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# VILLAGE OF KEY BISCAYNE

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Office of the Village Manager

*Village Council*

Robert L. Vernon, *Mayor*  
Jorge E. Mendia, *Vice Mayor*  
Michael Davey  
Enrique Garcia  
Steve Liedman  
Thomas Thornton  
Patricia Weinman

*Village Manager*

Genaro "Chip" Iglesias

DATE: August 26, 2008  
TO: Honorable Mayor and Members of the Village Council  
FROM: Genaro "Chip" Iglesias, Village Manager  
RE: Virginia Key Storage Site - Water and Sewer Project

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## RECOMMENDATION

It is recommended that the Village Council approves the Revocable License Agreement between the Village and the City of Miami for the temporary storage of non-hazardous soil and sewer piping on a designated track of land in Virginia Key during the Water and Sewer Project Construction period of approximately eighteen (18) months.

The specified track of land identified by exhibit A consists of approximately three acres. The contractor will pay City of Miami a monthly use fee of three thousand dollars (\$3,000) and a security deposit of two months of use, equivalently to six thousand dollars (\$6,000).

## BACKGROUND

On July 24<sup>th</sup>, 2008 the City of Miami Commission approved the Revocable License Agreement.

cc: Randy White, Village Finance Director  
David M. Wolpin, Esq., Village Attorney

**RESOLUTION NO. 2008-**

**A RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAIYNE, FLORIDA, APPROVING A REVOCABLE LICENSE AGREEMENT TO BE ENTERED INTO BETWEEN THE VILLAGE AND THE CITY OF MIAMI, GRANTING THE VILLAGE A LICENSE TO STORE NON-HAZARDOUS CONSTRUCTION MATERIAL, INCLUDING SANDY SOIL, AND WATER AND SEWER PIPING ON A TRACT LAND ON VIRGINIA KEY; AUTHORIZING IMPLEMENTATION BY VILLAGE MANAGER; AND PROVIDING FOR EFFECTIVE DATE.**

**WHEREAS**, the Village of Key Biscayne, Florida (the “Village”) is undertaking a public works project that involves excavating non-hazardous sandy soil and installing new water and sewer piping in Key Biscayne (the “Project”);

**WHEREAS**, the Village anticipates the Project to take approximately eighteen (18) months;

**WHEREAS**, the Village is requesting the City of Miami’s permission to temporarily store non-hazardous construction material, including sandy soil, and water and sewer piping to be used in the Project on a tract of land on Virginia Key;

**WHEREAS**, the City of Miami is willing to grant the Village such permission pursuant to a revocable license agreement (the “Revocable License Agreement”); and

**WHEREAS**, the Village Council finds that approval of the Revocable License Agreement between the Village and the City of Miami is in the best interest of the Village.

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

**Section 1. Recitals Adopted.** That each of the above stated recitals is hereby adopted and confirmed.

**Section 2. Agreement Approved.** That the Revocable License Agreement, in substantially the form attached hereto, between the Village and the City of Miami, is hereby approved, and the Village Manager is hereby authorized to execute the Agreement on behalf of the Village, once approved as to form and legal sufficiency by the Village Attorney.

**Section 3. Implementation.** That the Village Manager is hereby authorized to take any action which is necessary to implement the purposes of this resolution and the Agreement.

**Section 4. Effective Date.** That this resolution shall be effective immediately upon adoption hereof.

PASSED AND ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
MAYOR ROBERT L. VERNON

ATTEST:

\_\_\_\_\_  
CONCHITA H. ALVAREZ, CMC, VILLAGE CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

\_\_\_\_\_  
VILLAGE ATTORNEY

7.25.2008

**REVOCABLE LICENSE AGREEMENT**

ISSUED BY THE

CITY OF MIAMI

TO

VILLAGE OF KEY BISCAYNE

FOR THE OCCUPANCY OF PROPERTY ON VIRGINIA KEY

MIAMI, FLORIDA

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## **REVOCABLE LICENSE AGREEMENT**

This Revocable License Agreement (the "Agreement") is made this \_\_\_\_ day of \_\_\_\_\_ 2008, between the City of Miami (the "City") a municipal corporation of the State of Florida and The Village of Key Biscayne, a municipal corporation of the State of Florida (the "Licensee").

