

RESOLUTION NO. 09-760

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF MIAMI LAKES, FLORIDA APPROVING THE FORM OF AGREEMENT FOR ACCESS FOR INSPECTIONS, TRAFFIC CONTROL AND ENFORCEMENT, EMERGENCY RESPONSE AND DISASTER DEBRIS REMOVAL, AND INDEMNIFICATION OF THE TOWN AND THE FEDERAL EMERGENCY MANAGEMENT AGENCY BETWEEN THE TOWN OF MIAMI LAKES AND PRIVATE GATED COMMUNITIES WITHIN THE TOWN; AUTHORIZING THE TOWN OFFICIALS TO IMPLEMENT THE TERMS AND CONDITIONS OF THE AGREEMENT; AUTHORIZING THE TOWN MANAGER TO EXPEND BUDGETED FUNDS; AUTHORIZING THE TOWN MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Miami Lakes (the "Town") is responsible for Code Enforcement throughout the Town to protect the public health, safety and welfare of the residents of the Town; and

WHEREAS, the Town is responsible for the implementation and enforcement of the Florida Building Code, providing minimum building requirements for all new and existing development, within the Town; and

WHEREAS, the Town has full power and jurisdiction to enter upon and patrol private property to enforce all of the duly enacted laws of the State, County and Town, excluding those of traffic control and enforcement; and

WHEREAS, there exists within the Town several private, gated residential communities (the "Communities"), who, through their respective Homeowner's Associations, are responsible, under their Declaration of Covenants, for the common area(s), and who own, control, or

otherwise have authority to contract for services and access on the private roads and limited access roads within the Property (the "Private Roads"); and

WHEREAS, the Town has been asked to exercise jurisdiction for traffic control and enforcement purposes including, but not limited to, the enforcement of traffic regulations promulgated by the Town over the Private Roads owned or controlled by several of these Communities, pursuant to Florida Statute 316.006(2)(b); and

WHEREAS, these Communities are subject to normal public, non-emergency services, including solid waste and postal services; and

WHEREAS, the Town hereby declares it to be a public purpose to eliminate or lessen immediate threats to life, health and safety caused by debris resulting from an event were a State of Emergency and/or State of Local Emergency is declared and it is a valid public purpose to eliminate immediate threats of significant damage to improved property; and

WHEREAS, during times of a declared State of Emergency and/or State of Local Emergency, the Communities shall provide unlimited access to the Property to facilitate debris removal services by the Town and/or FEMA; and

WHEREAS, as an inducement to the Town to provide such debris removal services and to FEMA to reimburse the Town for the costs of such services, the Communities are willing to grant the necessary access and to indemnify and hold harmless the Town and FEMA as set forth in the attached Agreement For Access For Inspections, Traffic Control and Enforcement, Emergency Response and Disaster Debris Removal, and Indemnification of the Town and the Federal Emergency Management Agency, (the "Agreement"); and

WHEREAS, the Town Council finds that approval of the form of this Agreement will be in the best interest of the Town.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF MIAMI LAKES, FLORIDA, AS FOLLOWS:

Section 1. Recitals. The above recitals are true and correct and incorporated into this Resolution by this reference.

Section 2. Approval of Form of Agreement. The Agreement For Access For Inspections, Traffic Control and Enforcement, Emergency Response and Disaster Debris Removal, and Indemnification of the Town and the Federal Emergency Management Agency, (the "Agreement"), a copy of which is attached as Exhibit "A", together with such non-material changes as may be acceptable to the Town Manager and approved as to form and legality by the Town Attorney, is approved in form, for execution and implementation with all appropriate Communities.

Section 3. Authorization of Town Officials. The Town Manager and Town Attorney are authorized to take all steps necessary to implement the terms and conditions of the Agreement.

Section 4. Authorization of Fund Expenditure. Notwithstanding the limitations imposed upon the Town Manager pursuant to the Town's Purchasing Procedures Ordinance, the Town Manager is authorized to expend budgeted funds to implement the terms and conditions of the Agreement.

Section 5. Execution of the Agreement. The Town Manager is authorized to execute the Agreement on behalf of the Town, to execute any required agreements and/or documents to implement the terms and conditions of the Agreement and to execute any extensions and/or amendments to the Agreement, subject to the approval as to form and legality by the Town Attorney.

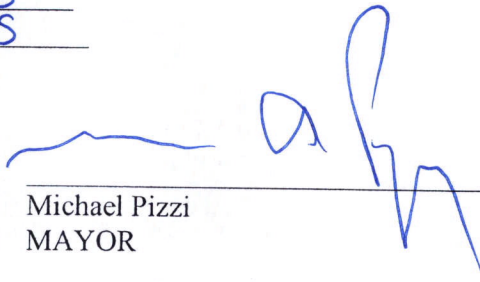
Section 7. **Effective Date.** This Resolution shall take effect immediately upon adoption.

