dade County petitioned the Village to formally and permanently eliminate vehicular access on these roadway segments; and,

**WHEREAS**, on April 7<sup>th</sup>, 2008 the Village Council, rather than proceeding with abandonment of the three roadways, approved an easement agreement with the State of Florida, Miami-Dade County and EEL, for the Deering Estate to use the roadways under certain conditions; and,

**WHEREAS**, the three roadways in the Deering Estate are generally described as: Road Section 1: 72 Avenue between SW 156 Street and SW 164 Terrace, Road Section 2: 72 Avenue between SW 168 Street and SW 169 Street, and Road Section 3: SW 169 Street between SW 72 Avenue and Biscayne Bay; and,

**WHEREAS**, the Village action of April 7, 2008, authorizing an access use easement agreement with the State, EEL and Miami-Dade County for the Village owned right-of-way for the following three road sections: 72 Avenue between SW 156 Street and SW 164 Terrace, 72 Avenue between SW 156 Street and SW 164 Terrace, and SW 169 Street between SW 72 Avenue and Biscayne Bay is hereby rescinded as the agreement was never accepted or executed by the State, EEL, or Miami-Dade County; and,

1  
2 **NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND VILLAGE**  
3 **COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, AS FOLLOWS:**  
4

5 Section 1. The Whereas clauses are incorporated and made a part of this resolution.  
6

7 Section 2. The Village of Palmetto Bay rescinds Village action of April 7, 2008, which  
8 had authorized the execution of an access use easement for the above described rights-of-way as the  
9 easement agreement, attached hereto as exhibit 1, was never accepted or executed by the State, EEL,  
10 or Miami-Dade County.  
11

12 Section 3. If any section, clause, sentence, or phrase of this resolution is for any reason  
13 held invalid or unconstitutional by a court of competent jurisdiction, the holding shall not affect the  
14 validity of the remaining portions of this resolution.  
15

16 Section 4. All resolutions or parts of resolutions in conflict with the provisions of this  
17 resolution are repealed.  
18

19 Section 5. This resolution shall take effect immediately upon approval.  
20

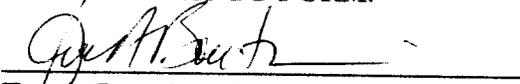
21 PASSED and ADOPTED this 1<sup>st</sup> day of December, 2008.  
22

23  
24 Attest:

  
25 Meghan Rader  
26 Village Clerk  
27

  
28 Eugene P. Flinn, Jr.  
29 Mayor  
30

31 APPROVED AS TO FORM:  
32

  
33 Eve A. Boutsis, Office of the Village Attorney  
34

35 FINAL VOTE AT ADOPTION:  
36

37 Council Member Ed Feller YES  
38

39 Council Member Howard Tendrich YES  
40

41 Council Member Shelley Stanczyk YES  
42

43 Vice-Mayor Brian W. Pariser YES  
44

Mayor Eugene P. Flinn, Jr. YES

## ACCESS EASEMENT AGREEMENT

THIS INDENTURE made and entered into this \_\_\_ day of \_\_\_\_\_, 2008, by and between the Village of Palmetto Bay (Grantor) and the State of Florida, and its sub-lessee Miami-Dade County, through its Park and Recreation Department ("Grantee").

WITNESSETH: in consideration of the sum of \$10.00, the mutual promises and covenants contained in this agreement, and for other good and valuable consideration, the receipt and legal sufficiency of which is acknowledged by both parties, the parties agree as follows:

1. The Village of Palmetto Bay, Grantor, provides a perpetual easement of certain rights-of-way, as described below to the Grantee, of that public rights-of way described as:

ROAD SECTION 1: 72 AVENUE BETWEEN SW 156 STREET AND SW 164 TERRACE

Being a portion of Section 26, Township 55 South, Range 40 East, of CHARLES DEERING ESTATE, according to the Plat thereof as recorded in Plat Book 34, at Page 30, of the Public Records of Miami Dade County, Florida, being more particularly described as follows:

Commence at the South  $\frac{1}{4}$  corner of said Section 26; thence N  $2^{\circ}58'00''$  W along the West SE  $\frac{1}{4}$  Section line of said Section 26, for a distance of 1235.45 feet; thence S  $87^{\circ}26'23''$  E a distance of 25.00 feet to the Point of Beginning of the hereinafter described parcel; thence N  $02^{\circ}58'00''$  W a distance of 665.85 feet; thence to the point of curvature of a circular curve concave to the west; thence run northwesterly and westerly along the arc of said circular curve having a radius of 325.00 feet, through a central angle of  $30^{\circ}12'57''$  for a arc distance of 171.39 feet to the point of reverse curvature with a circular curve concave to the east; thence run northwesterly and northeasterly along the arc of said circular curve having a radius of 1960.00 feet, through a central angle of  $50^{\circ}32'18''$  for a arc distance of 1728.84 feet to the point of compound curvature with a circular curve concave to the southeast; thence run northeasterly along the arc of said circular curve having a radius of 827.07 feet, through a central angle of  $17^{\circ}19'44''$  for a arc distance of 250.14 feet to the point of reverse curvature with a circular curve concave to the northwest; thence run northeasterly along the arc of said circular curve having a radius of 325.00 feet, though a

central angle of  $11^{\circ}02'17''$  for a arc distance of 62.61 feet; thence  $N 87^{\circ}58'25'' W$  a distance of 54.65 feet; thence to the point of curvature of a circular curve concave to the southwest; thence run southwesterly and westerly along the arc of said circular curve having a radius of 375.00 feet, through a central angle of  $14^{\circ}39'28''$  for a arc distance of 95.93 feet to the point of reverse curvature with a circular curve concave to the southeast; thence run southwesterly along the arc of said circular curve having a radius of 777.07 feet, through a central angle of  $17^{\circ}19'44''$  for a arc distance of 235.02 feet to the point of compound curvature with a circular curve concave to the east; thence run southwesterly and southeasterly along the arc of said circular curve having a radius of 1910.00 feet, through a central angle of  $50^{\circ}32'18''$  for a arc distance of 1684.74 feet to the point of reverse curvature with a circular curve concave to the southwest; thence run southeasterly and southerly along the arc of said circular curve having a radius of 375.00 feet, through a central angle of  $30^{\circ}12'57''$  for a arc distance of 197.76 feet; thence  $S 02^{\circ}58'00'' E$  a distance of 666.35 feet; thence  $S 87^{\circ}36'23'' W$  a distance of 50.00 feet to the Point of Beginning. Lying and being in Miami Dade County, Florida and containing 143,969 square feet or 3.31 acres, more or less.

**ROAD SECTION 2: 72 AVENUE BETWEEN SW 168 STREET AND SW 169 STREET**

Being a portion of Section 35, Township 55 South, Range 40 East, of CHARLES DEERING ESTATE, according to the Plat thereof as recorded in Plat Book 34, at Page 30, of the Public Records of Miami Dade County, Florida, being more particularly described as follows:

Commence at the North East corner  $NW \frac{1}{4}$  of said Section 35; thence  $S 02^{\circ}17'58'' E$  along the Westerly line  $NW \frac{1}{4}$  of said Section 35, for a distance 35.00 feet to the interception with the Southerly Right of Way line of SW 168<sup>th</sup> Street, being the Point of Beginning of the hereinafter described parcel; thence  $N 87^{\circ}07'58'' E$  along said Southerly Right of Way line a distance of 25.00 feet; thence  $S 02^{\circ}17'58'' E$  a distance of 321.67 feet; thence  $S 87^{\circ}39'21'' W$  a distance of 50.00 feet; thence  $N 02^{\circ}17'58'' W$  a distance of 321.67 feet; then  $N 87^{\circ}17'52'' E$  a distance of 25.00 feet to the Point of Beginning. Lying and being in Miami Dade County,

Florida and containing 16,084 square feet or 0.37 acres, more or less.

