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**RESOLUTION NO. 07-111**

A RESOLUTION OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING AUTHORIZING THE VILLAGE MANAGER TO EXECUTE A TEMPORARY LICENSE AND USE AGREEMENT WITH 17777 OLD CUTLER ROAD, LLC, A/KA/ PALMETTO BAY VILLAGE CENTER FOR USE OF A SPECIFIC SITE WITHIN THE PALMETTO BAY VILLAGE CENTER PROPERTY AS A STAGING AREA FOR THE VILLAGE'S CONSTRUCTION RELATED NEEDS IN ORDER TO INITIATE CONSTRUCTION OF THE VILLAGE LIBRARY TO BE LOCATED AT 17641 OLD CUTLER ROAD; AND PROVIDING AN EFFECTIVE DATE.

**WHEREAS**, the Village of Palmetto Bay has developed plans for the construction of a library at 17641 Old Cutler Road; and,

**WHEREAS**, the Village desires to start construction of the site and seeks the opportunity to enter into a temporary license and use agreement with 17777 Old Cutler Road, LLC, also known as the Palmetto Bay Village Center, to use a specific site, as identified in the attached site plan and survey, for a construction staging area; and,

**WHEREAS**, 17777 Old Cutler Road, LLC, desires to provide a temporary license and use agreement to the Village for such purposes; and,

**WHEREAS**, the mayor and village council desire to approve the attached temporary license and use agreement.

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

**Section 1:** The above whereas clauses are incorporated by reference.

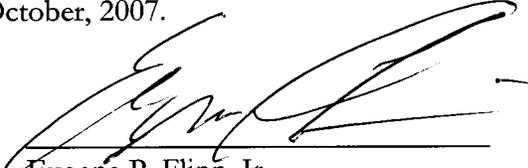
**Section 2.** Village Council approves in substantial form the attached temporary license and use agreement with 17777 Old Cutler Road, LLC, also known as the Palmetto Bay Village Center, which use agreement, with attached survey is incorporated by reference as exhibit 1 to this resolution.

**Section 3:** This resolution shall take effect immediately upon adoption.

1 PASSED and ADOPTED this 17<sup>th</sup> day of October, 2007.

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4 Attest:

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6 Meighan Rader  
7 Village Clerk

  
Eugene P. Flinn, Jr.  
Mayor

8 APPROVED AS TO FORM:  
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12  
13 Eve A. Boutsis,  
14 Nagin Gallop & Figueredo, P.A.,  
15 Office of the Village Attorney  
16  
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19 FINAL VOTE AT ADOPTION:  
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21 Council Member Ed Feller YES

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23 Council Member Paul Neidhart YES

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25 Council Member Shelley Stanczyk YES

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27 Vice-Mayor Linda Robinson YES

28  
29 Mayor Eugene P. Flinn, Jr. YES  
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## TEMPORARY LICENSE AND USE AGREEMENT

This Temporary License and Use agreement (agreement) entered into, by and between 17777 Old Cutler Road, LLC, a/k/a the Palmetto Bay Village Center ("PBVC"), and the Village of Palmetto Bay ("Village"), a Florida municipal corporation under the laws of the State of Florida, shall be effective as of the 16<sup>th</sup> day of October, 2007.

**NOW THEREFORE**, in consideration of the sum of \$10.00, the mutual promises and covenants contained in this agreement, and for other good and valuable consideration, the receipt and legal sufficiency of which are acknowledged by both parties, the parties agree to the following:

1. Term. This temporary license and use agreement shall commence on October 16<sup>th</sup>, 2007 (commencement date) for a one year term [initial term], for the use of the site by the Village. The agreement may be extended for an additional one year term [renewal term]. During the initial term, PBVC shall not be entitled to terminate this agreement during the first six (6) months unless termination is necessary due to cause (material breach) of this temporary license and use agreement.

2. License and Use of Premises. PBVC hereby grants unto Village, and Village hereby accepts, a license to use a portion of land located at 17777-18001 Old Cutler Road, and as more particularly described on exhibit 1, hereto for vehicular parking and trailer parking as a staging site for construction at the Village's Library parcel, bearing an address of 17641 Old Cutler Road, which is located adjacent to the PBVC site. The Village shall be entitled to 24 hour access to the premises identified at exhibit 1. The Village shall be entitled to place a holding tank for waste and/or port-o-johns on the site, for use by the Village's Contractor during construction of the Village's library.

