



VILLAGE OF KEY BISCAINE

Office of the Village Manager

Village Council

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

Village Manager

Jacqueline R. Menendez

DATE: May 16, 2006
TO: Honorable Mayor and Members of the Village Council
FROM: Jacqueline R. Menendez, Village Manager
RE: Beach Management Plan – The Sonesta Beach Resort, Key Biscayne

RECOMMENDATION

It is recommended that the Village Council approve the Beach Management Plan, submitted by The Sonesta Beach Resort, with the following condition:

1. Clear passage for emergency access and patrolling purposes
 - As specified under section 30-102 of the Village code, subsection (g)(6), none of the permitted activities, including the storage of any equipment shall be maintained or conducted within 15 (fifteen) feet of the waterline. This applies to the placement of chairs and umbrellas as well.
 - The Village needs this 15 (fifteen) feet pathway clear at all times for emergency access and for patrolling the beach.

BACKGROUND

Ordinance 2005-5 amended the Zoning and Land Development Regulations contained in Chapter 30 of the Village code, for the purpose of protecting the public beach areas and the public's right of access to the public beach areas within the jurisdictional limits of the Village. The Village reevaluated the zoning regulations applicable to the Government Use District of the Village Zoning.

The first reading was passed and adopted on April 26th, 2005 and the second reading was passed and adopted on May 24th, 2005.

cc: David M. Wolpin, Esq., Village Attorney



VILLAGE OF KEY BISCAYNE

Department of Public Works
88 West McIntyre St., Suite 230 • Key Biscayne, FL 33149 • Phone (305) 365-8945 • Fax (305) 365-7757

BEACH MANAGEMENT PLAN - PERMIT APPLICATION

Permit Number _____

Name of Property

SONESTA BEACH RESORT

Street Address of Property

350 OCEAN DRIVE

Legal Description: Lot(s)

Name of Applicant

SONESTA BEACH RESORT

Address

350 OCEAN DR.

Phone No.

305-361-2021

Name of Property Owner
(if Different from Applicant)

Address

Phone No.

Proposed Hours of Operation

8am - 6pm

Proposed Area of Operations

Proposed Storage Area Location
Contents

If Applicable, Proposed Storage, Hours
of Use, and Method of Fueling for
All Terrain Vehicle

N/A

**Village of Key Biscayne
Beach Management Plan – Permit Application
Page 2**

If Applicable, Number and Type of
Proposed Non-Motorized Vessels¹

2/A

All applications must be accompanied by:

- A detailed and dimensioned site plan depicting the type and location of all proposed activity(ies), structures, garbage containers, storage areas, and where the use of Vessels is proposed, the location of the proposed channel (subject to Council approval)
- Indemnity and Insurance form (with Village as additional insured) in a form and amount approved by Village Attorney
 - See attached form
- Proof of ownership of adjacent upland property or written authorization from upland property owner
- Proposed safety & emergency plan (including storm management/preparation)
 - The set plan must be fully implemented upon issuance of a “hurricane warning” by Miami-Dade County
- Application fee plus the annual inspection fee for the approved activity as established by resolution pursuant to Section 30-4 of the Village Code
- Any additional information as reasonably required by the Village Manager

¹ / The use of motorized vessels is prohibited except for one (1) personal watercraft as defined in Section 327.02, F.S., maintained in good working condition and available for emergency rescue purposes only in accordance with Section 30-102(g)(9) of the Village Code.

SONESTA BEACH PLAN

OUTLINE OF PLAN:

- Each stack of chairs will be below the top of the sand dunes. Each stack will consist of ten chairs, which is approximately six feet tall. There are thirty-two stacks in total.
- The design of the beach plan is intended to keep the footprint of the chairs low and minimize the visual impact on the natural surroundings.
- All of the cabanas (7) will be left in the lowered position unless a guest is using them. They have been mounted in the ground to a depth of three feet up along the base of the sand dunes. Again, this will maintain the natural appearance of the beach.
- All of the umbrellas will be stored in one of the three storage boxes along the beach.
- There are trashcans placed along each path between the hotel and the beach to help reduce trash on the beach.
- There are two structures adjoining to our building on the west side of the dunes. These structures are used to provide snacks and alcoholic beverages. Hours of operations: Snackerrie: Monday – Friday 11:30 a.m. to 4:30 p.m. Saturday and Sunday 11:30 a.m. to 5:00 p.m. Seagrape Bar: Monday – Sunday 11:00 a.m. – 6:00 p.m.

