



# V I L L A G E O F K E Y B I S C A Y N E

## Office of the Village Manager

*Village Council*  
Franklin H. Caplan, *Mayor*  
Michael W. Davey, *Vice Mayor*  
Theodore J. Holloway  
Michael E. Kelly  
Mayra P. Lindsay  
Ed London  
James S. Taintor

*Village Manager*  
John C. Gilbert

DATE: May 27, 2014  
TO: Honorable Mayor and Members of the Village Council  
FROM: John C. Gilbert, Village Manager  
RE: Beach Club Lease Agreement- Beach Maintenance Tractor

### RECOMMENDATION

It is recommended that the Village Council approve the attached Lease Agreement with the Beach Club located at 685 Ocean Drive. This site will be used to store the Village's beach maintenance tractor, as well as, access to and from the beach along the Atlantic Ocean. The term of the lease will automatically renew per year for three (3) years; for a total of \$1,000 per month (attached Lease Agreement as Exhibit A). The funding will be obtained from the FY2014 Public Works budget.

### BACKGROUND

Currently, the beach maintenance tractor (attached tractor photo as Exhibit B) is stored on private property located at 350 Ocean Drive (Oceana). This location was provided at no cost to the Village granted by the former owners of the property and the developer of Oceana. As the Oceana project will be substantially completed in July of 2014, the tractor must be stored on another site.

The Administration has negotiated a Lease Agreement with the Beach Club to store the beach maintenance tractor on the southeast corner of the property. The tractor will be surrounded by a 6 ft. fence with mesh screening covered by landscaping. A photo of the Beach Club property is attached as Exhibit "A-1". The leased area is 14 ft. x 45 ft. for a rental rate of \$1.48 per sq. ft. for a total cost of \$1,000 per month.

Reviewed by Mr. Eduardo Soto from Weiss Serota Helfman Pastoriza Cole & Boniske as to form and legal sufficiency.

**RESOLUTION NO. 2014-**

**A RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, APPROVING THE LEASE AGREEMENT BETWEEN THE VILLAGE OF KEY BISCAYNE AND KEY BISCAYNE BEACH CLUB INC., A FLORIDA NONPROFIT CORPORATION, FOR THE LEASE OF CERTAIN REAL PROPERTY; PROVIDING FOR IMPLEMENTATION; PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the Village Council desires to lease certain real property from the Key Biscayne Beach Club Inc., a Florida nonprofit corporation (the “Landlord”), to store beach maintenance equipment as well as providing access to and from the beach along the Atlantic Ocean; and

**WHEREAS**, the Village Council finds that approval of the attached Lease Agreement (“Lease”) between the Landlord and the Village is in the best interest of the Village.

**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. Agreement Approved.** That the certain Lease Agreement between the Village of Key Biscayne and the Landlord, in substantially the form attached hereto, is hereby approved, and the Village Manager and Village Clerk are authorized, in their respective capacities, to execute the Agreement on behalf of the Village, once approved by the Village Attorney as to form and legal sufficiency.

**Section 3. Implementation.** That the Village Manager and Village Attorney are hereby authorized to take any necessary action 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 \_\_\_\_\_, 2014.

\_\_\_\_\_  
MAYOR FRANKLIN H. CAPLAN

ATTEST:

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

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

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

**Exhibit A**

**Lease Agreement**

## LEASE AGREEMENT

THIS LEASE AGREEMENT (this "Lease") is made and entered into as of the \_\_\_ day of \_\_\_\_\_, 2014, by and between KEY BISCAYNE BEACH CLUB INC., a Florida nonprofit corporation, having an address of 685 Ocean Drive, Key Biscayne, Florida 33149 (the "Landlord") and the VILLAGE OF KEY BISCAYNE, a Florida municipal corporation having an address at 88 W. McIntyre Street Key Biscayne, Florida 33149 ("Tenant").

### RECITALS

**WHEREAS**, the Tenant is in need of a location to store beach maintenance equipment as well as access to and from the beach along the Atlantic Ocean within the Tenant; and

**WHEREAS**, the Landlord is the owner of certain real property located in Miami-Dade County, Florida commonly known as the Key Biscayne Beach Club (the "Beach Club Property"); and

**WHEREAS**, the Tenant desires to lease from Landlord, and Landlord is willing to lease to Tenant, a section of real property located within the Beach Club Property and more particularly depicted as the 15' by 45' area in the southeast corner of the Beach Club Property on Exhibit "A-1" attached hereto and made a part hereof (the "Premises"), in furtherance of such purposes of Tenant, subject to all of the terms, covenants, conditions and provisions set forth below.