**ROAD SECTION 3: SW 169 STREET BETWEEN SW 72 AVENUE AND BISCAYNE BAY**

Being a portion of Section 35, Township 55 South, Range 40 East, of CHARLES DEERING ESTATE, according to the Plat thereof as recorded in Plat Book 34, at Page 30, of the Public Records of Miami Dade County, Florida, being more particularly described as follows:

Commence at the North East corner NW ¼ of said Section 35; thence N 87°39'26" E along the North line of said Section 35, for a distance of 25.00 feet; thence S 02°17'58" E a distance of 306.67 feet to the Point of Beginning of the hereinafter described parcel; thence N 87°39'21" E a distance of 815.53 feet more or less to the Mean High Water line of Biscayne Bay; thence S 02°17'58" E a distance of 50.00 feet; thence S 87°17'52" W a distance of 815.53 feet more or less to the interception of the south prolongation with the Easterly Right of Way line of SW 72 avenue; thence N 02°17'58" W a distance of 50.00 feet to the Point of Beginning. Lying and being in Miami Dade County, Florida and containing 40,776 square feet or 0.94 acres, more or less.

As a condition to providing the perpetual easement, the Grantor requires as a condition precedent, that the Grantee and its sublessees, provide a perpetual public easement to the Village for ingress and egress access to those rights-of-way for public pedestrian and bicycle usage through those rights-of-way to the remainder of the Deering Estate abutting the perpetual easement area. The public easement shall provide the Grantee, and the Village's residents with an easement access to the Deering Estate and park for public use.

2. That for, and in consideration of this agreement and other consideration shown herein, the Grantor does hereby grant to the Grantee, a perpetual easement of the property delineated above, as shall be recorded in public records of Miami-Dade County; and that said lands shall inure to the benefit of the aforesaid easement area for the purpose of a public access easement in perpetuity. Grantee shall be entitled to pave, repair and rehabilitate the public easement area solely for the purpose of pedestrian and bicycle access.

3. That the easement granted in this agreement is considered and proclaimed by the parties hereto to be a covenant running with the land and the easement shall include:

(a) there shall be, and Grantor hereby reserves and covenants that the Grantee shall have a non-exclusive easement appurtenant for pedestrian and bicycle traffic over the easement area right-of-way identified herein.

(b) The Grantee shall be required to install, operate, maintain, repair, replace, and update the condition of the easement area to ensure safe and secure use of the easement area.

(c) Additionally, Grantee shall ensure fire, police, health and sanitation and other public service personnel and vehicles shall have a permanent and perpetual easement for ingress and egress over and across the easement area in the performance of their respective duties. Grantee may, in its sole and absolute discretion grant a non-exclusive easements in favor of persons who is not the Grantor over and upon the easement area (or portions thereof) for pedestrian and/or vehicular ingress and egress over, through and across the easement area, as may be reasonably necessary for access to and from the easement area to the remainder of the Deering Estate, adjoining the easement area.

(d) The Grantee covenants, warrants, and agrees with the Grantor that the premises shall be used by Grantee only for the permitted use, and that Grantee and all persons using the premises pursuant to this agreement will comply with all laws, rules, and regulations of the federal, state, village and county governments and other authorities having jurisdiction (collectively, "AHJ"), and of any lawful order of any officer thereof (collectively, legal requirements), that relate to the permitted use. The Grantee, the Grantor, and all persons using the premises pursuant to this agreement shall not store fuel, or hazardous materials, solid waste or other toxic materials at the easement area. Used in this agreement, the term "hazardous material" means any hazardous or toxic substance, material waste, which is or becomes regulated by any local governmental authority in the State of Florida or by any governmental authority of the United States. Grantee agrees to indemnify and hold the Grantor harmless from any and all claims, demands, liabilities, losses, damages or expenses arising as a result of Grantor's or any such persons' breach or failure to perform any of the terms that are contained in this paragraph. Both parties covenant and agree that both will occupy and maintain the premises in a good condition and that it will not commit, or suffer to be committed, any waste of or on the premises. Neither party shall use the premises for any unlawful purpose and shall comply with all laws and permitting requirements applicable now, or in the future, to the permitted use. Neither party shall permit any offensive, or dangerous activity, nor any nuisance or other conduct at the premises in violation of the public policy of the Village, County or State. The indemnification provisions of this section shall survive any termination of this easement agreement.

