ORDINANCE NO. 2013-

AN ORDINANCE OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, CREATING CHAPTER 5 "PROPERTY MAINTENANCE STANDARDS;" PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN CODE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Village of Key Biscayne (the "Village") Village Council finds that there is a need to establish more stringent regulations regarding the maintenance of structures and lots, including vacant structures and lots, within the Village in order to supplement existing regulations; and

WHEREAS, these structures and properties, if left unsecured, unattended to, or otherwise allowed to fall into disrepair can constitute a significant danger to residents of, and visitors to, the Village; and

WHEREAS, the Village Council finds that such regulations, procedures, and penalties governing structures and lots, will serve to protect the health, safety, and welfare of the residents of the Village, as well as the aesthetics of the Village.

NOW THEREFORE, IT IS HEREBY ORDAINED BY THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, AS FOLLOWS[1]:

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

Section 2. **Property Maintenance Standards.** That the Code of Key Biscayne, Florida, is hereby amended by adding a Chapter to be numbered Five, which Chapter reads as follows:

Coding: underlined words are additions to existing text, ~~struck through~~ words are deletions from existing text.

Chapter 5 – PROPERTY MAINTENANCE STANDARDS

Sec. 5-1. Applicability

The provisions of this Chapter shall apply to all private properties located within the Village.

Sec. 5-2. Definitions.

In construing the provisions of this Chapter, where the context will permit and no definition is provided herein, words and phrases used in this Chapter that are defined in other parts of the Code, including but not limited to the Florida Building Code, but are not defined in this Chapter, shall have those meanings when used in this Chapter. The following words and phrases when used in this Chapter shall have the following meanings:

Excessive Growth shall mean 1) the growth of vegetation, including, but not limited to, grass, weeds, bushes, hedges, undergrowth, trees, or roots, that is detrimental to the public health, safety, and welfare by creating a public nuisance, obstacle or dangerous condition in the public way; 2) the growth of vegetation that generally detracts from the appearance of the neighborhood for lack of landscape maintenance; or 3) the growth of grass, weeds, or undergrowth that exceeds the height of 6 inches from the ground.

Garbage shall mean the animal and vegetable waste resulting from the handling, preparation, cooking and consumption of food, including, but not limited to packaging materials.

Infestation shall mean the presence of any insects, rodents, vermin, or other pests.

Maintenance or corrective action shall mean the action required to comply with the provisions of this Article including, but not limited to maintaining, cleaning, clearing, mowing, cutting, trimming, watering, irrigating, painting, or repairing, a lot or structure, as applicable, and removing and legally disposing of all associated solid waste.

Responsible Party means the current owner of the property in addition to any other party who has possession of the property or any contractor working for the owner or person in possession of the property or any successor owners, agents, or parties in possession of the property.

Solid waste shall mean Garbage, litter, junk, rubbish, trash, hazardous waste, construction and demolition debris, industrial waste, or other discarded materials, including material or containers from domestic, commercial or agricultural operations. The term shall include all combustible and noncombustible waste materials The term shall include residue from the burning of wood, coal, coke, and other combustible materials, paper, rags, cartons, boxes, wood, excelsior, rubber, leather, tree branches, yard trimmings or other botanical waste, tin cans, metal, mineral matter, glass and crockery. The term shall also include inoperable or discarded personal property, including, but not limited to, furniture, clothing, large and small appliances, printed material, vehicles, vessels, or any

other items that give the appearance that the property is abandoned or is not being maintained.

Sec. 5-3. Standards for maintenance and appearance of property generally.

(a) Every Responsible Party shall comply with the following:

(1) Every structure, foundation and exterior wall, fence, window, and roof, shall be structurally sound, maintained in good repair, kept clean, sanitary, weathertight, watertight, and free from Infestation and Solid Waste. Roofs shall also be well drained of rainwater.

(2) All exterior areas of any structure or surfaces, that show evidence of graffiti or similar markings, damage, rot, rust, or other deterioration shall be cleaned, repaired, removed or replaced and painted over with an exterior grade paint or other protective coating that matches the color of the exterior area, as applicable.

(3) Every exterior stairway, porch and appurtenance shall be structurally sound, maintained in good repair and kept clean. All exterior floors, paving and sidewalks, shall be kept reasonably clean and free of Solid Waste.

(4) Every utility connection shall be properly maintained.

(5) All clamps, straps, fasteners and similar devices shall be free of rust and shall be securely fastened to both the structure and the object to be fastened. Any missing fasteners shall be replaced.

(6) Swimming pools and spas and other water features shall be maintained so the water remains free and clear of algae, insects, fish, amphibians, pollutants, and debris. Pools and spas that do not comply with the requirements of the Village Code and other applicable law, may be secured by draining, covering, fencing, or by using another method approved by the Village.

(7) Lots shall be kept free of Excessive Growth, Solid Waste, stagnant water, and the accumulation of newspapers, circulars, flyers, notices, and building materials.

(8) Lots shall be kept free of dead trees. The Responsible Party shall remove any dead trees. Any tree that is removed must be replaced in accordance with Section 30-235 of the Village Code.

(9) Lots shall be kept free of invasive exotic species listed in Section 30-235 of the Village Code and the Responsible Party shall remove any invasive exotic species.

(10) Domestic animals and pets shall not be kept in such a manner as to create odors,

unsanitary conditions, or otherwise constitute a nuisance.

(b) Except for the removal of invasive exotic species, the requirements of this Chapter shall apply to utility easements and the public rights-of-way abutting such properties including, but not limited to, alleys, sidewalks and swales. The Responsible Party shall maintain utility easements and the abutting public right-of-way in such a manner to prevent and to correct any violations of this Chapter including, but not limited to, keeping the utility easements or swale free of Excessive Growth, Solid Waste, stagnant water, and shall also keep the abutting public right-of-way free of any holes, obvious or hidden dangers, obstructions, depressions or other excavations. Moreover, the Responsible Party shall remove from the public right-of-way any mud, dirt, soil, clippings, or other debris resulting from any construction or landscaping work that is performed on a lot or its abutting public right-of-way.

(c) The Responsible Party shall also maintain and repair any paved area or structures or improvements in the public right-of-way that were not placed there by the Village, such as, but not limited to, driveways and pavers. This section shall not be interpreted to legalize any structures or improvements placed in the public right-of-way without the express approval of the Village.

(d) Unless otherwise provide in this Code, the Responsible Party shall legally dispose of all Solid Waste in a container and shall not deposit, store, maintain or relocate such solid waste to the public right-of-way other than twenty-four (24) hours prior to an authorized scheduled pick up. Solid Waste shall not be relocated to any lot other than a legal disposal site. All Solid Waste containers, including, but not limited to Garbage cans and dumpsters, shall have a neat and orderly appearance.

Sec. 5-4. Standards for maintenance and appearance of property upon which construction ~~or demolition~~ is being performed.

(a) Public notice. After the initial construction permits have been submitted to the Village for any construction or demolition of a structure on a single family or two family lot, the owner or contractor hired by the Responsible Party shall post a "Public Notice" on the property advising the public of such submittal. Said notice shall be posted in a form provided by the Village within ten (10) days of the filing of the application and proof of posting with a dated photo shall be furnished to the Village Building Planning & Zoning Department. Said notice shall be maintained on site for not less than ten (10) consecutive days.

(b) Property lines. Permits issued for construction of a wall, fence or other structure along a common, shared property line do not in any manner authorize any Responsible Party or person hired by any Responsible Party to encroach upon, trespass or otherwise enter upon the adjacent property to accomplish work.