**NOW, THEREFORE**, in consideration of the rents and agreements set forth herein, and intending to be legally bound hereby, Landlord and Tenant agree as follows:

### ARTICLE 1. Demise; Term; Rent.

1.1. Landlord hereby leases to Tenant and Tenant hereby leases from Landlord for the Term (as hereinafter defined), the Premises.

1.2. This Lease shall be for an initial term commencing on the date hereof and expiring three (3) years thereafter (the "Termination Date") (the "Initial Term"). Upon the expiration of the Initial Term, the Lease shall be automatically renewed for successive terms of expiring three (3) years each, unless sooner terminated in accordance with the terms of this Lease (the "Renewal Terms"). The Initial Term and the Renewal Terms shall hereinafter be collectively referred to as the "Term."

1.3. During the Term, Tenant shall have the right, in its sole discretion, to terminate this Lease upon not less than 90 days prior written Notice (as defined below) to the Landlord. Notwithstanding the foregoing, Tenant may terminate this Lease upon not less than 30 days prior written Notice prior the expiration of the Term. Upon the date set forth in such Notice, this Lease shall terminate and the parties shall be relieved of all rights and obligations hereunder except for any rights and obligations that expressly survive termination as set forth herein.

1.4. Monthly rent during Term shall be \$1,000.00 (the "Rent"), which amount includes all applicable state, local, and sales taxes, payable to Landlord commencing on the date

hereof (the "Commencement Date") and thereafter, in advance, on the first day of each month during the Term.

1.5. Upon the expiration of the Term or any earlier expiration or termination of this Lease, Tenant shall quit and surrender to Landlord the Premises in the condition required under this Lease, subject to ordinary wear and tear.

#### **ARTICLE 2. Utilities.**

Any and all utilities necessary for the use of the Premises by Tenant including, but not limited to, electric, water and sanitary sewer facilities, shall be separately arranged for and paid by Tenant. Landlord acknowledges and agrees that connections for utilities may be required on the Premises and shall cooperate with Tenant in obtaining all utilities including, but not limited to entering into the necessary agreements and easements with the providers of such utilities.

#### **ARTICLE 3. Use; Access**

3.1 The Premises may be used for the storage of materials, supplies and equipment of Tenant, including, without limitation beach maintenance equipment, and for other legal purposes. Tenant shall comply with all laws and regulations applicable to Tenant's use and occupancy of the Premises.

3.2 Tenant, its agents, employees, invitees and guests shall have at all times, without restriction, the right to access the Premises over and across portions of the Beach Club Property for purposes of vehicular and pedestrian ingress and egress to and from the Premises. The foregoing right of access shall be deemed an easement, running with the land, appurtenant to the estate of Tenant created hereunder. Notwithstanding the foregoing, Tenant acknowledges that the Beach Club Property is used in common with other occupants and users of the Landlord's property and Tenant agrees not to unreasonably interfere with or disturb such other occupants and users.

#### **ARTICLE 4. Quiet Enjoyment.**

Upon paying Rent and keeping and performing the terms, covenants, conditions and provisions of this Lease, Tenant may lawfully and quietly hold and enjoy the Premises during the Term without hindrance, ejection, molestation, or interruption.

#### **ARTICLE 5. Defaults; Remedies.**

If either party is in default under this Lease for a period of (a) 15 days following receipt of notice from the non-defaulting party with respect to a default which may be cured solely by the payment of money, or (b) giving thirty (30) days following receipt of notice from the non-defaulting party with respect to a default which may not be cured solely by the payment of money, then, in either event, the non-defaulting party may pursue any remedies available to it against the defaulting party under applicable law and in equity, including, but not limited to, the right to terminate this Lease. If the non-monetary default cannot reasonably be cured within a 30-day period, this Lease may not be terminated if the defaulting party commences action to cure the default within such 30-day period and proceeds with due diligence to fully cure the default.

**ARTICLE 6. Indemnification.**

6.1 Subject to the provisions and monetary limitations of Section 768.28, Florida Statutes, Tenant does hereby indemnify and hold harmless Landlord from and against any and all liabilities, damages, claims, costs or expenses whatsoever including reasonable attorneys' fees and costs at both the trial and appellate levels (collectively "Claims") arising from Tenant's exercise of its rights under this Lease, except for any Claims arising due to the grossly negligent or tortuous acts or omissions of Landlord. Subject to the limitations contained herein, Tenant does hereby indemnify Landlord from all third party claims asserted against Landlord based upon acts or omissions of Tenant, its agents, contractors, guests, invitees, successors and assigns, in exercising or discharging Tenant's rights pursuant to this Lease.