LEGEND

■ CABANAS

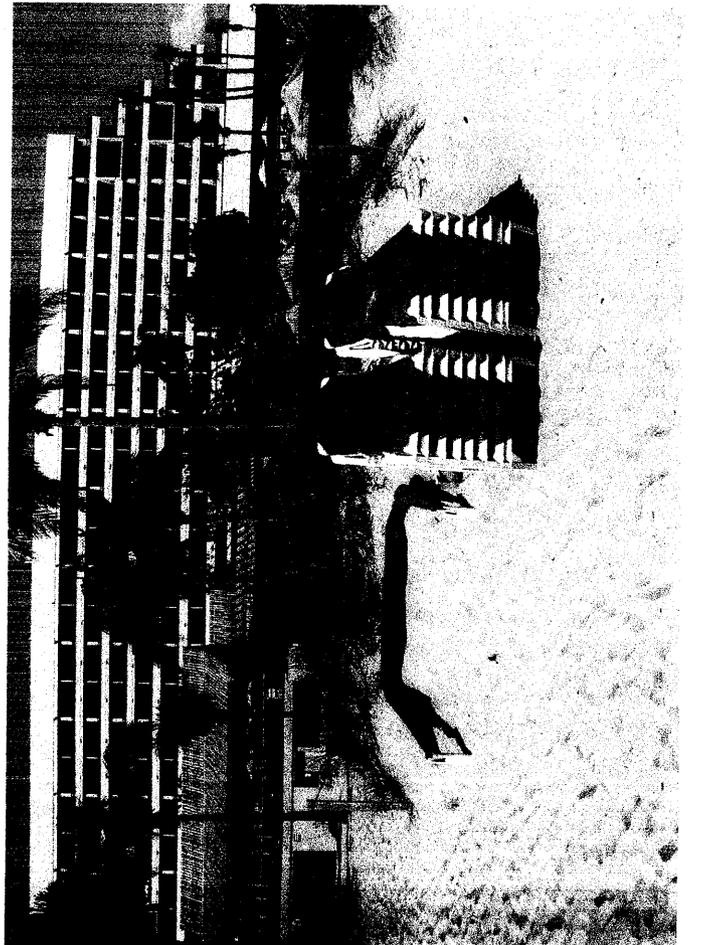
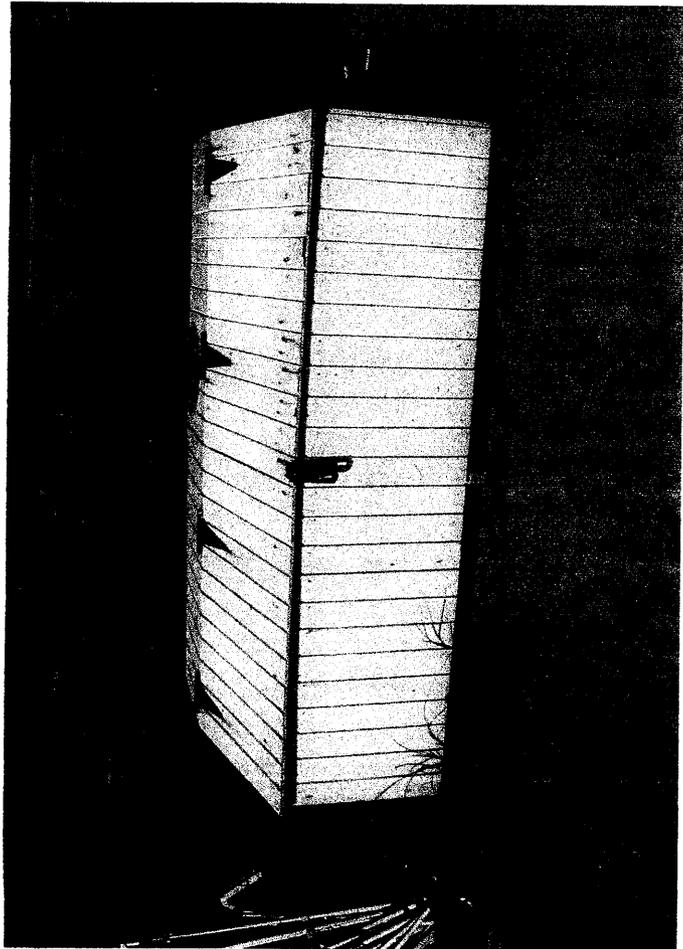
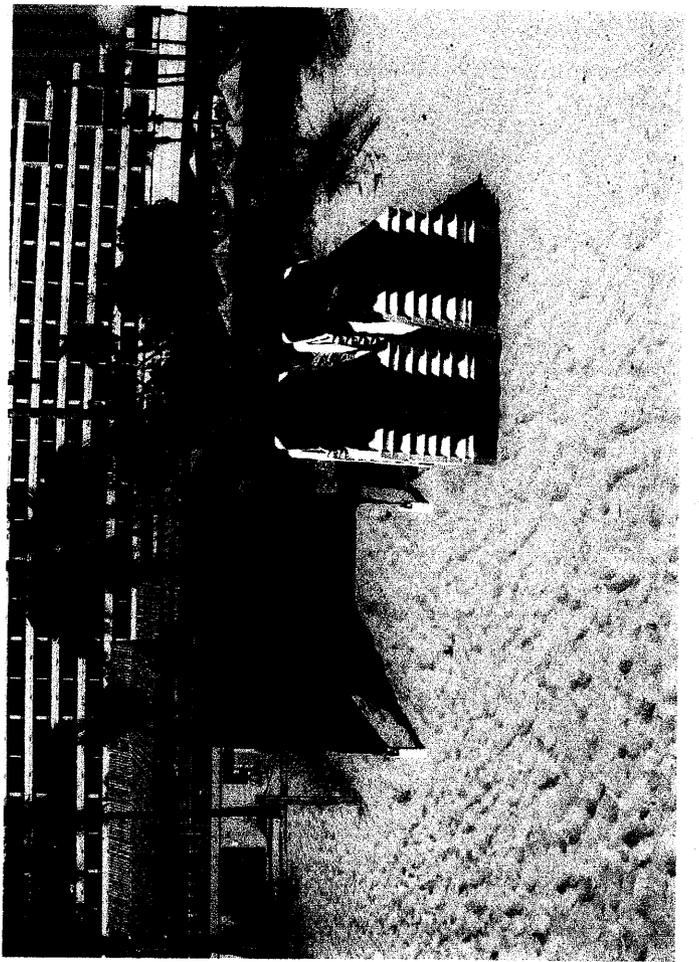
■ UMBRELLA BOXES