3. Warranty to Follow Law. Village covenants, warrants, and agrees with PBVC that the premises shall be used by Village only for the permitted use, and that Village and all persons using the premises pursuant to this agreement will comply with all laws, rules, and regulations of the federal, state, city and county governments and other authorities having jurisdiction (collectively, "AHJ"), and of any lawful order of any officer thereof (collectively, legal requirements), that relate to the permitted use. Village and all persons using the premises pursuant to this agreement shall not store fuel (other than fuel in parked vehicles), or hazardous materials, solid waste or other toxic materials at the premises. Used in this agreement, the term "hazardous material" means any hazardous or toxic substance, material waste, which is or becomes regulated by any local governmental authority in the state of Florida or by any governmental authority of the United States. Village agrees to indemnify and hold PBVC harmless from any and all claims, demands, liabilities, losses, damages or expenses arising as a result of Village's or any such persons' breach or failure to perform any of the terms that are contained in this paragraph. Village further covenants and agrees with PBVC that it will occupy and maintain the premises in a good condition and that it will not

  
PBVC  
Village

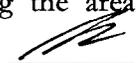
commit, or suffer to be committed, any waste of or on the premises. Village shall not use the premises for any unlawful purpose and shall comply with all laws and permitting requirements applicable now, or in the future, to the permitted use. Village shall not permit any offensive, or dangerous activity, nor any nuisance or other conduct at the premises in violation of the public policy of the city, county or state. The indemnification provisions of this section shall survive the termination of this use agreement.

4. Maintenance. Village has agreed to maintain the premises in compliance with the covenants, restrictions and maintenance obligations of the PBVC relating to maintaining the native vegetation on the portion of the land subject to the use agreement such that the native vegetation shall obscure any visibility of buildings from Old Cutler Road. The Village shall ensure that any buffering required under the underlying covenant recorded against the property known as 17777 Old Cutler Road, LLC, shall be complied with as it relates to the use area described in exhibit 1, and this agreement shall specifically incorporate the Declaration of Restrictive Covenants and the First Amendment to the Declaration of Restrictive Covenants recorded May 1, 1989 at Official Records Book 14089 at Pages 2349-52 and Official Records Book 12428 at Pages 923-1010, of the Public Records of Miami-Dade County, Florida. The site plan attached thereto documents the required landscape buffering to ensure compliance with the underlying restrictive covenant. The Village's buffering efforts shall in no way limit or negate the affirmative covenant requirements for maintaining the remainder of the visual landscape buffer for 17777 Old Cutler Road, LLC, and the Village shall not be responsible for any buffering requirements beyond that identified in the attached site plan.

Additionally, the Village shall be responsible for maintaining fences separating the premises from the remainder of the land owned by PBVC in good working condition. The Village shall ensure that for the length of this agreement that the sidewalk and curb are not materially deteriorated due to Village's use of the site (heavy equipment entering and exiting the premises). Additionally, Village will screen the fence and gate to the premises in order to screen the activities on site. The PBVC may periodically inspect the premises to advise of any maintenance issues that require attention during the term of this agreement, but shall have no obligation to do so.

5. Right to Entry. Village warrants, covenants and agrees with PBVC that PBVC shall have the right but not the obligation to enter upon the premises at such times and at such places during reasonable business hours, for the purpose of inspecting the premises or for any purpose whatsoever.

6. Non-Assignment. Village hereby further warrants, covenants and agrees that it will not assign this agreement, or any interest therein, either voluntarily or involuntarily to any entity. It is understood, however, that the Village's contractors and laborers shall be utilizing the area

  
PBVC  
  
Village

described in exhibit 1, as the staging area for the Village's construction of the proposed library located at 17641 Old Cutler Road.

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

8. Insurance and Indemnification. The Village hereby indemnifies and agrees to defend, and hold harmless the PBVC, its partners, officers, agents and employees from and against any and all claims, suits, actions, and causes of action, as well as the costs of removal, remediation and monitoring of a condition of construction, and/or environmental contamination arising during the term of this easement and resulting in personal injury, loss of life, or damage to property sustained by any person or entity, caused by or arising out of Village's (or its contractors', subcontractors' employees' or agents') construction, operation or maintenance of the easement area, including all costs, attorneys' fees, expenses, including any appeal, and including the investigations and defense of any action or proceeding and any order, judgment or decree which may be entered in any action or proceeding, except to the extent caused by or arising out of the negligence, strict liability, intentional torts or criminal acts of the PBVC, its partners, officers, agents, employees or contractors. In the event that a judgment covered by the foregoing indemnity shall be rendered in any suit or action against the PBVC, the Village shall either fully satisfy or bond the judgment within sixty (60) days after the Village shall have received written notice from the PBVC of the judgment following the final determination of the suit or action, if determined adversely to the PBVC. If the Village shall fail to satisfy or bond the judgment within the designated time period set forth in this agreement, then the failure shall be a violation of this easement agreement. Nothing in this agreement shall be construed to affect in any way the Village's rights, privileges, and immunities under the doctrine of "sovereign immunity" as set forth in section 768.28, Florida Statutes. The provisions of this section shall survive the termination of this use agreement.