6.2 Landlord does hereby indemnify and hold harmless Tenant and its elected officials, employees from and against any and all Claims arising from Landlord's exercise of its rights under this Lease, except for any Claims arising due to the acts or omissions of Tenant. Subject to the limitations contained herein, Landlord does hereby indemnify Tenant from all third party claims asserted against Tenant based upon either the grossly negligent or tortuous acts or omissions of Landlord, its agents, contractors, guests, invitees, successors and assigns, in exercising or discharging Landlord's rights pursuant to this Lease.

**ARTICLE 7. Assignment and Subletting.**

Tenant shall not sublet assign or otherwise transfer this Lease, or any part of Tenant's right, title or interest therein or mortgage, pledge or otherwise encumber this Lease without Landlord's prior written consent, which consent shall be within Landlord's sole discretion. Notwithstanding the foregoing, Landlord hereby consents to the occupancy of the Premises by third parties contracted by the Tenant for purposes of beach maintenance.

**ARTICLE 8. Damage; Restoration.**

If the Premises, including the Improvements or any part thereof shall be damaged or destroyed by fire, flood or other casualty ("Damage") as to render the Premises and/or the Improvements, or any part thereof, untenable by Tenant for a consecutive period of more than fifteen (15) days, Tenant may terminate this Lease by giving thirty (30) days' Notice to Landlord. If Tenant does not terminate this Lease as aforesaid, Landlord shall proceed with diligence to repair the Damage to the Premises.

**ARTICLE 9. Signs.**

Tenant, at its sole cost and expense, may install or affix any and all signs on or about the Premises in accordance with applicable laws provided that any signage shall be subject to Landlord's reasonable approval (keeping in mind that the Premises are part of a building which is used by other tenants for other purposes) and provided further that Tenant shall remove such signage upon expiration or termination of this Lease.

**ARTICLE 10. Notices.**

All notices, requests, demands, elections, consents, approvals and other communications hereunder must be in writing (each such, a "Notice") and addressed as follows (or to any other address which either party may designate by Notice):

If to Tenant: Tenant Manager  
Tenant of Key Biscayne  
85 West McIntyre Street  
Key Biscayne, FL 33149

With a copy to:

Weiss Serota Helfman Pastoriza Cole & Boniske, P.L.  
2525 Ponce de Leon Blvd., Suite 700  
Coral Gables, Florida 33134  
Attn: Stephen J. Helfman, Esq.

If to Landlord:

Any Notice required by this Lease to be given or made within a specified period of time, or on or before a date certain, shall be deemed to have been duly given only if delivered by hand, evidenced by written receipt; sent by certified mail, return receipt requested, postage and fees prepaid; or sent by overnight delivery service, evidenced by written receipt. A Notice sent by certified mail shall be deemed given as of the receipt date indicated on the return receipt. All other Notices shall be deemed given when received.

**ARTICLE 11. Insurance.**

Landlord agrees that Tenant may self-insure against any loss or damage which could be covered by a comprehensive general public liability insurance policy. Landlord and Tenant agree that the insurance policy limits currently held by Tenant under the Preferred Governmental Insurance Trust shall be maintained, at Tenant's expense, during the Term and Tenant shall add Landlord as an additional insured thereunder.

**ARTICLE 12. Miscellaneous.**

12.1 In any proceeding which either party may prosecute to enforce its rights hereunder, the unsuccessful party shall pay all costs incurred by the prevailing party (as such parties are hereafter defined), including reasonable attorneys' fees, through appeal.

12.2 This Lease shall be governed by and construed in accordance with the Laws of the State of Florida applicable to contracts made and to be performed entirely in the State.

12.3 The terms, covenants, conditions, and provisions of this Lease shall bind and inure to the benefit of Landlord and Tenant and their respective legal representatives, successors, and assigns.

12.4 This Lease may be executed in several counterparts, each of which shall constitute an original and all of which shall constitute the same agreement.

12.5 If any term, covenant, condition or provision of this Lease (or the application thereof to any circumstance or Person) shall be invalid or unenforceable to any extent, the remaining terms, covenants, conditions and provisions of this Lease shall not be affected thereby; and each remaining term, covenant, condition and provision of this Lease shall be valid and shall be enforceable to the fullest extent permitted by law unless the enforcement of the remaining terms, covenants, conditions and provisions of this Lease would prevent the accomplishment of the original intent of the agreement between the parties.

12.6 Upon execution of this Lease, Landlord shall provide Tenant with any existing surveys, title insurance policies, environmental reports, engineering reports and any other material documentation, information, correspondence, and materials related to the Premises.