PASSED AND ADOPTED this 8th day of September, 2009.

Motion to adopt by Councilmember Meador, second by Mayor Pizzi.

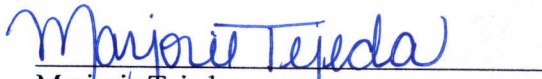
FINAL VOTE AT ADOPTION

Mayor Michael Pizzi	<u>yes</u>
Vice Mayor Richard Pulido	<u>yes</u>
Councilmember Mary Collins	<u>No</u>
Councilmember George Lopez	<u>yes</u>
Councilmember Robert Meador II	<u>yes</u>
Councilmember Nick Perdomo	<u>yes</u>
Councilmember Nancy Simon	<u>yes</u>



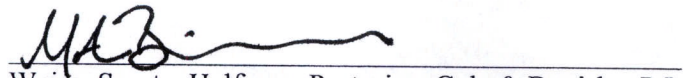
Michael Pizzi
MAYOR

ATTEST:



Marjorie Tejada
ACTING TOWN CLERK

Approved as to form and legality for the use
and benefit of the Town of Miami Lakes only:



Weiss, Serota, Helfman, Pastoriza, Cole & Boniske, P.L.
TOWN ATTORNEY

Exhibit "A"

**AGREEMENT
BETWEEN THE
TOWN OF MIAMI LAKES
AND**

FOR

**ACCESS FOR INSPECTIONS, TRAFFIC CONTROL AND ENFORCEMENT,
EMERGENCY RESPONSE AND DISASTER DEBRIS REMOVAL, AND
INDEMNIFICATION OF THE TOWN AND THE FEDERAL EMERGENCY
MANAGEMENT AGENCY**

THIS AGREEMENT is made and entered into in Miami-Dade County, Florida, this _____ day of _____, 2009, by and between the Town of Miami Lakes, a municipal corporation organized and existing under the laws of the State of Florida, (hereinafter referred to as the "Town"), and _____, a not for profit Florida corporation, located in the Town of Miami Lakes (hereinafter referred to as "Association"). A legal description of the Association property is attached hereto as Exhibit "A."

WITNESSETH:

WHEREAS, Association is a Florida not-for-profit corporation which is responsible, under its Declaration of Covenants, for the common area(s) of _____ (hereinafter "Property"), which is located within the municipal boundaries of the Town; and

WHEREAS, the Town is responsible for Code Enforcement throughout the Town to protect the public health, safety and welfare of the residents of the Town; and

WHEREAS, the Town is responsible for the implementation and enforcement of the Florida Building Code, providing minimum building requirements for all new and existing development, within the Town; and

WHEREAS, the Town and the Association recognize and acknowledge that the Town has full power and jurisdiction to enter upon and patrol private property to enforce all of the duly enacted laws of the State, County and Town, excluding those of traffic control and enforcement; and

WHEREAS, the Association owns, controls, or otherwise has authority to contract for services provided herein on the private roads and limited access roads within the Property (the "Private Roads") described in Exhibit "B" which is attached and incorporated into this Agreement; and

WHEREAS, the Association wishes to have the Town exercise jurisdiction for traffic control and enforcement purposes including, but not limited to, the enforcement of traffic regulations promulgated by the Town over the Private Roads owned or controlled by the Association, pursuant to Florida Statute 316.006(2)(b); and

WHEREAS, the Property is subject to normal public, non-emergency services, including solid waste and postal services; and

WHEREAS, the Town hereby declares it is legally responsible to eliminate or lessen immediate threats to life, health and safety caused by debris resulting from an event were a State of Emergency and/or State of Local Emergency is declared and is legally required to eliminate immediate threats of significant damage to improved property; and

WHEREAS, during times of a declared State of Emergency and/or State of Local Emergency, Association shall provide unlimited access to the Property to facilitate debris removal services by the Town and/or FEMA; and

WHEREAS, as an inducement to the Town to provide such debris removal services and to FEMA to reimburse the Town for the costs of such services, Association is willing to grant the necessary access and to indemnify and hold harmless the Town and FEMA as set forth herein.

NOW, THEREFORE, for and in consideration of the mutual covenants and undertakings of the parties hereto, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Town and Association covenant and agree, each with the other as follows:

SECTION 1. RECITALS.

The above stated recitals are true and correct and are incorporated herein by this reference.