(f) The Grantee shall be responsible for maintaining any fences separating the easement area from the remainder of the land owned and/or operated by the Grantee in good working condition. The Grantee shall ensure that for the length of this agreement that the sidewalk and curb are not materially deteriorated due to use of the site and shall

ensure that no gate or fence shall preclude access during day-light hours to the easement area. The Grantor may periodically inspect the premises to advise of any maintenance issues that require attention during the term of this agreement, but shall have no obligation to do so.

(g) The Grantee warrants, covenants and agrees with Grantor that Grantor shall have the right but not the obligation to enter upon the premises at such times and at such places during reasonable business hours, for the purpose of inspecting the premises or for any purpose whatsoever.

(h) The maintenance obligations of the Grantee shall include, without limitation, the duty and obligation to operate and maintain any portion of the access easement area in compliance with the regulations and restrictions imposed by the local governmental authority and those imposed of record.

4. Grantee hereby further warrants, covenants and agrees that it will not assign this easement agreement, or any interest therein, either voluntarily or involuntarily to any entity, without the prior written consent of the Grantor, which consent shall not be unreasonably withheld.

5. It is further mutually understood and agreed that if suit be brought to correct any breach of any provision or condition of this easement agreement to be performed by Grantor or Grantee, the prevailing party shall be entitled to an award of reasonable attorney fees and costs, including paralegal fees, for commencing or prosecuting any action, through trial, and any appeal. Venue for any litigation shall be Miami-Dade County, Florida, and this easement agreement shall be interpreted under Florida law.

6. It is further understood and agreed by and between the parties that the warranties, covenants and provision set forth in this easement agreement and made by Grantor are expressly made conditions to the Grantor's continued use of the premises, and if, during the term that this easement agreement is in effect, Grantee fails or defaults in the faithful performance or keeping of any of the provisions of this easement agreement, and the failure or default shall continue for a period of thirty (30) days after receipt by Grantee of written notice from Grantor, specifying the particulars in which Grantee is in default, then Grantor, at its option, forthwith and without further notice to Grantee, may terminate and end this perpetual easement agreement and have title re-vested in the Grantor, and all rights of Grantee hereunder shall cease and transfer back to the Grantor; whereupon the Grantor may re-enter the premises and remove all persons and property at Grantee's sole cost and expense, unless within the said period of thirty (30) days Grantee, in good faith, shall have commenced and, if reasonably possible, completed such performance for the purpose of curing the default.

7. Enforcement shall be by action against any parties or persons violating or attempting to violate any provision of this easement agreement. The prevailing party to

any action or suit pertaining to or arising out of this easement agreement 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 an attorney. This enforcement provision shall be in addition to any other remedies available at law, in equity or both.

8. Invalidation of any of provision of this easement agreement by judgment of Court shall not affect any of the other provisions, which shall remain in full force and effect.

9. All rights, remedies and privileges granted herein shall be deemed to be cumulative and the exercise of any one or more shall neither be deemed to constitute an election of remedies, nor shall it preclude the party exercising the same from exercising such other additional rights, remedies or privileges.

10. In the event of a violation of this agreement, in addition to any other remedies available, the Village of Palmetto Bay shall be authorized to withhold any future permits, and refuse to make any inspections or grant any approval, until such time as there is compliance.

11. This perpetual easement agreement shall be recorded in the public records of Miami-Dade County at the Grantee's expense.

12. Whenever notice is required, it shall be addressed as follows until written notice of change of address is given to the other party and shall be sent by overnight carrier, Certified Mail, postage prepaid or via hand delivery provided a receipt is given:

Village                      Village of Palmetto Bay  
8950 SW 152<sup>nd</sup> Street  
Palmetto Bay, Florida 33157  
Attention: Ron E. Williams, Village Manager  
Telephone: (305) 259-1234

With a copy to:            Eve A. Boutsis, Office of General Counsel  
Nagin Gallop Figueredo, P.A.  
18001 Old Cutler Road, Suite 556  
Miami, Florida 33157  
Telephone: 305-854-5353  
Facsimile: 305-854-5351

Grantee                      State Bard of Division; Sublessees MDC,  
DERM-EEL  
Deering Estate at Cutler  
16701 S.W. 72<sup>nd</sup> Avenue  
Village of Palmetto Bay, Florida 33157

13. In the event of any litigation concerning this agreement, Grantor and Grantee hereby agree to waive any trial by jury.