12.7 All rights and remedies of the parties hereunder or at law or in equity are cumulative, and the exercise of any right or remedy shall not be taken to exclude or waive the right to the exercise of any other, subject to the express limitations set forth in this Lease, if any. No waiver by either party of any failure to perform any of the terms, covenants, and conditions hereunder shall operate as a waiver of any other prior or subsequent failure to perform any of the terms, covenants, or conditions herein contained.

12.8 Upon termination or expiration of this Lease, the parties shall remain liable for all obligations and liabilities that have accrued prior to the date of termination or expiration.

12.9 No elected official, officer, administrator, official, agent or employee of Landlord or Tenant shall be charged personally or held contractually liable under any term or provisions of this Lease or of any supplement, modification or amendment to this Lease or because of any breach thereof, or because of its or their execution or attempted execution.

12.10 The relationship of Landlord and Tenant hereunder is the relationship of landlord and tenant. The parties expressly acknowledge that it is not their intent to create any rights or obligations in any third person or entity under this Lease. Nothing contained herein shall be deemed or construed as creating the relationship of principal and agent, partners, joint venturers, or any other similar such relationship between the parties hereto.

12.11 Both parties have substantially contributed to the drafting and negotiation of this Lease and this Lease shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than any other. The parties hereto acknowledge that they have thoroughly read this Lease, including all exhibits and attachments hereto, and have sought

and received whatever competent advice and counsel was necessary for them to form a full and complete understanding of all rights and obligations herein.

12.12 No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Lease and executed by Landlord and Tenant. In the event Tenant changes insurers or obtains services related to this Agreement from any party or vendor other than those currently in place, Tenant shall provide Landlord with sixty (60) days prior written notice, or as much as is possible under the circumstances.

12.13 This document incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Lease that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

12.14 Tenant does not waive any rights of sovereign immunity that it has under applicable law. Notwithstanding anything contained in this Lease to the contrary, in no event shall Tenant be liable for any consequential and/or punitive damages in connection with this Lease.

12.15 All approvals and consents required to be obtained hereunder must be in writing to be effective. Unless otherwise specifically provided to the contrary, any consent or approval required by a party to this Lease shall not be unreasonably withheld, conditioned or delayed.

12.16 Tenant cannot, and hereby specifically does not, waive or relinquish any of its regulatory approval or enforcement rights and obligations as it may relate to regulations of general applicability which may govern the Premises, any improvements thereon, or any operations at the Premises. Nothing in this Lease shall be deemed to create an affirmative duty of Tenant to abrogate its sovereign right to exercise its police powers and governmental powers by approving or disapproving or taking any other action in accordance with its zoning and land use codes, administrative codes, ordinances, rules and regulations, federal laws and regulations, state laws and regulations, and grant agreements. In addition, nothing herein shall be considered zoning by contract.

12.17 WAIVER OF TRIAL BY JURY. LANDLORD AND TENANT EACH WAIVE ANY AND ALL RIGHTS THAT IT MAY NOW OR HEREAFTER HAVE UNDER THE LAWS OF THE UNITED STATES OF AMERICA OR ANY STATE, TO A TRIAL BY JURY OF ANY AND ALL ISSUES ARISING DIRECTLY OR INDIRECTLY IN ANY ACTION OR PROCEEDING RELATING TO THIS LEASE OR ANY TRANSACTIONS CONTEMPLATED THEREBY OR RELATED THERETO. IT IS INTENDED THAT THIS WAIVER SHALL APPLY TO ANY AND ALL DEFENSES, RIGHTS, AND/OR COUNTERCLAIMS IN ANY SUCH ACTION OR PROCEEDING.



**LANDLORD:**

KEY BISCAYNE BEACH CLUB,  
a Florida non profit corporation

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

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

Title: \_\_\_\_\_

(CORPORATE SEAL)

STATE OF FLORIDA )

SS: )

COUNTY OF MIAMI-DADE )

**THIS IS TO CERTIFY**, that on this \_\_\_\_ day of \_\_\_\_\_, 2014, before me, an officer duly authorized to take acknowledgments in the State and County aforesaid, personally appeared \_\_\_\_\_, as \_\_\_\_\_ of **KEY BISCAYNE BEACH CLUB INC., A FLORIDA NON PROFIT CORPORATION** who (check one) [ ] is personally known to me or [ ] produced a \_\_\_\_\_ drivers license as identification.

NOTARY PUBLIC

Print Name: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

Exhibit A-1

Beach Club Property





Exhibit B