Village shall maintain during the term of this agreement commercial general liability insurance with personal injury and property damage liability with limits of \$1,000,000.00 for combined single limit per occurrence for bodily injury and property damage with a general aggregate limit of \$2,000,000.00. The policy shall name PBVC as additional insured.

Village shall furnish certificates of insurance to the PBVC prior to the commencement of the permitted use. The certificates shall clearly indicate that Village has obtained insurance in the type, amount, and classification as required for strict compliance with this paragraph and that no reduction in

  
PBVC  
Village

limits by endorsement during the policy term, or cancellation of this insurance shall be effective without 30 days prior written notice to the PBVC.

Compliance with the foregoing requirements shall not relieve Village of its liability and obligations under this agreement.

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

10. Termination for Convenience. Except as specifically provided for under paragraph 1 above, either party may terminate this agreement without cause by giving written notice to the other no less than 180 days prior to the effective date of such termination. Upon such termination each of the parties hereto shall be relieved of all obligations hereunder arising after the effective date of such termination.

11. Termination for Cause. Notwithstanding anything to the contrary, in the event that any AHJ except the Village no longer allows the permitted use at the premises, and/or either party is in material violation of the terms herein, the non-violating party shall have the right to terminate this agreement upon delivering written notice 30 days prior to the effective date of such termination, whereupon the parties hereto shall have no further obligations to each other.

12. Condition of Premises Upon Termination. Upon any termination of this agreement, Village shall deliver the premises to PBVC in as good condition as exists on the date of this agreement, with only ordinary wear and decay and damage by the elements excepted.

13. Waiver. It is understood and agreed that any waiver shall not be, or construed to be, a waiver of any subsequent breach of the same or any other condition, term, or agreement herein.



PBVC  
Village

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

PBVC: 17777 Old Cutler Road, LLC,  
a/k/a The Palmetto Bay Village Center  
18001 Old Cutler Road, Suite 600  
Palmetto Bay, Florida 33157  
Attention: Scott Silver, Manager  
Telephone: (305) 377-8802

With a copy to: 17777 Old Cutler Road, LLC  
c/o Goddard Investment Group, LLC  
3390 Peachtree Road, Suite 1200  
Atlanta, GA 30326  
Attention: Steve DeVinney, Asset Manager  
Telephone: (404) 442-5510

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

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

15. Liens. Village shall not cause any mechanics' liens or any other encumbrances to affect the premises. At PBVC's option, relevant provisions of Chapter 713, Florida Statutes, shall be complied with by Village.

16. Waiver of Jury Trial. In the event of any litigation concerning this agreement, Village and PBVC hereby agree to waive any trial by jury.



PBVC  
Village

17. Nuisance/Trespassing. Village shall not trespass on property adjacent to the premises.

18. Independent Contractor. Nothing contained in this agreement shall be construed to create the relationship, of Principal and Agent, Partnership, Joint Venture or any other relationship between the parties other than the relationship of PBVC as licensor and Village as licensee.

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

20. Time of Essence. It is understood and agreed that "time is of the essence" and this applies to all terms and conditions contained in the agreement.

21. Access to Premises. PBVC hereby acknowledges that it has the right and the authority to give Village access to the premises and to permit Village to use the premises as set forth herein. Village shall properly maintain the gated entranceway, screening of the site in the aesthetically pleasing manner, and shall be responsible for all items (vehicles or materials) on the premises at all times during this agreement. The time of works are Monday through Friday, 7:30 a.m. to 6:30 p.m.; and Saturday 10:00 am to 4:00 p.m. No staging uses are allowed on Sundays. When the premises are not in use for construction activities, Village shall secure the gates by locking same. Notwithstanding the designation of the designated area, the roadways contained therein shall be kept clear of all materials and PBVC reserves the right of access across same.

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

23. Contingency Fee. Village warrants that neither it, nor any principal, employee, agent, representative or family member has promised to pay, and Village has not, and will not, pay a fee the amount of which is contingent upon the PBVC awarding this agreement to Village.

24. Code of Ethics. Village warrants that to its knowledge neither it, nor any principal, employee, agent, representative or family member has procured, or attempted to procure, this agreement in violation of any of the provisions of Miami-Dade County or the Village's conflict of

  
PBVC  
Village

interest and code of ethics ordinances. A violation of this section will result in the termination of the agreement.

25. Warranty of Authority. Each of the signatories to this agreement warrant that he or she is duly authorized, by the appropriate action of his or her respective Village Council, board of directors or other authority, to execute this agreement and to bind the parties hereto to the promises, terms, conditions and warranties contained in this agreement.

26. Entire agreement. The agreement, when signed by all of the parties, constitutes the full and complete understanding and agreement of all the parties hereto and may not be in any manner interpreted or fulfilled in contradiction of its express terms. This agreement and the incorporated attachments constitute the entire understanding between the parties and integrates by its terms all previous contracts or understandings, oral or written, between the parties. In the event of any conflict, the terms of this agreement will govern over the provisions of any incorporated documents.

27. Recording. Notwithstanding the provisions of Section 22 above, neither this agreement nor any memorandum thereof shall be recorded in the Miami-Dade County Public Records.

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

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

IN WITNESS WHEREOF, the parties have executed this instrument for the purpose expressed in this agreement to be effective on the 15 day of October, 2007.

[SIGNATURE PAGES TO FOLLOW]

  
PBVG  
RW  
Village

VILLAGE OF PALMETTO BAY

By: *Ron E. Williams*  
Ron E. Williams,  
Village Manager

ATTEST:

*Meighan J. Rader*  
Meighan J. Rader,  
Village Clerk

SEAL

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

Sworn to and subscribed before me this 18<sup>th</sup> day of October, 2007, by Ron E. Williams, Village Manager, Village of Palmetto Bay, who is  personally known to me or \_\_\_\_\_ produced \_\_\_\_\_ as identification.

*Olga Cadaval*  
/ Notary Public – State of Florida  
Printed Name: Olga Cadaval  
Commission No.:

My Commission Expires:



**OLGA CADAVAL**  
MY COMMISSION # DD 538367  
EXPIRES: May 19, 2010  
Bonded Thru Budget Notary Services



**OLGA CADAVAL**  
MY COMMISSION # DD 538367  
EXPIRES: May 19, 2010  
Bonded Thru Budget Notary Services

*BBVC*  
Village



Composite Exhibit 1

This agreement shall apply to that certain property described as:

A portion of tract "A" of "Burger King World Headquarters" according to the plat thereof as recorded in plat book 127 at page 86 of the public records of Miami-Dade County, Florida, more particularly described as follows:

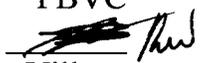
All as designated in the attached survey (*see clouded area*).

and that said lands are desired by the aforesaid Village of Palmetto Bay for the purpose of a use agreement for parking and as a staging area for construction associated with the development of a library and park on the Village's adjoining parcel bearing the following address: 17641 Old Cutler Road, Palmetto Bay, Florida, and legal description:

Beginning at a point on the East side of the County Road 1872 feet due South of the South Boundary of the Town of Cutler thence Southerly along said County Road to a point 338 feet due South of said South Boundary of the Town of Cutler, thence East 1000 feet to Biscayne Bay, thence Northeasterly along Biscayne Bay and parallel to said County Road to a point 1872 feet South of the South boundary line of the Town of Cutler, thence West 1000 feet to the Point of Beginning together with Riparian Rights lying between above described land and the channel of Biscayne Bay, said above described land being in the NE 1/4, SW 1/4, of Section 35, Township 55 South, Range 40 East, lying and being in Miami-Dade County, Florida.

LESS THE FOLLOWING DESCRIBED PARCEL OF LAND  
All that certain tract or parcel of land lying and being situated in Miami-Dade County, State of Florida, and being described as follows:  
T. 55 S, R 40 E, S 35

Commencing at the intersection of the Easterly Right of Way of Old Cutler Road and a line 187.5 feet South of the South boundary of the Town of Cutler. Then go N 87E39'08" E for 750 feet to the Point of Beginning. For the Northern boundary of the Tract continued 87E39'08" E from the Point of Beginning for 169 feet, more or less, to the mean high water line of Biscayne Bay and a point hereafter

  
PBVC  
  
Village

designated as Point A, for the Western, Southern and Eastern boundaries, go S 07E24'35"W from the Point of Beginning for 152.71 feet to the South line of Tract 2, of DAUGHERTY=S SUBDIVISION, as recorded in Plat Book 1 at Page 1 of the Public Records of Miami-Dade County, Florida, then go N87E39'08"E for 152 feet, more or less, to the mean high water line of Biscayne Bay then go Northerly along said mean high line to Point AA.®

The use agreement shall also provide the Village access to the Palmetto Bay Village Center (PBVC) road, within the designated area.

(Survey of use area to be attached)