SECTION 2. PURPOSE.

It is the purpose and intent of this Agreement:

- a. For the Association to provide basic access over the Private Roads to the Town's code enforcement and building official personnel for the purposes of building and permit inspections and code enforcement inspections for areas visible from the Property.
- b. For the Town to provide traffic control and enforcement over the Private Roads owned or controlled by the Association.
- c. For the Town to provide emergency debris removal following a declaration of emergency when legally required to eliminate immediate threats of significant damage to improved property.

SECTION 3. INSPECTIONS.

- a. The Association hereby agrees to provide access to all Private Roads and on the Property for purposes of Code Enforcement and Building Inspections by Town staff and any persons and entities contracted by the Town to implement such inspections.
- b. Failure of the Association to permit entry or access shall result in a re-inspection fee charged to Association and any private property owner requesting an inspection.

SECTION 4. TRAFFIC CONTROL JURISDICTION.

- a. The Association hereby represents that the Association owns or controls the Private Roads as described in Exhibit "B", which is attached and incorporated into this Agreement.
- b. The Association hereby recognizes and consents to the jurisdiction of the Town over all Private Roads within the Property for traffic control and enforcement purposes.
- c. The Association agrees to pay all costs necessary for traffic control devices as prescribed by the appropriate local governmental authority, as necessary for traffic control and enforcement purposes.
- d. The Association shall be solely responsible for the maintenance and repair of all Private Roads, and any traffic control devices thereon, within the Property.
- e. The Town agrees to exercise traffic control jurisdiction over the Private Roads as follows:
 - i. Town shall provide for Police Officers of its Police Department to patrol randomly, by motor vehicle, the Private Roads, subject to availability of police resources.

- ii. In exercising such traffic control jurisdiction, the Town shall enforce the traffic laws generally applicable to streets and highways under the Town's original jurisdiction which are similar in nature to the Private Roads.
 - iii. The Town's exercise of traffic control jurisdiction pursuant to this Agreement shall be in addition to the jurisdictional authority presently exercised by the Town over the Private Roads under law, and nothing herein shall be construed to limit or remove any such jurisdictional authority, the Town agreeing to continue to provide such other police services as are otherwise provided under law.
 - iv. In addition to exercising traffic control jurisdiction over the Private Roads, the Town shall be entitled to exercise traffic control jurisdiction, even when not requested by the Association.
- f. In the event a dispute between the Town and the Association should arise as to the extent of the duties and functions rendered hereunder, the final determination shall be made by the Town and be binding upon the Association.

SECTION 5. EMERGENCY RESPONSE AND DISASTER DEBRIS REMOVAL.

The Town's responsibilities for emergency response and disaster debris removal shall be limited to those permitted and eligible for reimbursement pursuant to 44 CFR 206.224(a) as amended from time to time.

SECTION 6. COMPENSATION.

The Town shall be entitled to retain all revenues from traffic citations issued by the Town for violations of traffic laws along the Private Roads, in accordance with law. This shall not preclude the assessment of impact fees or other fees provided by law.

SECTION 7. LIABILITY NOT INCREASED.

Neither the existence of this Agreement nor anything contained herein shall give rise to any greater liability on the part of the Town than the Town would ordinarily be subjected to when providing its normal police services as routinely provided throughout the Town.

SECTION 8. INDEMNIFICATION AND HOLD HARMLESS.

Association agrees to hold harmless, indemnify and defend the Town and FEMA and their respective employees, agents, servants and representatives, including any agency that the Town or FEMA has contracted with to provide the services contemplated under this Agreement, including, but not limited to, code enforcement,

building code inspection and enforcement, traffic control and enforcement, and debris removal for the Town, from any and all suits, claims or judgments of any kind arising out of the Town and FEMA exercising jurisdiction for traffic control and enforcement, code enforcement, building code inspection and enforcement or debris removal purposes on the Property or over any Private Roads, as provided in this Agreement, or arising out of the acts, omissions or negligence of the Association, its employees, agents, servants or representatives. This indemnification shall survive termination or expiration of this Agreement.

SECTION 9. INSURANCE.

In support, but not in limitation of the above indemnification provision, the Association agrees to name the Town, and any agency or organization that has contracted with the Town to provide police services for the Town, as an additional insured under its general liability policy for all actions arising out of this Agreement. The Association's policy shall provide for 30 days advance written notice to the Town of any change to or termination of the policy. A copy of that policy is attached as Exhibit "C" and incorporated herein. If the Association changes or transfers its policy, a copy of the changed or transferred policy shall be supplied to the Town.

SECTION 10. SUCCESSOR OR ASSIGNS.

Association's obligations hereunder may not be assigned without written consent of the Town, which consent shall not be unreasonably withheld. The dissolution of the Association shall not affect this Agreement or any of Association's obligations hereunder.

SECTION 11. DURATION OF AGREEMENT/TERMINATION

- a. The term of this Agreement shall be five (5) years commencing on the date hereof and ending five (5) years following the date hereof, and shall thereafter automatically continue for successive five (5) year terms, unless terminated by either party, with or without cause, upon at least thirty (30) days written notice to the other party.
- b. Either party may immediately terminate this Agreement, in whole or in part, in the event:
 - i. the other party substantially breaches any duty, obligation or service required pursuant to this Agreement; or
 - ii. the duties, obligations or services required herein become impossible, illegal, or not feasible.

SECTION 12. MISCELLANEOUS PROVISIONS.

- a. This Agreement incorporates and includes all prior negotiations, correspondence, agreements or 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 Agreement 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. It is further agreed that no change, amendment, alteration or modification in the terms and conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith by all parties to this Agreement.
- b. In the event a court of competent jurisdiction determines any sentence, provision, paragraph or section of this Agreement to be null and void, the remaining parts of this Agreement shall continue in full force and effect as though such sentence, provision, paragraph or section had been omitted from this Agreement.
- c. No delay or failure on the part of any party to exercise any right or remedy accruing to such party shall affect any such right or remedy or be held to be an abandonment thereof or preclude such party from the exercise thereof at any time during the continuation of any event of default or violation. No waiver of a single event of default or violation shall be deemed to be a waiver of any subsequent event of default or violation.
- d. The parties hereby knowingly, voluntarily and intentionally waive the right they may have to a trial by jury in respect of any litigation based upon this agreement or arising out of, under or in connection with any other agreement contemplated to be executed in conjunction herewith, or any course of conduct, course of dealing, statements (whether verbal or written) or actions of any party. This provision is a material inducement for the parties entering into this agreement.
- e. This Agreement shall be governed, construed and controlled according to the laws of the State of Florida. Any claim, objection or dispute arising out of the terms of this Agreement shall be litigated in the Eleventh Judicial Circuit in and for Miami-Dade County, Florida.
- f. In the event of litigation concerning this Agreement, each party shall be responsible for their own costs and expenses, including attorneys' fees.

- g. The parties shall comply with all federal, state, and local laws, codes, ordinances, rules, and regulations in performing their duties, responsibilities, and obligations pursuant to this Agreement.
- h. Whenever a party desires to give notice to the other parties, such notice must be in writing and sent by United States mail, return receipt requested, courier, evidenced by a delivery receipt or by an overnight express delivery service addressed to the parties for whom it is intended at the place last specified; and the place for giving of notice shall remain such until it shall have been changed by written notice in compliance with the provisions of this paragraph. For the present, the parties designate the following as the respective places for giving of notice. Notice shall be effective upon delivery.

FOR THE TOWN:

Frank Bocanegra
Town Manager
Town of Miami Lakes
15700 NW 67th Avenue
Miami Lakes, Florida 33014

With a copy to:
Weiss Serota Helfman
Pastoriza Cole & Boniske, P.L.
Town Attorney
Town of Miami Lakes
15700 NW 67th Avenue
Miami Lakes, Florida 33014

FOR ASSOCIATION:

Attn: _____

With a copy to:

Attn: _____

(THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK)

**AGREEMENT BETWEEN THE TOWN OF MIAMI LAKES AND
FOR ACCESS FOR INSPECTIONS, TRAFFIC
CONTROL AND ENFORCEMENT, EMERGENCY RESPONSE AND DISASTER
DEBRIS REMOVAL, AND INDEMNIFICATION OF THE TOWN AND THE FEDERAL
EMERGENCY MANAGEMENT AGENCY.**

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the respective dates under each signature: Town of Miami Lakes through its Town Council, signing by and through its Manager, authorized to execute same by Council action on the _____ day of _____, 2009; and _____ authorized to execute same, through its signatory.

IN WITNESS WHEREOF the parties hereto have executed this Agreement on the day and date first above written.

Attest: TOWN OF MIAMI LAKES

By: _____ By: _____
Town Manager

By: _____
Weiss, Serota, Helfman, Pastoriza, Cole & Boniske, P.L.
Town Attorney

WITNESSES (for Association): _____ **ASSOCIATION**

_____ By: _____

_____ Name: _____

Print Name Title: _____

_____ day of _____, 2009

Print Name

EXHIBIT A
Legal Description of Association Property

EXHIBIT B
Description of Private Roads

EXHIBIT C
Insurance Policy