### **RECITALS**

WHEREAS, Licensee is undertaking a public works project that involves excavating non-hazardous sandy soil and installing new sewer piping in Key Biscayne (The "Project"); and

WHEREAS, Licensee anticipates the Project to take approximately eighteen (18) months; and

WHEREAS, Licensee is requesting permission to temporarily store said non-hazardous soil and sewer piping to be used in Project on a tract of land on Virginia Key during said Project in order; and

WHEREAS, the City is owner of the tract of land in Virginia Key identified by the Licensee; and

WHEREAS, this Agreement is not assignable; and

WHEREAS, this Agreement is revocable-at-will by the City and without the consent of the Licensee; and

WHEREAS, this Agreement does not transfer an interest in real property including any leasehold interest in real property owned by the City; and

WHEREAS, this Agreement does not confer a right to use any real property for any general purposes; and

WHEREAS, this Agreement does not convey or transfer any right to exclude the City from any real property; and

WHEREAS, this Agreement permits only certain, enumerated, specific, listed Permitted Use, and does not permit anything further; and

WHEREAS, in order to carry out the intent as expressed herein and in consideration of the mutual agreements subsequently contained, City and Licensee agree as follows:

**1. Purpose.**

The City is the owner of real property and improvements thereon at Virginia Key, Miami, Florida (the "Property"). The City has determined that approximately three (3) acres of vacant land within the Property (the "Area") which is depicted in **Exhibit "A"** attached hereto and made a part hereof is not needed at this time by any of the City's offices or departments. The Licensee wishes to use the Area for temporary storage of non-hazardous construction materials, including sandy soil and approximately 30,000 linear feet of 20' water and sewer pipes for installation of new water and sewer line installations in the Village of Key Biscayne, Key Biscayne Florida (the "Permitted Use"). The City is willing to assist the Licensee by temporarily authorizing the Licensee to occupy and use the Area for the Permitted Use, under the conditions hereinafter set forth. Any use of the Area not authorized under the Permitted Use must receive the prior written consent of the City Manager, which consent may be withheld or conditioned for any or no reason, including, but not limited to additional financial consideration.

**2. Occupancy And Use Period.**

This Agreement shall commence as of date this Agreement is fully executed and attested to by the City Clerk (the "Effective Date") and be for a term of 18 months or until the first to occur of the following:

- (a) Cancellation or termination by the express written agreement of the parties hereto; or
- (b) Cancellation or termination by request of either of the parties hereto, subject to the notice provisions of Paragraph 20, "Cancellation By Request Of Either Of The Parties Without Cause;" or
- (c) Cancellation pursuant to Paragraph 21, "Termination By City Manager For Cause."

If at the end of the term the Licensee needs more time to complete the Project, they shall notify the City Manager no later than the end of the 17<sup>th</sup> month of occupancy of its need. The City Manager, in his sole discretion, may extend this Agreement for an additional period of time, not to exceed six (6) months, under the same terms and conditions, provided Licensee is not in violation of this Agreement.

**3. Interest Conferred By This Agreement.**

Licensee agrees that this Agreement has been issued by the City to authorize Licensee to occupy the Area solely for the limited purpose of the Permitted Use and no other purpose. The parties hereby agree that the provisions of this Agreement do not constitute a lease and the rights of Licensee hereunder are not those of a tenant but are a mere personal privilege to do certain acts of a temporary character and to otherwise use the Area subject to the terms of this Agreement. No leasehold interest in the Area is conferred upon Licensee under the provisions hereof and Licensee does not and shall not claim at any time any leasehold estate or ownership interest in the Area by virtue of this Agreement or its use of the Area hereunder. Additionally, Licensee does not and shall not claim at any time any interest or estate of any kind or extent whatsoever in the Area by virtue of any expenditure of funds by the Licensee for improvements, construction, repairs, partitions, or alterations to the Area even if such improvements, construction, repairs, partitions, or alterations are authorized by the City.

**4. Use Fee.**

In consideration of this Agreement, Licensee agrees to pay a use fee (the "Monthly Use Fee") to the City, of three thousand dollars and 00/100 (\$3,000), plus State Use Tax, if applicable, for each month, or portion thereof, that Licensee uses or occupies the Area. Beginning with the first month of occupancy and continuing each month thereafter, Licensee shall pay the Monthly Use Fee in advance and in full on the first day of each month, without notice or demand. Payments shall be made payable to "City of Miami" and shall be mailed to Finance Department, Attn: Treasury/Receipts, 444 S.W. 2<sup>nd</sup> Avenue, 6<sup>th</sup> Floor, Miami, Florida 33130, or such other address as may be designated from time to time.

**5. Late Fee.**

In the event City does not receive any installment of the Monthly Use Fee within five days of the date in which it was due, Licensee shall pay to City a late charge in an amount equal to five percent (5%) of the Monthly Use Fee. Such late fee shall constitute additional fees due and payable

to City by Licensee upon the date of payment of the delinquent payment referenced above. Acceptance of such late charge by City shall, in no event, constitute a waiver of Licensee's violations with respect to such overdue amount nor prevent City from the pursuit of any remedy to which City may otherwise be entitled.

**6. Returned Check Fee.**

In the event any check is returned to the City as uncollectible, the Licensee shall pay to City a returned check fee (the "Returned Check Fee") based on the following schedule:

<u>Returned Amount</u>	<u>Returned Check Fee</u>
\$00.01 - 50.00	\$20.00
\$50.01 - 300.00	\$30.00
\$300.01 - 800.00	\$40.00
OVER \$800	5% of the returned amount.

The Returned Check Fee shall constitute additional fees due and payable, to City by Licensee, upon the date of payment of the delinquent payment referenced above. Acceptance of Returned Check Fee by City shall, in no event, constitute a waiver of Licensee's violations with respect to such overdue amount nor prevent City from the pursuit of any remedy to which City may otherwise be entitled.

**7. Security Deposit.**

Simultaneously with the execution of this Agreement, the Licensee shall deposit with City the sum of SIX THOUSAND DOLLARS (\$6,000) (the "Security") as guarantee for the full and faithful performance by Licensee of all obligations of Licensee under this Agreement or in connection with this Agreement. If Licensee is in violation beyond any applicable notice or cure period, the City may use, apply or retain all or any part of the Security for the payment of (i) any fee or other sum of money which Licensee was obligated to pay but did not pay, (ii) any sum expended by City on Licensee's behalf in accordance with the provisions of this Agreement, or (iii) any sum which City may expend or be required to expend as a result of Licensee's violation. The use,

application or retention of the Security or any portion thereof by City shall not prevent City from exercising any other right or remedy provided for under this Agreement or at law and shall not limit any recovery to which City may otherwise be entitled. At any time or times when City has made any such application of all or any part of the Security Deposit, the Licensee shall deposit the sum or sums equal to the amounts so applied by City within ten (10) calendar days of written notice by the City of such application.

Provided Licensee is not in violation of this Agreement, the Security or balance thereof, as the case may be, shall be returned to Licensee upon the termination of this Agreement or upon any later date after which Licensee has vacated the Area in the same condition or better as existed on the Effective Date, ordinary wear and tear excepted. Upon the return of the Security (or balance thereof) to the Licensee, City shall be completely relieved of all liability with respect to the Security. Licensee shall not be entitled to receive any interest on the Security.

**8. (INTENTIONALLY DELETED)**

**9. (INTENTIONALLY DELETED)**

**10. Utilities.**

Licensee shall pay for all utilities and services, including but not limited to, electricity, water, storm water fees, gas, telephone, garbage and sewage disposal used by Licensee during its occupancy of the Area, as well as all costs for installation of any necessary lines and equipment. Licensee, at its sole cost, shall install all utilities required for its use, install separate utility meters, and shall be billed directly by the applicable utility company for such services. In the event that the City is billed for any utility or service that is a result of Licensee's use of the Area, the Licensee shall reimburse such amount to the City within five (5) calendar days of notification of the City's receipt of said bill.

**11. Condition Of The Area.**

Licensee accepts the Area "as is", in its present condition and state of repair and without any representation by or on behalf of City, and agrees that City shall, under no circumstances, be liable for any latent, patent or other defects in the Area. Licensee, at its sole cost, shall maintain the Area

in good order and repair at all times and in an attractive, clean, safe and sanitary condition and shall suffer no waste or injury thereto. Licensee shall be responsible for all repairs to the Area required or caused by Licensee's use of any part thereof.

Licensee agrees to make all changes necessary to the Area at Licensee's sole cost and expense in order to comply with all City, County, State and Federal code requirements for Licensee's use or occupancy thereof. Additionally, Licensee agrees to make at its sole cost and expense as a precondition to moving the items specified in Exhibit B.

**12. Alterations, Additions Or Replacements.**

Except in the event of an emergency, and those repairs specified in Exhibit B, Licensee shall not make any repair or alteration required or permitted to be performed by Licensee without first receiving the written approval of the City Manager, which approval may be conditioned or withheld for any or no reason whatsoever. If City approves such request, no repair or alteration shall be commenced until plans and specifications therefore shall have been submitted to and approved by the City Manager. In the event of an emergency, Licensee may reasonably proceed to perform such repair work and shall immediately notify City of such work.

**13. Violations, Liens And Security Interests.**

Licensee, at its sole expense and with due diligence and dispatch, shall secure the cancellation, discharge, or bond off in the manner permitted by law, all notices of violations arising from, or otherwise in connected with, Licensee's improvements, use, occupancy, or operations in the Area which shall be issued by any public authority having or asserting jurisdiction. Licensee shall promptly pay its contractors, subcontractors, and material-men for all work and labor done at Licensee's request. Should any lien, claim, or encumbrance be asserted or filed, Licensee shall bond against or discharge the same regardless of validity, within ten (10) calendar days of Licensee's receipt of notice of the filing of said lien, claim, or encumbrance. In the event Licensee fails to remove or bond against said lien or claim in the full amount stated, the City without obligation to do so, may bond, settle, or otherwise remove such lien or claim and Licensee shall pay the City upon demand any amounts paid out by City to extinguish such claim or lien, including City's costs, expenses, and reasonable attorneys' fees. Licensee further agrees to hold City harmless from and to

indemnify the City against any and all claims, demands and expenses, including attorney's fees, of any contractor, subcontractor, materialman, laborer or any other third person with whom Licensee has contracted or otherwise is found liable, in respect to the Area. Nothing contained in this Agreement shall be deemed, construed or interpreted to imply any consent or agreement on the part of City to subject the City's interest or estate to any liability under any mechanic's or other lien asserted by any contractor, subcontractor, materialman or supplier against any part of the Area or any of the improvements thereon. All contracts, subcontracts, purchase orders, or other agreements involving the Area shall provide for the waiver of any lien rights in the Area and provide that the contracting party agrees to be bound by such provision and include the waiver provision in any subagreement.

**14. City Access To Facility.**

City and its authorized representative(s) shall at all times have access to the Area. The City shall have access to and entry into the Area at any time to (a) inspect the Area, (b) to perform any obligations of Licensee hereunder which Licensee has failed to perform after written notice thereof to Licensee, Licensee not having cured such matter within ten (10) calendar days of such notice, (c) to assure Licensee's compliance with the terms and provisions of this Agreement and all applicable laws, ordinances, rules and regulations, (d) to show the Area, to prospective purchasers or tenants, and (e) for other purposes as may be deemed necessary by the City Manager in the furtherance of the City's corporate purpose; provided, however, that City shall make a diligent effort to provide at least 24-hours advance notice and Licensee shall have the right to have one or more of its representatives or employees present during the time of any such entry. The City shall not be liable for any loss, cost or damage to the Licensee by reason of the exercise by the City of the right of entry described herein for the purposes listed above. The making of periodic inspection or the failure to do so shall not operate to impose upon City any liability of any kind whatsoever nor relieve the Licensee of any responsibility, obligations or liability assumed under this Agreement.

**15. Indemnification And Hold Harmless.**

The Licensee shall indemnify, hold harmless and defend the City from and against any and all claims, suits, actions, damages or causes of action of whatever nature, for any personal injury,

loss of life or damage to property sustained in or on the Area, by reason of or as a result of Licensee's use or operations thereon, and from and against any orders, judgments or decrees which may be entered thereon, and from and against all costs, attorney's fees, expenses and liabilities incurred in and about the defense of any such claims and the investigation thereof;

even if the claims, costs, liabilities, suits, actions, damages or causes of action arise from the negligence or alleged negligence of the City, including any of its employees, agents or officials.

#### **16. Hazardous Materials**

The Licensee shall, at its sole cost and expense, at all times and in all respects comply with all federal, state and local laws, statutes, ordinances and regulations, rules, rulings, policies, orders, administrative actions and administrative orders ("Hazardous Materials Laws"), including, without limitation, any Hazardous Material Laws relating to industrial hygiene, environmental protection or the use, storage, disposal or transportation of any flammable explosives, toxic substances or other hazardous, contaminated or polluting materials, substances or wastes, including, without limitation, any "Hazardous Substances", "Hazardous Wastes", "Hazardous Materials" or "Toxic Substances, under any such laws, ordinances or regulations (collectively "Hazardous Materials"). The Licensee shall, at its sole cost and expense, procure, maintain in effect, and comply with all conditions of any and all permits, licenses and other governmental and regulatory approvals relating to the presence of Hazardous Materials within, on, under or about the Area required for the Licensee's use, or storage of, any Hazardous Materials in or about the Area in conformity with all applicable Hazardous Materials Laws and prudent industry practices regarding management of such Hazardous Materials. Upon termination or expiration of this Agreement, the Licensee shall, at its sole cost and expense, cause all Hazardous Materials, including their storage devices, placed in or about the Area by the Licensee or at the Licensee's direction, to be removed from the Area and transported for use, storage or disposal in accordance and compliance with all applicable Hazardous Materials Laws. The City acknowledges that it is not the intent of this Article to prohibit the Licensee from operating in the Area for the uses described in the Section of this Agreement entitled "Purpose". The Licensee may operate according to the custom of the industry so long as the use or presence of Hazardous Materials is strictly and properly monitored according to, and in compliance with, all

applicable governmental requirements. The requirements of this Section of the Agreement shall survive the expiration or termination of this Agreement.

**17. Insurance.**

Licensee represents that it is self-insured in accordance and subject to the limitations as set forth in Section 768.28 of the Florida Statutes, and shall provide evidence of acceptable self-insurance under the laws of the State of Florida to the City's Department of Risk Management. Licensee represents that its self-insurance program covers actions to recover for injury or loss of property, personal injury or death caused by the negligent or wrongful acts or omission of its officers and employees. Licensee further represents that it shall self-insure against any and all damage or destruction to one or more of the subject Properties and any buildings thereon, by any casualty, including but not limited to fire, windstorm and hurricanes.

At its option, the Licensee may procure general liability insurance covering its operations and related liability at the Property. If the Licensee procures general liability insurance, Licensee shall name the City as an additional insured and provide the below listed coverage. If the insurer imposes a charge to name the City as an additional insured, the Licensee shall bear such cost.