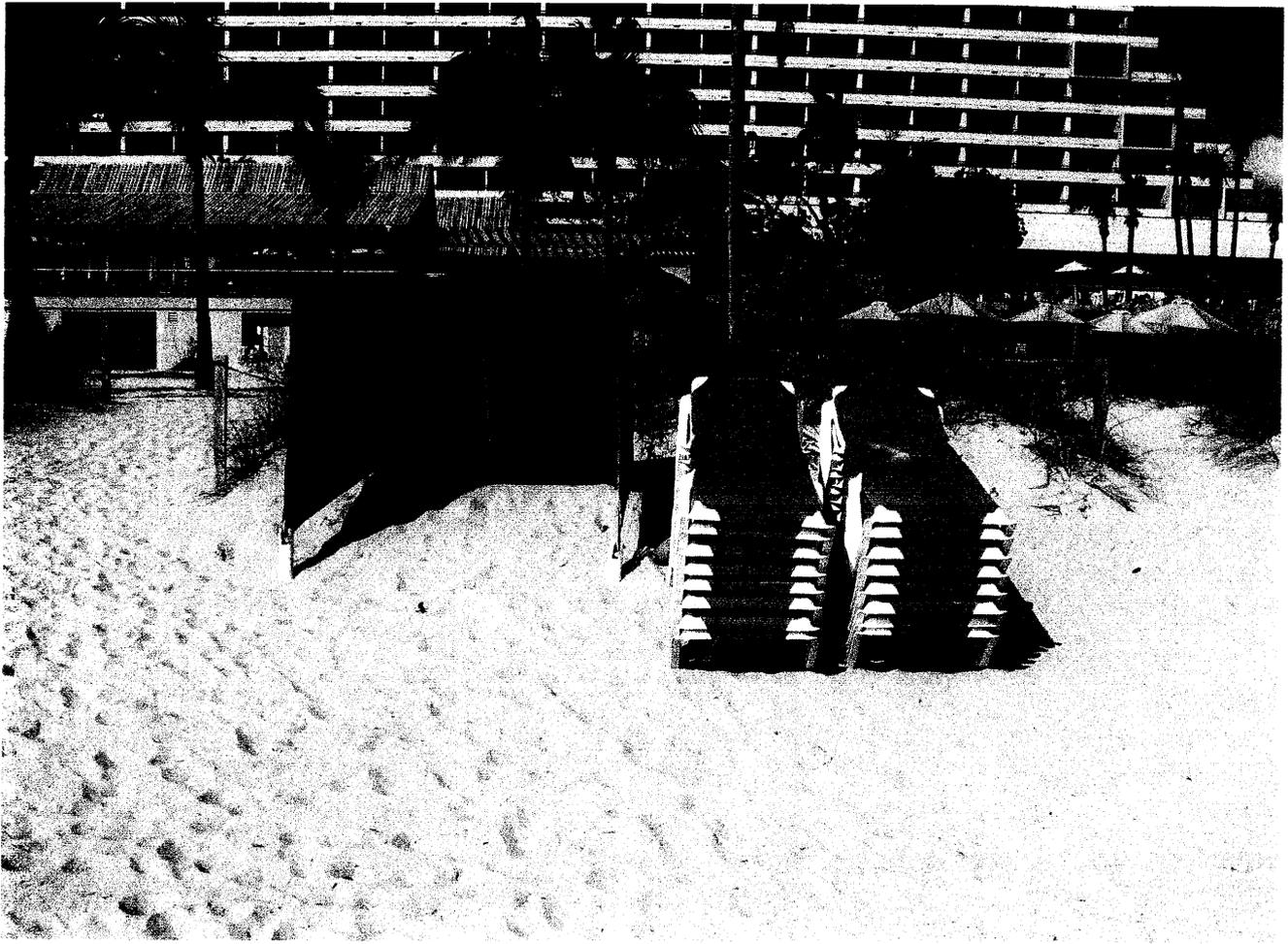
■ STACKS OF CHAIRS



6

FIGURE 2
BEACH MANAGEMENT PLAN
VILLAGE OF KEY BISCAYNE





COVENANT OF INDEMNIFICATION & INSURANCE

Upon approval of a Beach Management Plan by the Village of Key Biscayne (the "Village") in accordance with Section 30-102(f) of the Village Code of Ordinances, Sonesta Beach Resort the "Applicant") hereby covenants and agrees as follows:

1. Applicant shall defend, indemnify, and hold harmless the Village, its elected officials, officers, agents, and employees from any claim, demand, suit, loss, cost, expense, or damage which may be asserted, claimed or recovered against or from Village by reason of any property damage or bodily injury, including death, sustained by any person whomsoever, which said claim, demand, suit, loss, cost, expense or damage arises out of or is incidental to or in any way connected with (1) Applicant's establishment, use, and/or operation of certain recreational activities within the Government Use Zoning District as specified in Applicant's Beach Management Plan, (2) Village approval of Applicant's Beach Management Plan, or (3) Applicant's breach of this Covenant of Indemnification and Insurance (the "Covenant"). This Covenant shall survive the termination or expiration of the Beach Management Plan approval.
2. Throughout Applicant's establishment, use, and/or operation of recreational activities within the Government Use Zoning District as specified in the approved Beach Management Plan, Applicant shall maintain the following:
 - A. Commercial general liability insurance for bodily injury, death, or property damage occasioned by any act or occurrence arising out of or in connection with Applicant's establishment, use, and/or operation of recreational activities within the Government Use Zoning District as specified in Applicant's Beach Management Plan, with minimum liability limits of \$1,000,000.00 for bodily injury or death of any one person and \$2,000,000.00 for bodily injury or death of two or more persons in any one incident or event, and in the minimum amount of \$1,000,000.00 for damage to property resulting from any one incident. This shall include coverage for premises/operations, products/completed operations, contractual liability, and independent contractors. This policy shall include coverage for contractual liability specifically covering the indemnity set forth in this Covenant. The Village shall be named as an additional insured on this policy.
 - B. Automobile liability in the amount of \$1,000,000.00 per occurrence combined single limit for bodily injury and property damage, covering all vehicles owned, leased, rented or otherwise hired or used by Applicant in association with Applicant's establishment, use, and/or operation of recreational activities within the Government Use Zoning

District as specified in Applicant's Beach Management Plan. The Village shall be named as an additional insured on this policy.

C. Workers compensation and employer's liability, as required by Florida Statutes.

3. Simultaneously with its delivery of the executed Covenant, Applicant shall deliver to the Village Manager certificates of insurance indicating that the above referenced insurance coverage has been obtained consistent with the terms of this Covenant.
4. Applicant agrees that in the event of any litigation arising out of this Covenant, the prevailing party shall be entitled to an award of reasonable attorney's fees and costs, at both the trial and appellate level.
5. Applicant represents that Applicant has the full right, title and authority to enter into this Covenant and to make the provisions hereof binding and in full force and effect.

IN WITNESS WHEREOF, the Applicant has executed this Covenant of Indemnification & Insurance on the 24 day of March, 2006.

APPLICANT:

Karen R. Whiting

By:

[Signature]
Title: Resident Manager

WITNESS:

By:

Katie Schaeffer

By:

[Signature]
Ruben Fuentes

Accepted by the Village of Key Biscayne, Florida this _____ day of _____,
2006.

VILLAGE MANAGER

ATTEST:

CONCHITA ALVAREZ, CMC

VILLAGE CLERK

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:

VILLAGE ATTORNEY

ACORD CERTIFICATE OF LIABILITY INSURANCE

OP ID JR
SONES-1

DATE (MM/DD/YYYY)
03/13/06

PRODUCER

HUB International New England
299 Ballardvale St
Wilmington MA 01887
Phone: 978-657-5100 Fax: 978-658-9185

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURED

Sonesta International Hotels Corporation
Sonesta Hotels of Florida, Inc
350 Ocean Drive
Key Biscayne FL 33149

INSURERS AFFORDING COVERAGE

NAIC #

INSURER A: Liberty Surplus Ins.Co
INSURER B: American Int'l Specialty
INSURER C: Twin City Fire Ins. Company
INSURER D:
INSURER E:

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR ADD'L LTR	INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A	X	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input checked="" type="checkbox"/> LOC	EGL-BO-184088-015	10/01/05	10/01/06	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 50,000 MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
C	X	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input checked="" type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS <input checked="" type="checkbox"/> Comp Ded \$500 <input checked="" type="checkbox"/> Coll Ded \$1,000	08MCZ500611K1	10/01/05	10/01/06	COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
		GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN EA ACC \$ AUTO ONLY: AGG \$
B	X	EXCESS/UMBRELLA LIABILITY <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE DEDUCTIBLE <input checked="" type="checkbox"/> RETENTION \$10,000	9745607	10/01/05	10/01/06	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000 \$ \$ \$
		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below				<input type="checkbox"/> WC STATU-TORY LIMITS <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
		OTHER				

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

Certificate Holder is an Additional Insured per form CGL 10000103. ✓
 Contractual Liability is included as per form ES207R71003.

CERTIFICATE HOLDER

VILLA-3

Village of Key Biscayne
88 W. McIntyre Street
Key Biscayne FL 33149

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 10 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

Richard J. McCarthy



ENDORSEMENT NO. 1

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

Endorsement Effective Date: 10/01/05 Policy No: EGL-BO-184088-015

Insured: Sonesta International Hotels Corporation

✓ **ADDITIONAL INSURED -BY WRITTEN CONTRACT**

WHO IS AN INSURED (Section II) is amended to include as an insured any person or organization with whom you have agreed to add as an additional insured by written contract but only with respect to liability arising out of your operations or premises owned by or rented to you.

2. Exclusions

This insurance does not apply to:

a. Expected or Intended Injury

"Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" resulting from the use of reasonable force to protect persons or property.



b. Contractual Liability

"Bodily injury" or "property damage" for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages:

- (1) That the insured would have in the absence of the contract or agreement; or
- (2) Assumed in a contract or agreement that is an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement. Solely for the purposes of liability assumed in an "insured contract", reasonable attorney fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be damages because of "bodily injury" or "property damage", provided:
 - (a) Liability to such party for , or for the cost of, that party's defense has also been assumed in the same "insured contract"; and
 - (b) Such attorney fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged.

c. Liquor Liability

"Bodily injury" or "property damage" for which any insured may be held liable by reason of:

- (1) Causing or contributing to the intoxication of any person;
- (2) The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or
- (3) Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

This exclusion applies only if you are in the business of manufacturing, distributing, selling, serving or furnishing alcoholic beverages.

d. Workers' Compensation and Similar Laws

Any obligation of the insured under a workers compensation, disability benefits or unemployment compensation law or any similar law.

e. Employer's Liability

"Bodily injury" to:

- (1) An "employee" of the insured arising out of and in the course of:
 - (a) Employment by the insured; or
 - (c) Performing duties related to the conduct of the insured's business; or

(2) The insured's responsibility to pay damages is determined in a "suit" on the merits; in the territory described in a. above or in a settlement we agree to.

5. "Employee" includes a "leased worker." "Employee" does not include a "temporary worker."
6. "Executive officer" means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document.
7. "Hostile fire" means one which becomes uncontrollable or breaks out from where it was intended to be.
8. "Impaired property" means tangible property, other than "your product" or "your work," that cannot be used or is less useful because:
 - a. It incorporates "your product" or "your work" that is known or thought to be defective, deficient, inadequate or dangerous; or
 - b. You have failed to fulfill the terms of a contract or agreement;

if such property can be restored to use by:

- a. The repair, replacement, adjustment or removal of "your product" or "your work"; or
- b. Your fulfilling the terms of the contract or agreement.

→ 9. "Insured contract" means:

- a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damages by fire to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";
- b. A sidetrack agreement;
- c. Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
- d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
- e. An elevator maintenance agreement;
- f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

Paragraph f. does not include that part of any contract or agreement:

- (1) That indemnifies a railroad for "bodily injury" or "property damage" arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road-beds, tunnel, underpass or crossing;
- (2) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
 - (a) Preparing, approving or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders, or drawings and specifications; or
 - (b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or

- (3) Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in (2) above and supervisory, inspection, architectural or engineering activities.

10. "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker."
11. "Loading or unloading" means the handling of property:
- a. After it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft or "auto";
 - b. While it is in or on an aircraft, watercraft or "auto"; or
 - c. While it is being moved from an aircraft, watercraft or "auto" to the place where it is finally delivered;
- but "loading or unloading" does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the aircraft, watercraft or "auto."
12. "Mobile equipment" means any of the following types of land vehicles, including any attached machinery or equipment:
- a. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
 - b. Vehicles maintained for use solely on or next to premises you own or rent;
 - c. Vehicles that travel on crawler treads;
 - d. Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:
 - (1) Power cranes, shovels, loaders, diggers or drills; or
 - (2) Road construction or resurfacing equipment such as graders, scrapers or rollers;
 - e. Vehicles not described in a., b., c. or d. above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
 - (1) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
 - (2) Cherry pickers and similar devices used to raise or lower workers;
 - f. Vehicles not described in a., b., c. or d. above maintained primarily for purposes other than the transportation of persons or cargo.

However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but will be considered "autos":

- (1) Equipment designed primarily for:
 - (a) Snow removal;
 - (b) Road maintenance, but not construction or resurfacing; or
 - (c) Street cleaning;

HURRICANE PLAN:

Remove and secure all loose objects i.e. lounge chairs, umbrellas, hammocks, etc.
These objects will be placed in the underground garage.

RESOLUTION NO. 2006- _____

A RESOLUTION OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, APPROVING A BEACH MANAGEMENT PLAN FOR ACTIVITIES WITHIN THE GOVERNMENT USE DISTRICT; PROVIDING FOR CONDITIONS; PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR EFFECTIVE DATE.

WHEREAS, pursuant to Section 30-102 of the Code of Key Biscayne, Florida, recreational activities are permitted within the Government Use District upon approval of a Beach Management Plan by the Village Council; and

WHEREAS, the applicant, Sonesta Beach Resort, Key Biscayne, located at 350 Ocean Drive, Key Biscayne, Florida has submitted a Beach Management Plan proposing the use and operation of recreational activities within the Government Use District for approval by Village Council; and

WHEREAS, a public hearing of the Village Council was advertised and held, as required by law, and all interested parties were given an opportunity to be heard; and

WHEREAS, the Village Council having considered the evidence presented, finds that the proposed activities comply with the requirements of the applicable codes and ordinances and do not constitute a threat to public safety or welfare, or constitute a danger or impediment to the public beach area to the extent the application is granted herein.

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

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

Section 2. Approval of Beach Management Plan. In accordance with Section 30-102 of the Village Code, the Village Council hereby authorizes and approves the Beach Management Plan, attached and incorporated herein.

Section 3. Conditions. The Beach Management Plan as approved, is subject to the following conditions:

- (1) Failure to comply with the provisions of the Beach Management Plan as approved, or the conditions of this Resolution shall result in automatic revocation of Beach Management Plan approval.

Section 4. Implementation. That the Village Manager is hereby authorized to take any action which is necessary to implement this Resolution.

Section 5. Effective Date. That this Resolution shall be effective immediately upon adoption hereof.

PASSED AND ADOPTED this _____ day of May, 2006.

ROBERT OLDAKOWSKI, MAYOR

ATTEST:
CONCHITA H. ALVAREZ, CMC

VILLAGE CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

VILLAGE ATTORNEY

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