(c) Perimeter fence. All lots on which a new single family home is to be constructed are required

to be secured on all sides with a six foot chain link fence with windscreens. Such fence shall remain in place until the drywall, windows and doors have been constructed. However, in no instance shall the swimming pool be left unsecured. The perimeter fence may be temporarily opened and/or removed as necessary for construction purposes. The Building, Zoning and Planning Director may waive the requirements provided for in this section if the adjoining property has an existing fence or wall.

(d) Removal of construction materials or debris. Under no circumstances shall any construction materials or debris be allowed to be placed in the public right-of-way. Any construction materials or debris shall be removed, even if it inadvertently lands within the public right-of-way due to weather conditions. The public right-of-way in front of the construction site and the immediately adjacent lots shall be kept clean and free of all construction materials or debris.

(e) Maintenance of the roadway and public rights-of-way. The roadway and all public rights-of-way in front of a construction site shall be kept clean from dirt and construction dust. Upon the request of the Building, Zoning and Planning Director, the roadway and public rights-of-way shall be watered down to remove dust and dirt which are the result of construction. If any swale is damaged during the course of construction, the responsible party shall repair the damaged swale.

(f) Parking. To the extent feasible, all construction vehicles shall be parked within the construction site.

(g) Other conditions. Any contractor hired by a Responsible Party is required to act in conformity with any other reasonable conditions imposed by Village issued building permits, regarding the standards for maintenance and appearance of any lot upon which construction and/or demolition is being performed.

Sec. 5-5. Failure to Comply

In addition to any other remedies available by law, the Village may issue a civil violation notice pursuant to Article III of Chapter 2 of this Code, which allows the Responsible Party ten calendar days to perform Maintenance or Corrective Action or to appeal. To the extent the Maintenance or Corrective Action cannot reasonably be completed within this time frame, the Village Manager may grant additional time to comply.

Sec. 5-6. Corrective Action by the Village

If the Responsible Party has not taken Maintenance or Corrective Action or appealed the civil violation, the Village may take corrective action to cure the violation. Upon ten days written notice served pursuant to Article III of Chapter 2 of this Code, the Village may, but is not required to, correct any violation of this Article at the expense of the owner of the real property or of the abutting real property in the case of a violation involving the public right-of-way. To the extent the Maintenance or Corrective Action cannot reasonably be completed within this time frame, then the

Village may grant additional time to comply. After causing the violation to be corrected, the Village shall certify the expense incurred, including but not limited to advertising, clearing, mowing, trimming, repairing, hauling, or disposing, together with an administrative fee of one hundred (100) dollars or ten (10%) percent of the total expenses, whichever is greater. The Village shall have a lien that it may record in the public records of Miami-Dade County. The lien shall accrue interest at the maximum legal rate from the date of the certification until paid. The Village may foreclose on such lien pursuant to Article III of Chapter 2 of this Code. This lien shall be prior to all other liens on such property, except taxes.

Sec. 5-7. Inspection of structures and premises.

In order to protect the public health, safety, and welfare and to the extent permitted by law, the Village is authorized to conduct inspections and enter lots and structures to enforce the provisions of this Chapter.

Section 3. **Conflicts.** All ordinances or parts of ordinances, resolutions or parts of resolutions, in conflict herewith, are repealed to the extent of such conflict.

Section 4. **Severability.** That the provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 5. **Inclusion in Code.** That it is the intention of the Village Council, and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of the Village of Key Biscayne; that the sections of this Ordinance may be renumbered or relettered to accomplish such intentions; and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

Section 6. **Effective Date.** That this Ordinance shall be effective immediately upon adoption on second reading, except that Responsible Parties shall have 180 days from the effective

date of this Ordinance to remove any existing invasive exotic species referred to in Section 5-3(a)(9) adopted by this Ordinance.

PASSED AND ADOPTED on first reading this _8th_ this day of _May_, 2013.

PASSED AND ADOPTED on second reading this ___this day of _____, 2013.

_____
MAYOR FRANKLIN H. CAPLAN

ATTEST:

_____
CONCHITA H. ALVAREZ, MMC, VILLAGE CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

_____
VILLAGE ATTORNEY