**Notwithstanding the above, Licensee shall require as well its construction contractors, subcontractors, and vendors for the Project that come onto the Property to furnish the Licensee and the City, evidence of the following insurance coverage, unless this requirement is waived in writing by the City Manager:**

A. Commercial Liability Insurance, including contractual liability, products and completed operations, personal injury and property and premises operations providing coverage against all claims, demands or actions, bodily injury, personal injury, death or property damage occurring on the Property with such limits as may be reasonably required by the City from time to time, but not less than \$1,000,000 per occurrence, combined single limit for bodily injury and property damage, \$2,000,000 Aggregate. The City shall be named as Additional Insured on this coverage and the cancellation provision should read (30) days. The licensee shall also require this coverage from any and all contractors, and vendors and require them to additionally provide and maintain in force for the length of the agreement, Excess Umbrella coverage with limits of at least \$1,000,000 per occurrence, \$2,000,000 aggregate naming the licensee and the City of Miami as an additional

insured with respect to this coverage. The certificate must also include (30) days on the notice of cancellation.

B. Automobile Liability Insurance covering all owned, non-owned and hired vehicles used in conjunction with operations covered by this Agreement. The policy or policies of insurance shall contain such limits as may be reasonably requested by the City from time to time, but not less than \$500,000 for bodily injury and property damage. The certificate must also include the City as an additional insured and list (30) days on the notice of cancellation. The requirements of this provision may be waived upon submission of a written statement that no automobiles are used to conduct business.

C. Worker's Compensation in the form and amounts required by Florida law.

D. Professional Liability/Pollution as may be required by the City.

E. The City's Director of Risk Management reserves the right to amend the insurance requirements for both the Licensee and third parties in accordance with reasonable industry practice by the issuance of ninety (30) days prior written notice to the Licensee. The Licensee shall itself provide or require third parties to provide any other insurance or security reasonably required by the City's Risk Management Department.

F. The policy or policies of insurance required shall be so written that the policy or policies may not be canceled or materially changed without thirty (30) days advance written notice to the City. Said notice should be delivered to the City of Miami, Department of Risk Management, 444 SW 2nd Avenue, 9<sup>th</sup> Floor, Miami, FL 33130 with copy to City of Miami, Department of Public Facilities, 444 SW 2nd Avenue, 3<sup>rd</sup> Floor, Miami, FL 33130.

G. Current Evidence of Insurance and a Policy of Insurance evidencing the aforesaid required insurance coverage shall be supplied to the Department of Risk Management of the City at least fifteen (15) days prior to the commencement of the third party's usage of the Property. Insurance policies required herein shall be issued by companies authorized to do business under the laws of the State of Florida, with the following qualifications as to management and financial strength: the company should be rated "A" as to management, and no less than class "V" as to financial strength, in accordance with the latest edition of Best's Key Rating Guide, or the company holds a valid Florida Certificate of Authority and is a member of the Florida Guarantee Fund. All policies and/or certificates of insurance are subject to review and verification by Risk Management prior to

insurance approval. The Licensee's failure to require third parties to procure insurance shall in no way release the Licensee from its obligations and responsibilities as provided. Failure to require third parties to procure insurance required by this Section shall constitute a default of this Agreement as provided in Section 12 herein, entitled "Event of Default."

If it can be determined that any loss or part thereof, shall be the fault of a third party (i.e. a contractor or contractors, visitors to the building or any other person, persons or organizations) except the City, then and in that event, the Licensee may take all necessary actions to cause such third party to pay such costs and the Licensee shall be responsible for the restoration of any and all losses incurred by the third party, subject to Section 25 herein. In no event shall the City be liable for damage caused to the Property or Properties by fire or other casualty. If no third party or parties shall be found liable or if found liable, but unable to pay damages, then the costs of such repairs shall be ascribed to the Licensee.

**18. No Liability.**

In no event shall the City be liable or responsible for injury, loss or damage to the property, improvements, fixtures and/or equipment belonging to or rented by Licensee, its officers, agents, employees, invitees or patrons occurring in or about the Area that may be stolen, destroyed, or in any way damaged, including, without limitation, fire, flood, steam, electricity, gas, water, rain, vandalism or theft which may leak or flow from or into any part of the Area, or from the breakage, leakage, obstruction or other defects of the pipes, sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures of the Area, or from hurricane or any act of God or any act of negligence of any user of the facilities or occupants of the Area or any person whomsoever whether such damage or injury results from conditions arising upon the Area or from other sources. Licensee indemnifies the City its officers, agents and employees from and against any and all such claims even if the claims, costs, liabilities, suits, actions, damages or causes of action arise from the negligence or alleged negligence of the City, including any of its employees, agents, or officials.

Licensee further acknowledges that as lawful consideration for being granted the right to utilize and occupy the Area, Licensee, on behalf of himself, his agents, invitees and employees,

does hereby release from any legal liability the City, its officers, agents and employees, from any and all claims for injury, death or property damage resulting from Licensee's use of the Area.

**19. Taxes and Fees.**

Licensee shall pay before any fine, penalty, interest or cost is added for nonpayment, any and all charges, fees, taxes or assessments levied against the Area, or against any occupancy interest or personal property of any kind, owned by or placed in, upon or about the Area by Licensee, including, but not limited to, ad valorem taxes, fire fees, and parking surcharges. In the event Licensee appeals a tax or fee, Licensee shall immediately notify City of its intention to appeal said tax or fee and shall furnish and keep in effect a surety bond of a responsible and substantial surety company reasonably acceptable to City or other security reasonably satisfactory to City in an amount sufficient to pay one hundred percent of the contested tax together with all interest, costs and expenses, including reasonable attorneys' fees, expected to be incurred.

**20. Cancellation By Request Of Either Of The Parties Without Cause.**

Either party may cancel this Agreement at any time by giving thirty (30) calendar days written notice to the non-canceling party prior to the effective date of the cancellation (the "Notice Period").

**21. Termination By City Manager For Cause.**

If, at the sole and complete discretion of the City, Licensee in any manner violates the restrictions and conditions of this Agreement, then, and in the event, after ten (10) calendar days written notice given to Licensee by the City Manager within which to cease such violation or correct such deficiencies, and upon failure of Licensee to do so after such written notice within said ten (10) day period, this Agreement shall be automatically canceled without the need for further action by the City.

**22. Notices.**

All notices or other communications which may be given pursuant to this Agreement shall be in writing and shall be deemed properly served if delivered by personal service or by certified mail addressed to City and Licensee at the address indicated herein or as the same may be changed from time to time. Such notice shall be deemed given on the day on which personally served; or if by certified mail, on the fifth day after being posted or the date of actual receipt, whichever is earlier:

CITY OF MIAMI

City of Miami  
Office of the City Manager  
444 SW 2 Avenue, 10<sup>th</sup> Floor  
Miami, Fl 33130

LICENSEE

Village of Key Biscayne Village Hall  
Office of Village Manager  
88 W. McIntyre Street, Room 210  
Key Biscayne, FL 33129

WITH A COPY TO

Director  
City of Miami  
Department of Public Facilities  
444 SW 2 Avenue, Suite 325  
Miami, FL 33130

**23. Advertising.**

Licensee shall not permit any signs, decoration, or advertising matter to be placed either in the interior or upon the exterior of the Area without having first obtained the approval of the Director of Public Facilities or his/her designee, which approval may be withheld for any or no reason, at his sole discretion. Licensee shall, at its sole cost and expense, install, provide, maintain such sign, decoration, advertising matter or other things as may be permitted hereunder in good condition and repair at all times. Licensee must further obtain approval from all governmental authorities having jurisdiction, and must comply with all applicable requirements set forth in the City of Miami Code and Zoning Ordinance. Upon the cancellation of this Agreement, Licensee shall, at its sole cost and expense, remove any sign, decoration, advertising matter or other thing permitted hereunder from the Area. If any part of the Area is in any way damaged by the removal of such items, said damage shall be repaired by Licensee at its sole cost and expense. Should Licensee fail to repair any damage caused to the Area within ten (10) days after receipt of written notice from City directing the required repairs, City shall cause the Area to be repaired at the sole cost and

expense of Licensee. Licensee shall pay City the full cost of such repairs within five (5) days of receipt of an invoice indicating the cost of such required repairs.

Licensee hereby understands and agrees that the City may, at its sole discretion, erect or place upon the Area an appropriate sign indicating City's having issued this Agreement.

**24. Ownership Of Improvements.**

As of the Effective Date and throughout the Use Period, title to the Area and all improvements thereon shall be vested in City. Furthermore, title to all Alterations made in or to the Area, whether or not by or at the expense of Licensee, shall, unless otherwise provided by written agreement, immediately upon their completion become the property of the City and shall remain and be surrendered with the Area.

**25. Surrender Of Area.**

In event of cancellation pursuant to paragraph 20, "Cancellation By Request Of Either Of The Parties Without Cause," or paragraph 21, "Termination By City Manager For Cause," at the expiration of the Notice Period, Licensee shall peacefully surrender the Area broom clean and in good condition and repair together with all alterations, fixtures, installation, additions and improvements which may have been made in or attached on or to the Area. Upon surrender, Licensee shall promptly remove all its personal property, trade fixtures and equipment and Licensee shall repair any damage to the Area caused thereby. Should Licensee fail to repair any damage caused to the Area within ten (10) days after receipt of written notice from City directing the required repairs, City shall cause the Area to be repaired at the sole cost and expense of Licensee. Licensee shall pay to the City the full cost of such repairs within five (5) calendar days of receipt of an invoice indicating the cost of such required repairs. At the City's option, City may require Licensee, at Licensee's sole cost and expense, to restore the Area to a condition acceptable to the City.

In the event Licensee fails to remove its personal property, equipment and fixtures from the Area within the time limit set by the notice, said property shall be deemed abandoned and thereupon shall become the sole personal property of the City. The City, at its sole discretion and without liability, may remove and/or dispose of same as City sees fit, all at Licensee's sole cost and expense.

**26. Default by Licensee.**

In the event Licensee is in default of the terms of this Agreement the City shall have all remedies available to it at law or in equity. In the event that Licensee fails to peacefully surrender the Area at the expiration of the Notice Period provided in paragraph 20, "Cancellation By Request Of Either Of The Parties Without Cause," or as provided in paragraph 21, "Termination By City Manager For Cause," after delivery of a notice of cancellation of the Agreement by the City (the "City Notice"), then the City shall, in addition to all other remedies, be entitled to collect from the Licensee and Licensee shall pay to the City, a per diem fee of One Thousand Dollars (\$1,000.00) for each day that Licensee remains in the Area in violation of this Agreement (the "Per diem Fee"). Acceptance of the Per diem Fee by City shall, in no event, constitute a waiver of the City's rights under this Agreement and shall not prevent the City from pursuing all other remedies to which is entitled including but not limited to the right to seek injunctive relief to eject Licensee from the Area.

**27. Severability.**

Should any provisions, paragraphs, sentences, words or phrases contained in this Agreement be determined by a court of competent jurisdiction to be invalid, illegal or otherwise unlawful, such provisions, paragraphs, sentences, words or phrases shall be deemed modified to the extent necessary in order to conform with such laws, and the same may be deemed severable by the City, and in such event, the remaining terms and conditions of this Agreement shall remain unmodified and in full force and effect.

**28. No Assignment or Transfer.**

The License may not assign or transfer this Agreement or any portion of any privilege of occupancy and/or use granted by this Agreement.

**29. Nondiscrimination.**

Licensee shall not discriminate as to race, color, religion, sex, national origin, age, disability or marital status in connection with its occupancy and/or use of the Area and improvements thereon.

**30. Affirmative Action.**

Licensee shall have in place an Affirmative Action/Equal Employment Opportunity Policy and shall institute a plan for its achievement which will require that action be taken to provide equal opportunity in hiring and promoting for women, minorities, the disabled and veterans. Such plan will include a set of positive measures which will be taken to insure nondiscrimination in the work place as it relates to hiring, firing, training and promotion. In lieu of such a policy/plan, Licensee shall submit a Statement of Assurance indicating that their operation is in compliance with all relevant Civil Rights laws and regulations.

**31. Minority/Women Business Utilization.**

Licensee shall make every good faith effort to purchase/contract fifty-one percent (51%) of its annual goods and services requirements from Hispanic, Black and Women businesses/professionals registered/certified with the City Office of Minority/Women Business Affairs. The City will make such lists available to the Licensee at the time of the issuance of the Agreement and the City's Office of Minority/Women Business Affairs will routinely provide updates.

**32. Waiver Of Jury Trial.**

The parties hereby knowingly, irrevocably, voluntarily and intentionally waive any right either may have to a trial by jury in respect of any action, proceeding or counterclaim based on this Agreement, or arising out of, under or in connection with this Agreement or any amendment or modification of this Agreement, or any other agreement executed by and between the parties in connection with this Agreement, or any course of conduct, course of dealing, statements (whether verbal or written) or actions of any party hereto. This waiver of jury trial provision is a material inducement for the City and Licensee entering into the subject transaction.

**33. Non-waiver of Violation.**

Any failure by the City at any time or from time to time to enforce and require the strict keeping and performance of any of the terms or conditions of this Agreement shall not constitute a waiver of any such terms or conditions at any future time and shall not prevent the City from insisting on the strict keeping and performance of such terms or conditions at any later time. No waiver of any right hereunder shall be effective unless in writing and signed by the City.

**34. Amendments And Modifications.**

No amendments or modifications to this Agreement shall be binding on either party unless in writing, signed by both parties and approved by the City Manager. The City Manager is authorized to amend or modify this Agreement as needed.

**35. Compliance with All Applicable Laws.**

The Licensee accepts this Agreement and hereby acknowledges that Licensee's strict compliance with all applicable federal, state and local laws, ordinances and regulations is a condition of this Agreement, and the Licensee shall comply therewith as the same presently exist and as they may be amended hereafter. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida regardless of any conflict of law or other rules which would require the application of the laws of another jurisdiction

**36. Captions.**

Title and paragraph headings are for convenient reference and are not a part of this Agreement.

**37. Interpretation.**

This Agreement is the result of negotiations between the parties and has been typed/printed by one party for the convenience of both parties. Should the provisions of this Agreement require judicial or arbitral interpretation, it is agreed that the judicial or arbitral body interpreting or construing the same shall not apply the assumption that the terms hereof shall be more strictly construed against one party by reason of the rule of construction that an instrument is to be

construed more strictly against the party which itself or through its agents prepared same, it being agreed that the agents of both parties have equally participated in the preparation of this Agreement.

**38. Entire Agreement.**

This instrument and its attachments constitute the sole and only agreement of the parties hereto and correctly sets forth the rights, duties and obligations of each to the other as of its date. Any prior agreements, promises, negotiations or representations not expressly set forth in this Agreement are of no force or effect.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement of the day and year first above written.

**CITY OF MIAMI,  
A FLORIDA MUNICIPAL CORPORATION**

ATTEST: \_\_\_\_\_  
PRISCILLA A. THOMPSON,  
CITY CLERK

BY: \_\_\_\_\_  
PEDRO G. HERNANDEZ, P.E.  
CITY MANAGER

APPROVED AS TO FORM AND  
CORRECTNESS:

APPROVED AS TO INSURANCE  
REQUIREMENTS:

BY: \_\_\_\_\_  
JULIE O. BRU  
CITY ATTORNEY

BY: \_\_\_\_\_  
LEE ANN BREHM  
RISK MANAGEMENT DIRECTOR

(OFFICIAL SEAL)

ATTEST:  
  
CONCHITA H. ALVAREZ, CLERK

VILLAGE OF KEY BISCAYNE, FLORIDA

By: \_\_\_\_\_  
DEPUTY CLERK

By: \_\_\_\_\_  
GENARO "CHIP" IGLESIAS  
VILLAGE MANAGER

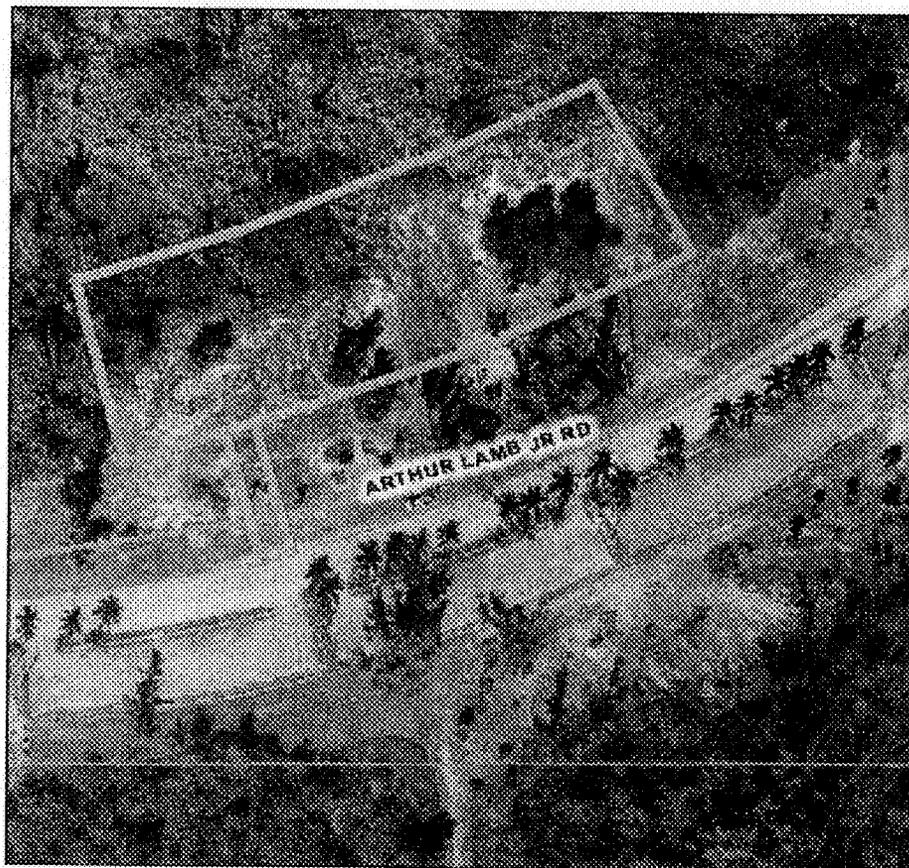
My Home  
Miami-Dade County, Florida

EXHIBIT A  
THE "AREA"

*miamidade.gov*

MIAMI-DADE

Property Information Map



Digital Orthophotography - 2007

0 ————— 59 ft

This map was created on 7/9/2008 12:19:50 PM for reference purposes only.

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## **EXHIBIT B: CONDITIONS OF USE**

1. Licensee agrees to erect a fence at least six feet (6') in height to enclose the Area. The fencing shall have green colored mesh that is sufficiently opaque to block view into the use from the road.
2. Licensee agrees to lay down a layer of industrial mesh over the storage area.
3. Licensee agrees to dig approximately one foot (1') deep pathway from the Arthur Lamb Road leading to the storage area to be filled with 57 drainfield rock over a layer of filter fabric.
4. Licensee shall conduct a soil analysis of the Area before use and after use to determine if it has left any contaminants. If contamination is found to be left on the Property, Licensee shall at its sole cost and expense pay to clean up its contamination. Additionally, upon request from the City, Licensee shall conduct such soil analysis tests the City may require from time to time during the Term.
5. Licensee shall have maintained at all times a mobile water spray down and agrees to have its contractor hose spray all trucks' tires leaving the use area to minimize the amount of sand and debris leaving the use area.
6. Licensee shall remove fencing and restore area to the same or better condition than the Area was in before use.