14. Nothing contained in this easement agreement shall be construed to create the relationship, of Principal and Agent, Partnership, Joint Venture or any other relationship between the parties other than the relationship of Grantee as licensor and Grantor as licensee.

15. If any term, covenant or condition of this easement agreement shall, to any extent, be invalid or unenforceable, the remainder of this agreement, or application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term, covenant or condition of this easement agreement shall be valid and enforced to the fullest extent permitted by law.

16. Notwithstanding the designation of the designated area, the roadways contained therein shall be kept clear of all materials and Grantor reserves the right of access across same.

17. The parties acknowledge that all documents prepared under this agreement shall be public records, and shall be subject to public inspection and copying, as provided by chapter 119, Florida Statutes. Upon conclusion of this agreement and any extensions, after written request by Grantor all pertinent documents shall be delivered by Grantee to Grantor.

18. Grantor and Grantee warrant that neither they, nor any principal, employee, agent, representative or family member has promised to pay, and has not, and will not, pay a fee the amount of which is contingent upon the Grantee awarding this agreement to Grantor.

19. Grantor and Grantee warrants that to their knowledge neither party, nor any principal, employee, agent, representative or family member has procured, or attempted to procure, this agreement in violation of any of the provisions of Miami-Dade County or the Grantor's conflict of interest and code of ethics ordinances.

20. Each of the signatories to this agreement warrant that s/he is duly authorized, by the appropriate action of his or her respective entity, board of directors or other authority, to execute this agreement and to bind the parties hereto to the promises, terms, conditions and warranties contained in this agreement.

21. This easement agreement, when signed by all of the parties, constitutes the full and complete understanding and agreement of all the parties hereto and may not be in any manner interpreted or fulfilled in contradiction of its express terms. This easement agreement and the incorporated attachments constitute the entire understanding between the parties and integrates by its terms all previous contracts or understandings, oral or

written, between the parties. In the event of any conflict, the terms of this agreement will govern over the provisions of any incorporated documents.

22. This easement agreement may be executed in one or more counterparts, and by the different parties hereto in separate counterparts, each of which when executed shall be deemed to be an original but all of which taken together shall constitute one and the same easement agreement. The parties hereby acknowledge and agree that facsimile signature of this easement agreement shall have the same force and effect as original signatures.

23. In the event a court must interpret any word or provision of this agreement, the word or provision shall not be construed against either party by reason of drafting or negotiating this easement agreement.

IN WITNESS WHEREOF, the parties have executed this instrument for the purpose expressed in this agreement to be effective on the \_\_\_ day of April, 2008.

VILLAGE OF PALMETTO BAY,  
GRANTOR

By: \_\_\_\_\_  
Ron E. Williams,  
Village Manager

ATTEST:

\_\_\_\_\_  
Meighan J. Rader,  
Village Clerk

SEAL

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

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 2008, by Ron E. Williams, Village Manager, Village of Palmetto Bay, who is \_\_\_\_\_ personally known to me or \_\_\_\_\_ produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
Notary Public – State of Florida  
Printed Name: \_\_\_\_\_  
Commission No.:

My Commission Expires:

GRANTEE

By: \_\_\_\_\_

\_\_\_\_\_

WITNESSED:

\_\_\_\_\_

STATE OF FLORIDA )

) SS:

COUNTY OF MIAMI-DADE )

Sworn to and subscribed before me this \_\_\_\_ day of \_\_\_\_\_, 2008, by \_\_\_\_\_, who is \_\_\_\_ personally known to me or \_\_\_\_ produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
Notary Public – State of Florida

Printed Name: \_\_\_\_\_

Commission No.: \_\_\_\_\_

My Commission Expires: