



# Council Communication

**To:** Mayor and Village Council

**From:** Maria T. Bassett, Acting Village Manager/Finance Director  
Maria Bagiotti, Founders Park Director

**Date:** April 29, 2021

**SUBJECT: FOR DISCUSSION: VILLAGE AGREEMENT WITH ISLAMORADA COMMUNITY ENTERTAINMENT, INC.**

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## **Background:**

At its meeting on June 23, 2005, the Village Council approved an Agreement with Islamorada Community Entertainment, Inc. ("ICE"), a non-profit corporation. Pages 3 through 5 of the minutes of the June 23, 2005, meeting are attached as Attachment 1, and the Agreement is attached as Attachment 2. Through the Agreement, ICE was obligated to complete construction of the amphitheater at Founders Park. Construction had stalled in 2003 or 2004 due to disputes between the Village, the architect and the contractor that ended in litigation. Of the approximate \$925,000.00 construction costs, ICE contributed almost \$300,000.00 to complete the project.

In return for finishing the amphitheater construction, the Village allowed ICE to operate the facility (primarily use of the amphitheater) for events to raise funds for its non-profit programs which provide scholarships to school age children for art and music education. The Agreement further allowed the Village to use the facility up to 270 days per year for "non-commercial Village events. Additionally, the Village reserves two (2) of the eight (8) major events (with more than 1,000 attendees) for ICE (Bay Jam and Baygrass Bluegrass Fest), plus a number of smaller events (less than 100 attendees) as outlined in the Village's Special Events Policy.

The Agreement was effective for a 15-year term beginning on November 7, 2006 when a temporary certificate of occupancy for the amphitheater was issued. The Agreement expires November 6, 2021 and requires that written notice be provided by either party to terminate the Agreement by May 11, 2021.

Attachment 3 is a letter from David Feder, Director of ICE, confirming ICE's willingness to continue its relationship with the Village and manage use of the amphitheater. If the Village does not wish to continue this relationship, then written notification must be provided to ICE by May 11, 2021.

**Analysis:**

With completion of construction of the amphitheater, ICE's role has mainly been to act as a liaison on behalf of the Village to non-profit organizations utilizing the amphitheater in conjunction with an event and providing logistic services for music, performing arts, and festival events. ICE provides audio equipment that it stores on-site and works with organizations to utilize. ICE collaborates with the Parks & Recreation Department in offering community events such as movies in the park, Pops in the Park – Community Concert Band, Holiday Dance Recitals, and other festival events. This function eliminates the need for the Village to hire staff or a vendor to become familiar with the audio equipment and assist with set-up for events. The Parks & Recreation Department wishes to continue the mutually beneficial collaboration of events and utilizing ICE's professional knowledge, services, and contacts in the performing arts/music industry.

The amphitheater is an asset of the Village. The Village carries property insurance on the facility and is responsible for occasional repair and maintenance.

Should the Village Council direct that the Village continue to utilize ICE for operation of the amphitheater and assistance with audio needs of non-profit organizations holding events at Founders Park and collaborating with the Parks & Recreation Department for related events, then a new, simplified agreement would be drafted and brought to the Village Council for approval.

**Budget Impact:**

There is no direct budget impact as a result of the Village's agreement with ICE. ICE's services result in a cost savings to the Village as they provide expertise related to audio equipment and logistics and assist non-profit organizations on behalf of the Village at no charge.

**Staff Impact:**

Through this arrangement with ICE, need for additional Parks and Recreation staff to set up and be familiar with audio equipment and logistic expertise; and use of the amphitheater is lessened.

**Recommendation:**

Staff recommends continuing a relationship with ICE for operation of the amphitheater if the Village Council deems this to be in the best interests of the Village.

**6/23/2005 RVCM Minutes**

Councilman Reckwerdt advised that he will not vote for a municipal complex that would not have a high percentage rate of survival.

Discussion ensued regarding meeting building codes; request for clear and concise information; shuttering the glass lobby areas; missile impact glass; definition of windows and doors protection; buildings being 175 mph standard; file storage protection; not increasing costs for the municipal complex; and requested workshop with staff to defined what design is wanted by Council.

Mr. Jim Piersol advised that because of the increase of construction costs, he is exploring putting buildings together.

It was the consensus of the Council to have a stronger building with loads winds of 175 mph without a great increase on costs and to schedule a workshop with staff and Dave Boerner to compile the criteria.

Village Manager LaPira gave his report regarding the community center.

Discussion ensued regarding the cost model estimate; design and engineer costs; allocation of funds to pay for the community center; the history of the community center as part of the RFP proposal with the municipal complex; and design fees for community center.

Councilman Reckwerdt made a motion to approve the design fees of the community center, seconded by Vice Mayor Schmidt.

Mayor Johnson opened the Public Comment Section. The following addressed the Council: Van Cadenhead, Tavernier, FL.

Mayor Johnson closed the Public Comment Section.

After discussion, Councilman Reckwerdt withdrew his motion.

Vice Mayor Schmidt withdrew her second.

Mayor Johnson recessed the meeting at 7:21 p.m. and reconvened at 7:55 p.m.

**B. Amphitheater Update (Vice Mayor Schmidt)**

Village Attorney Boniske introduced Village Attorney Steve Zelkowitz which handled the development agreement for the Village regarding Islamorada Community Entertainment (ICE) contract for the amphitheater.

Village Manager LaPira gave his report to Council regarding the development agreement.

Mayor Johnson opened the Public Comment Section. The following addressed the Council: Richie Hanson, Lower Matecumbe, FL; Susie Ptomey, Tavernier, FL; Don Achenberg, Lower Matecumbe, FL; Meredith Cline, Key Largo, FL; Robert Werthamer, Islamorada, FL; Cheryl Kinkelaar, Islamorada, FL; Van

Cadenhead, Tavernier, FL; John Fernandez, Islamorada, FL; George Geisler, Islamorada, FL; David Schneider, Islamorada, FL; and Rod Halenza, Islamorada, FL.

Mayor Johnson closed the Public Comment Section.

David Feder, representative for ICE, gave a presentation to Council.

Discussion ensued regarding members of the ICE Board; anti-Semite comments; total costs for the amphitheater; character of the benefactor for the amphitheater; trust in the ICE Board members; viability of the amphitheater; availability to set shows; funding safe guards; grant funding; best practice is a separation of government and the arts; termination of the ICE contract; changes in ICE Board membership; appointing ICE Board members by the residents; history of the amphitheater; not allowing religious programs; request to add to the contract to say no strong sexual material in any program is permitted; 180 days for termination; bylaws; TIB Bank still sponsoring the amphitheater; the Village has programming for 270 days which includes all the holidays and ICE has 90 days; 2 year clause to take ownership of the amphitheater; \$300,000 cap; objections of a private company taking charge of a public facility; risks involved in the contract; Janet Palacino, Consultant, will not be overlooking the project construction; Village fronting money instead of ICE; requesting a bond instead of a line of credit; 15 year term renewal automatically; development contract and operationally contract; 30 year commitment to a non-profit that has no background; tearing down the present amphitheater and building a larger project; current construction problems with the amphitheater; ICE renting the amphitheater instead of being in charge of the programming; Council having the authority to appoint ICE Board members; if line of credit defaults, the Village will be liable to finish the project; no provision for profit sharing; conflicts in scheduling not included in the contract; and public procession.

Mayor Johnson requested to make changes in the ICE Operational Agreement on Page 6, Section 4.2.1; Page 8, Section 8.3 and Section 9.1; Page 9, Section 11 and 11.2; Page 10, Section 14.2; and Page 11, Section 16.1.3. He further requested to wait on voting on this item until this contract could be reviewed further.

Councilman Sante requested changes in the ICE Operational Agreement regarding programs not having any sexual content; size of the stage; no storage; ingress and egress development; and 15 year contract with an option to renew after that.

Discussion ensued regarding staff salaries; insurances; and car allowance in the contract.

Mayor Johnson asked if Council would like to extend the meeting.

Councilman Sante made a motion to extend the meeting one hour until 11:00 p.m., seconded by Councilman Reckwerdt. Motion carried unanimous.

Councilman Sante made a motion to approve the operation agreement and the development agreement as amended, seconded by Vice Mayor Schmidt.

Mayor Johnson called for the vote.

Councilman Forster	Yes
Councilman Reckwerdt	No
Councilman Sante	Yes
Vice Mayor Schmidt	Yes
Mayor Johnson	No

Vote passes 3 to 2.

Mayor Johnson recessed the meeting at 10:03 p.m. and reconvened the meeting at 10:09 p.m.

## **VIII. CONSENT AGENDA**

- A.** Minutes: Special Call Village Council Meeting, June 2, 2005 and Village Council Budget Meeting, June 2, 2005

Vice Mayor Schmidt made the motion to approve the Consent Agenda, seconded by Councilman Forster.

Mayor Johnson called for the vote.

Councilman Forster	Yes
Councilman Reckwerdt	Yes
Councilman Sante	Yes
Vice Mayor Schmidt	Yes
Mayor Johnson	Yes

Vote passes 5 to 0.

## **IX. A. PUBLIC HEARINGS – QUASI-JUDICIAL**

### **QUASI-JUDICIAL PUBLIC HEARINGS**

Please be advised that the following items on the agenda are quasi-judicial in nature. If you wish to comment upon any of these items, please inform the Clerk by filling out the available sign-up form. An opportunity for persons to speak on each item will be made available after the applicant and staff has made their presentations on each item. All testimony, including public testimony and evidence, will be made under oath or affirmation. Additionally, each person who gives testimony may be subject to cross-examination. If you refuse either to be cross-examined or to be sworn, your testimony will not be considered. The general public will not be permitted to cross-examine witnesses, but the public may request the Board to ask questions of staff or witnesses on their behalf. Persons representing organizations must present evidence of their authority to speak for the



## AGREEMENT

**THIS AGREEMENT** (the "Agreement") is made and entered into as of the 14 day of July, 2005, by and between **ISLAMORADA, VILLAGE OF ISLANDS**, a Florida municipal corporation (the "Village") having an address at 87000 Overseas Highway, Islamorada, Florida 33036 and **ISLAMORADA COMMUNITY ENTERTAINMENT, INC.**, a Florida non-profit corporation (the "ICE") having an address at 88765 Overseas Highway, Plantation Key, Florida 33070.

## RECITALS

1. The Village is the owner of the Facility located in Founder's Park in the Village.
2. The Village Council has reviewed the terms and conditions for ICE to operate the Facility and has authorized the Village, ICE, the Village Attorney, and the Village staff to negotiate an Agreement with ICE for the operation of the Facility.
3. Village is willing to grant to ICE the right and privilege of operating the Facility pursuant to the terms of this Agreement, and ICE has agreed to operate the Facility, subject to the terms and conditions of this Agreement.

**NOW, THEREFORE**, in consideration of the mutual covenants and promises set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties, the parties hereto do hereby agree as follows:

1. Definitions. The following terms used in this Agreement will have the following meanings:

1.1 Agreement. This Agreement, together with all exhibits, amendments and modifications hereto.

1.2 Village. Islamorada, Village of Islands, a Florida municipal corporation. Village's mailing address is 87000 Overseas Highway, Islamorada, Florida 33036, Attention: Village ICE; Telephone (305) 664-2345; Facsimile: (305) 853-5357.

1.3 County. Monroe County, a political subdivision of the State of Florida.

1.4 Development Agreement. That certain Development Agreement between the Village and ICE of even date herewith pursuant to which ICE is obligated to complete the construction of the Facility.

1.5 Effective Date. The date that a temporary certificate of occupancy for the Facility issued by the applicable Governmental Authority.

1.6 Event of Default. Any one or more of the occurrences constituting a default under this Agreement.

1.7 Facility. The Improvements and any other improvements which may be constructed on the Land in accordance with this Agreement as well as adjacent parking areas, driveways, buffer areas and open space.

1.8 Force Majeure. Any one or more of the following occurrences: Acts of God (including, without limitation, hurricanes, windstorms, earthquakes, floods); war, terrorist acts or declaration of a state of national, state or local emergency; civil unrest; strikes, boycotts, lockouts or labor disputes beyond the control of Village or ICE.

1.9 Governmental Authority. Any federal, state, county, municipal or other governmental department, entity, authority, commission board, bureau, court, agency or any instrumentality of any of them.

1.10 Governmental Requirement. Any law, enactment, statute, code, ordinance, rule, regulation, judgment, decree, writ, injunction, order, permit, certificate, license, authorization, agreement, or other direction or requirement of any Governmental Authority now existing or hereafter enacted, adopted, promulgated, entered, or issued (which in the case of the Village such requirement must be of general applicability [e.g., health, safety and welfare] and not Facility specific).

1.11 ICE. Islamorada Community Entertainment, Inc., a Florida non-profit corporation. ICE's mailing address is 88765 Overseas Highway, Plantation Key, Florida 33070 Attention: Joe Miklas, Esq. Telephone (305) 852-7225 Facsimile: (305) 852-4323.

1.12 Improvements. The Improvements consist of an amphitheater located on the Land which amphitheater and all other buildings, fixtures, utilities, infrastructure, permanently affixed equipment, facilities (both above ground and below ground) and all other structures or improvements now or hereafter constructed onsite in connection with the Facility as well as all additions, alterations, modifications, renovations, and replacements thereto. The building footprint of the Improvements is shown on Exhibit "B" attached hereto and by this reference made a part hereof.

1.13 Land. The parcel of real property commonly known as Founder's Park located in the Village. The Land is more particularly described in Exhibit "A" attached hereto and by this reference made a part hereof.

1.14 Liabilities. Any and all liabilities (including strict liability), losses, suits, proceedings, settlements, judgments, orders, penalties, fines, liens, assessments, claims, demands, damages, injuries, obligations, costs, disbursements, expenses or fees of any kind or nature, including attorneys' fees and expenses (at both the trial and appellate levels) paid or incurred in connection therewith.



1.15 Permitted Uses. The permitted uses of the Facility set forth on Exhibit "B" attached hereto.

1.16 Personal Property. The items listed on Exhibit "D" attached hereto, which are owned by the Village and located at the Facility that may be used by ICE during the Term. The Personal Property shall be returned to the Village at the end of Term in the condition existing on the Effective Date, normal wear, tear and replacement excepted. The parties acknowledge and agree that the Personal Property is not known at the time of execution hereof and the list of Personal Property will be initialed by the parties and attached hereto prior to the Effective Date.

1.17 Public Areas. Those areas of the Facility which are open for use by the public, which generally include all areas from which events and performances are viewed.

1.18 Reasonable Approval. Approval which is not unreasonably withheld, conditioned, delayed or denied. In instances where the Reasonable Approval of a party is required, a failure to deny approval within thirty (30) days after approval has been requested in writing will be deemed Reasonable Approval. Any withholding, conditioning, delay or denial of Reasonable Approval must be accompanied by a written statement of the reasons for such withholding, conditioning, delay or denial of approval. Reasonable Approval must be in writing, except when there is a failure to deny approval within the time specified above, in which case approval is deemed given. The foregoing shall not apply to any approvals which require consideration by the Village Council.

1.19 Term. The period of time beginning on the Effective Date and ending fifteen (15) years thereafter, subject to the renewal term as provided in Section 3.1.

1.20 Termination Date. The date that is fifteen (15) years after the Effective Date, unless ICE exercises the renewal term as set forth in Section 3.1, the Termination Date shall be the date of expiration of the then current Term, or unless sooner terminated pursuant to the terms of this Agreement in which case the date of termination shall be the Termination Date.

1.21 Third Party Contractor. A party entering into a contract or transaction with ICE for the use or operation of any portion of the Facility, including all subcontractors, suppliers, concessionaires, licensees and co-promoters.

1.22 Year. That annual period from the Effective Date to the first anniversary thereof and each successive year thereafter during the Term.

2. Operation of Facility. Village and ICE hereby agree that for the Term ICE shall operate the Facility for the Permitted Uses under the terms and conditions hereinafter set forth, all subject to and in accordance with the terms and conditions of this Agreement.

2.1 General Obligations of ICE. Except as otherwise expressly set forth in this Agreement, during the Term of this Agreement, ICE shall have full legal, financial and administrative responsibility for the operation of the Facility. In connection with the foregoing,

ICE agrees to comply with rules and regulations promulgated by the Village from time to time with respect to the Facility. ICE shall conduct its operations in a first class, business-like manner and in accordance with the terms and conditions of this Agreement. ICE shall control the conduct, demeanor, performance and appearance of its officers, members, employees, agents, volunteers, independent contractors, representatives, guests, and invitees consistent with the operation of a first class business and otherwise in accordance with Governmental Requirements.

2.2 Activities. ICE shall use its best efforts to effectuate marketing and advertising devoted to promoting its activities at the Facility.

2.3 As Is. Except as may be otherwise provided in this Agreement, ICE hereby accepts the Facility and all components thereof, in "as-is" condition and "with all faults." ICE hereby releases the Village of and from any and all claims and liabilities whatsoever on account of the condition of the Facility or because of any necessity of the Village to repair or take corrective actions with respect to any part thereof, or the necessity for obtaining any development approvals from any governmental body, including without limitation the Village.

2.4 Village's Use of Facility. Notwithstanding anything herein to the contrary, Village may use the Facility for up to two hundred seventy (270) days per Year during the Term for non-commercial Village events ("Village Events") (e.g., July 4<sup>th</sup> events), and ICE may use the Facility for at least ninety (90) days per Year, it being acknowledged and agreed that if the Village does not use the Facility for all two hundred seventy (270) days, ICE may use the Facility for the remaining days. Additionally, Village may not stage any Village Events at the Facility which compete directly with events staged by ICE. Village and ICE agree to cooperate with each other in the scheduling of their respective events at the Facility. Throughout the Term, the Village will provide ICE with a proposed schedule of Village Events. If a Village Event is not set forth on the proposed schedule, the Village must notify ICE in writing of the proposed date of any Village Event not less than ninety (90) days prior to such date, except in the case where ninety (90) days prior notice is impracticable or unfeasible, in which case the Village shall provide notice as far in advance as possible. It is expressly understood and agreed to by ICE that the scheduling of Village Events shall have priority over the scheduling of ICE's events at the Facility, except when Village desires to schedule a Village Event with less than ninety (90) days' prior written notice to ICE, in which case, ICE must schedule such Village Event unless it conflicts with an event previously scheduled by ICE. Village will pay all costs in connection with a Village Event; provided, however, no charges shall be paid by the Village to ICE in connection with the Village's use of the Facility for Village Events. Nothing herein shall be deemed to prevent the Village from charging nominal fees for Village Events in its sole and absolute discretion.

### 3. Term.

3.1 Initial Term; Renewal Option. The Term of this Agreement will commence upon the Effective Date and, unless terminated sooner pursuant to the provisions hereof, end on the Termination Date. Provided an Event of Default on the part of ICE is not then existing, ICE and the Village, by their mutual written agreement, may extend the Term for up to one (1) successive fifteen (15) year renewal term. In order for the parties to extend the Term as

aforesaid, either party shall provide written notice to the other party indicating its desire to renew the Term at least one hundred eighty (180) days prior to the end of the initial Term. Thereafter, the parties will mutually decide whether to extend the Term. If either party fails to give the other party written notice of its desire to extend the Term as set forth in the preceding sentence, the Term of this Agreement shall expire at the end of the initial Term. All references in this Agreement to the Term shall include the Term as it may be extended.

3.2 Elective Termination. Notwithstanding anything herein to the contrary, the Village may terminate this Agreement without cause and in its sole and absolute discretion at any time during the Term upon one hundred eighty (180) days prior written notice to ICE. If Village exercises its right to electively terminate this Agreement as aforesaid with the first two (2) Years, the Village shall be obligated to reimburse ICE an amount equal to the contribution made by ICE towards the construction of the Facility pursuant to the terms and conditions of the Development Agreement ("ICE's Contribution"). Notwithstanding the foregoing, the parties agree that ICE's Contribution for purposes of this Agreement and determining the amount the Village shall be obligated to reimburse ICE shall not exceed Three Hundred Thousand and 00/100 Dollars (\$300,000.00), despite the fact that pursuant to the Development Agreement ICE may actually contribute more than such amount towards the construction of the Facility. If Village exercises its right to electively terminate this Agreement as aforesaid at any time subsequent to the first two (2) Years, the Village shall be obligated to reimburse ICE an amount equal to the to the unamortized portion of ICE's Contribution as depreciated on a straight line basis for a thirty (30) year term from the Effective Date with such valuation made as of the Termination Date set forth in the notice from Village to ICE. The parties acknowledge and agree that ICE shall be entitled to such reimbursement under this Section 3.2 only in the event of an elective termination by the Village pursuant to this Section 3.2. If this Agreement is terminated for cause due to an Event of Default on the part of Manager, the Manager shall not be entitled to a reimbursement of ICE's Contribution.

3.3 ICE's Departure from Facility. At the end of the Term or the sooner termination thereof, ICE must vacate and surrender the Facility, leaving it broom clean and in good working order, ordinary wear and tear excepted. ICE may remove any equipment and personal property owned by ICE, as long as any damage caused by the removal is repaired.

4. Gross Revenues; Operating Expenses. During the Term, ICE shall be responsible for collecting, and shall be entitled to, all Gross Revenues from which it shall pay its Operating Expenses for the Facility. If in any Year, the Operating Expenses exceed the Gross Revenues, ICE shall be responsible for, and pay, any such shortfalls.

4.1 Gross Revenues. The phrase "Gross Revenues" when used in this Agreement means all revenues (whether cash, credit or barter) earned or accrued by or on behalf of ICE during each Year of the Term from the use and operation of the Facility. The following revenues are included in Gross Revenues: revenues from events, performances, activities, programs and services, admission and ticket sales, parking, radio and television broadcast programming rights, other media rights, sponsorship rights, concessions, retail sales, registration fees, program sales, advertising and sponsor contributions, flat rental fees, receipts, and commissions.

4.2 Operating Expenses. The phrase "Operating Expenses" when used in this Agreement shall mean the total of all bona fide expenses and costs of every kind and nature paid or incurred by ICE in respect of the operation of the Facility.

4.2.1 Operating Expenses Included. The following expenses are included in Operating Expenses: (1) Salaries, wages, medical insurance, group life and disability insurance, union and general welfare benefits, pension payments, severance payments, sick day payments, fringe benefits, payroll taxes, workers' compensation, and uniforms (collectively, "Salaries") for employees of ICE engaged in the direct operation of the Facility; (2) administrative costs of operation of the Facility including all reasonable costs and expenses of legal, bookkeeping, accounting and other professional services directly related to the Facility; (3) costs of all insurance, including, but not limited to, liability insurance as required by this Agreement; (4) all taxes and assessments paid by ICE pursuant to the terms of this Agreement related to the Facility; and (5) the total costs and expenses incurred in operating the Facility including costs and expenses of cleaning, sanitary control, removal of trash, garbage and other refuse in connection with ICE's activities at the Facility.

4.2.2 Exclusions From Operating Expenses. The following expense items are not included in Operating Expenses: (1) any utility costs including, but not limited to, electricity, water, sewer and other utility charges allocable to the Facility; (2) the costs of any capital improvements; (3) expenses for repairs or other work occasioned by condemnation or fire or other casualty to the extent not covered under any insurance policies covering the Facility; and (4) any costs or expenses incurred by the Village in respect of the operation, repair, replacement, maintenance, and security of the Facility and the related parking areas, driveways, landscaping and open space not in connection with ICE's activities at the Facility.

5. Utilities. Throughout the Term, the Village shall pay for all electric, water, sewer, and all other utility and other expenses of any and all types whatsoever which are now or hereafter charged or assessed with respect to the management, operation, maintenance, and repair of the Facility. ICE shall be responsible for and pay all telephone, cable and similar charges related to its operation of the Facility. No failure, delay or interruption in supplying any services for any reason whatsoever shall be grounds for any claim by ICE under this Agreement for damages, consequential or otherwise unless caused by the Village's wrongful act or gross neglect.

6. Financial Information.

6.1 Financial Statements. Within ninety (90) days following the end of each Year, ICE shall provide the Village with audited financial statements prepared in accordance with generally accepted accounting principles by a certified public accounting firm satisfactory to Village, showing Gross Revenues and Operating Expenses. The statement must be accompanied by documentation reasonably acceptable to the Village supporting the certification of Gross Revenues and Operating Expenses reflected in the statement.

6.2 Books and Records. ICE must make available to Village upon demand all of its books and records pertaining to the operation of the Facility. In addition, ICE must require that all Third Party Contractors make available to Village upon demand complete, permanent and accurate books and records, including records of all sales at the Facility. All books and records must be preserved for at least six (6) years following the close of the Year to which they relate. ICE shall implement these requirements by including a provision in its agreements with Third Party Contractors. Village or its authorized representatives or agents may inspect and make copies of the books and records of ICE and Third Party Contractors pertaining to the Facility during normal business hours. Village will require all of its representatives or agents with access to ICE's books and records to sign confidentiality agreements with respect to information obtained from ICE's books and records and, if requested, with respect to information obtained from Third Party Contractors' books and records.

6.3 Accounting Procedures. All books, records, statements, and other financial data of ICE will be prepared in accordance with generally accepted accounting principles. ICE will utilize procedures conforming to industry standards for similar facilities to assure accuracy of records and secure revenue handling and reporting procedures. ICE will implement any additional reasonable accounting procedures requested by Village. ICE will allow a representative of Village to be present at events to monitor the receipt and handling of money.

## 7. Taxes.

7.1 Ad Valorem Taxes. Village and ICE acknowledge that the Facility is currently exempt from ad valorem taxes. If ad valorem taxes are assessed against the Facility, the Land, ICE's interest in this Agreement or any part thereof due to the exercise by ICE of its rights under this Agreement, ICE is responsible for the payment, as an Operating Expense, of such taxes and any interest or penalties with respect to such taxes. The Village agrees not to impose or assess ad valorem taxes against the Facility during the Term.

7.2 Non-Ad Valorem Taxes. ICE is responsible for the payment, as an Operating Expense, of all taxes (other than ad valorem taxes) on the Facility, the Land, this Agreement and ICE's operation of the Facility, including, without limitation, tangible personal property taxes on property owned by ICE, intangible personal property taxes, sales taxes, use taxes, and documentary stamp taxes. ICE must pay all taxes prior to delinquency and must present proof of payment to Village prior to delinquency.

## 8. Maintenance and Repair of Facility; Alterations; Storage.

8.1 Maintenance and Repair of Facility. Throughout the Term, the Village, at its sole cost and expense shall be responsible for and perform, or cause to be performed all repair and maintenance, replacements and capital improvements whatsoever on the Facility whether such repair, maintenance, replacements or capital improvements, whether such are ordinary or extraordinary, structural or otherwise. Notwithstanding the foregoing, unless otherwise agreed in writing by the parties, ICE shall be responsible for and perform, or cause to be performed all repair and maintenance and replacements whatsoever on the Facility arising from, related to or in

connection with any damage caused by ICE its employees, contractors, agents, guests or invitees. Additionally, in connection with the staging of events, performances, activities, programs and services at the Facility, ICE shall be required to (1) keep the Facility in a clean and orderly condition and appearance, including trash removal, (2) be responsible for the routine maintenance required in connection with its activities, and (3) provide adequate security for the Facility and all portions thereof for the purposes of protecting persons and property.

8.2 Alterations. ICE shall not perform or caused to be performed any alterations, including minor or cosmetic alterations, to the Facility without Village's prior written approval, which, may be withheld in Village's sole discretion. Any alterations by ICE shall be performed at the sole cost of ICE, by contractors and workmen subject to the Reasonable Approval of Village, in a good and workmanlike manner, and in accordance with all Governmental Requirements.

8.3 Storage. During the Term, the Village shall provide ICE with storage facilities on the Property in a size and location as mutually determined by the parties. The storage area shall be used by ICE solely for the storage of ICE's equipment and personal property, Village shall not be responsible for any damage, destruction or theft of ICE's equipment and personal property and ICE hereby releases Village from any claims or damages in connection therewith.

9. Ownership and Sponsorship.

9.1 Ownership. The Facility will at all times be owned by Village, subject to ICE's right to operate the Facility as set forth in this Agreement. The Village has previously entered into a naming rights agreement (the "Naming Rights Agreement") with TIB Bank of the Keys with respect to the Facility. During the term of the Naming Rights Agreement, ICE shall have not rights with respect to the naming of the Facility. If the Naming Rights Agreement expires or is otherwise terminated, ICE shall have the right to enter into a naming rights agreement for the Facility. The name of the Facility must include the name "Islamorada, Village of Islands." Any naming rights agreement between ICE and a Third Party Contractor relative to the naming rights (1) is subject to the Village Reasonable Approval provided the Village shall not be obligated to approve any naming rights agreement or name which is detrimental to the status or reputation of the Facility and (2) shall expressly provide that the naming rights shall terminate upon the termination of this Agreement. All revenues for naming rights received by ICE will be included in Gross Revenues.

9.2 Sponsorship. ICE has the right to enter into agreements with sponsors with respect to events, performances and other activities at the Facility, subject to Village's Reasonable Approval. Any agreement between ICE and a Third Party Contractor relative to the sponsorship rights is subject to the Village's Reasonable Approval and shall expressly provide that the sponsorship rights shall terminate upon the termination of this Agreement. All revenues for sponsorships received by ICE will be included in Gross Revenues.

10. Permitted Uses of Facility. During the Term, ICE shall operate the Facility only for the Permitted Uses. The Facility may not be used by ICE for any purpose other than the

Permitted Uses without Village's Reasonable Approval. The parties acknowledge and agree that the Permitted Uses are generally for charitable, educational and civic purposes and the Permitted Uses expressly exclude religious, political and sexually explicit uses.

10.1 Alcoholic Beverages. The sale of alcoholic beverages by ICE or any other party at the Facility shall only be permitted as set forth in this Section 10.1. Alcoholic beverages may be sold for consumption only within the Facility, and shall be permitted only in accordance with and subject to applicable Governmental Requirements. No alcoholic beverages shall be sold or distributed on a retail basis or for consumption outside of the Facility.

11. Operation of the Facility. ICE will provide for operation of the Facility, and all necessary personnel and equipment to handle the operation of the Facility in connection with providing events, performances, activities, programs and services, including with limitations as proscribed by the Village and its reasonable rules and regulations, scheduling, the dispensing of food and beverage, the manning of all concession, the booking and acquisition of events and performances, parking, marketing and advertising. ICE may utilize Third Party Contractors to perform certain operations of the Facility (including Third Party Contractors with exclusive rights to provide services or goods).

11.1 Security. ICE is responsible for providing security at the Facility, at ICE's expense, including police protection if required based upon the reasonable discretion of the Village. ICE shall provide adequate traffic management for events in accordance with a plan to be prepared by ICE and approved by the Village ICE.

11.2 Hours of Operation. The permitted hours of operation for the Facility for ICE's use of the Facility will be Sunday through Thursday from 7 a.m. to 10 p.m., and Friday and Saturday from 7 a.m. to 11 p.m. Additional hours may be permitted on a case-by-case basis by the Village Manager in his sole discretion.

11.3 Comply with Governmental Requirements. ICE shall comply with all applicable Governmental Requirements as may be in effect now or at any time during the Term of this Agreement, all as may be amended, which are applicable to ICE, the Facility, or the operations conducted at the Facility. A violation of any of such Governmental Requirements, as amended, not cured within the applicable cure period shall constitute a material breach of this Agreement, and in such event Village shall be entitled to exercise any and all rights and remedies hereunder and at law and in equity.

12. Events, Performances and Other Activities at the Facility.

12.1 Costs. Except as expressly set forth in other provisions of this Agreement, ICE is solely responsible, as an Operating Expense, for all costs incurred in providing events, performances, activities, programs and services and the staging of the foregoing by ICE pursuant to this Agreement. ICE, at ICE's expense, as an Operating Expense, will obtain all permits and licenses required by any Governmental Authority for any events, performances, activities, programs and services to be held by ICE at the Facility. Village will use best efforts to expedite

the issuance of any permits required for events, performances, activities, programs and services at the Facility.

12.2 Scheduling. Throughout the Term, ICE will provide the Village with a proposed schedule of events, performances, activities, programs and services at the Facility.

12.3 Bonds. In connection any events, performances, activities, programs and services staged by ICE or Third Party Contractors at the Facility, prior to any such events, performances, activities, programs and services, ICE and Village shall mutually agree, on a case by case basis, taking into consideration the type, duration and anticipated attendance of the events, performances, activities, programs and services and such other factors deemed relevant by the parties, whether ICE or the Third Party Contractor, as applicable, shall be required to deliver to the Village a payment and performance bond and fidelity bond to secure the payment and performance and the handling of funds by ICE and its Third Party Contractors. The payment and performance bond and fidelity bond shall be in amounts and forms satisfactory to Village and may be drawn upon by the Village in case of an Event of Default.

13. Public Areas. The Public Areas will be accessible to the general public at all times during the Term except when ticketed events are being held, in cases of emergency, or in other instances where unrestricted access to the Public Areas may present actual or potential hazards to public health or safety.

14. Promotion.

14.1 Promotion of Programs and Services. Village and ICE acknowledge that the success of the Facility depends in large part upon the promotion of the events, performances, activities, programs and services to be held there. ICE will promote the Facility in a manner comparable to the promotion of other similar facilities. Village will cooperate with ICE in promoting Facility through normal operations of departments within the Village.

14.2 Promotion of Village. ICE must conspicuously use the name "Islamorada, Village of Islands," the Village logo and, wherever reasonably possible, the Facility name, in all advertising promotion of the Facility and the events, performances, activities, programs and services to be held at the Facility. ICE will use best efforts to ensure that the name and image of the Village are positively promoted in all media coverage of Facility. The Village hereby grants ICE to use the Village logo for the purposes set forth herein, but for no other purpose whatsoever including but, not limited to, commercial purposes. Whenever reasonably possible, ICE must give qualified Village residents priority consideration for any employment opportunities at the Facility. ICE will give preference to businesses located in the Village as Third Party Contractors.

when  
feasible

15. Assignment of Agreement by ICE.

15.1 Prohibition. ICE may not assign its rights, obligations or interests under the Agreement, in whole or in part, to any party without the prior written approval of Village, which may be withheld in Village's sole discretion.



15.2 Pledge of Revenues. ICE may pledge or assign the revenues to be received by ICE under this Agreement as security for any credit facility or financing obtained by ICE, as long as the pledge or assignment does not include an assignment of any other rights under this Agreement, or the mortgaging of ICE's interest in this Agreement.

15.3 Terms of Assignment. Any approved assignment by ICE of its rights, obligations and interests under the Agreement must include an express assumption by the assignee of all obligations of ICE under this Agreement.

16. Insurance.

16.1 Insurance to be Provided by ICE. Unless otherwise specified herein, ICE, at its own expense (the cost of which will include premiums, deductibles and claims processing), as an Operating Expense, will obtain and maintain on behalf of ICE and Village during the Term the following insurance coverages with insurance limits subject to the Village's Reasonable Approval:

16.1.1 Liability Insurance. Commercial comprehensive general liability insurance protecting against loss of life, bodily injury and property damage, and liability resulting from negligence, occurrence, accident or disaster with respect to the Facility and the operations of ICE at the Facility in accordance with this Agreement. Insurable limits will be agreed to by ICE and Village and may be increased from time to time based upon the commercially reasonable insurable limits at the time, it being understood that this Agreement has potential thirty (30) year Term. The policy to be obtained by ICE will provide liability coverage for the events, performances, activities, programs and services, at the Facility promoted or co-promoted by ICE. If ICE enters into agreements to subcontract or co-promote events, the liability insurance required under this Section must also cover the activities of the Third Party Contractor unless provided in a separate liability insurance policy acceptable to the Village. Any additional insurance required for the activities of any Third Party Contractor must be provided at the expense of ICE or the Third Party Contractor.

16.1.2 Worker's Compensation. Worker's compensation insurance, employer's liability insurance, and any other insurance applicable to ICE's employees and uninsured subcontractors.

16.1.3 Motor Vehicle Insurance. Motor vehicle liability and collision insurance for any motor vehicles owned or operated by ICE.

16.1.4 Third Party Insurance. All Third Party Contractors hired by ICE must provide their own commercial general liability insurance coverage naming Village and ICE as additional insureds.

16.2 Policy Requirements. All insurance to be obtained by ICE will be with financially responsible insurance companies licensed to do business in the State of Florida; will name as insureds ICE and Village, as their respective interests may appear, and will require

written notice of any cancellation or change to be sent to ICE and Village at least thirty (30) days prior to cancellation, termination or material change. ICE shall deliver to the Village copies of all insurance certificates and policies required under this Agreement, along with receipts evidencing payment of the premiums for such insurance.

16.3 Insurance to be Provided by Village. Village, at its own expense (the cost of which will include premiums, deductibles and claims processing), will obtain and maintain during the Term the following insurance coverages:

16.3.1 Liability Insurance. Commercial comprehensive general liability insurance protecting against loss of life, bodily injury and property damage, and liability resulting from negligence, occurrence, accident or disaster with respect to the Facility and the operations of Village at the Facility in accordance with this Agreement. Insurable limits will be determined by the Village. Alternatively, the Village may elect, in its sole discretion, to self-insure the risk which would be covered by the commercial comprehensive general liability insurance policy.

16.3.2 Property Insurance. Property insurance for the Facility in an amount determined by the Village against such hazards and risks as may now or in the future be included under the Standard Form of Fire and Extended Coverage insurance policy of the State of Florida with a deductible as determined by the Village.

16.4 Waiver of Subrogation. Each insurance policy required to be obtained by ICE or Village under this Agreement must provide that any release from liability or waiver of claim for recovery made by ICE and Village in writing prior to any loss or damage will not affect the validity of the policy or the right of the insured to recover thereunder and must provide that the insurer waives all rights of subrogation which the insurer might have against Village, ICE, and their respective officers, directors, representatives, partners, and employees. Without limiting any release or waiver of liability or recovery contained in any other section of this Agreement, but rather in confirmation and furtherance thereof, ICE and Village each waive all claims for recovery from the other party and its officers, directors, representatives, partners, and employees for any loss or damage to property or for damages as a result of fire, business interruption, revenue loss or other perils, events or happenings required to be insured under this Agreement.

17. ICE's Representations and Warranties. ICE represents and warrants to Village as follows:

17.1 Status of ICE. ICE (a) is a non-profit corporation duly organized, validly existing and in good standing under the laws of the State of Florida; (b) has the power and authority to carry on its business as now being conducted; and (c) is in compliance with all Governmental Requirements.

17.2 Validity of Agreement. The execution, delivery and performance by ICE of the Agreement are within the powers and purposes of ICE, have been duly authorized by all requisite action of ICE, do not require the approval of any Governmental Authority (other than

Village), and will not violate any Governmental Requirement, the joint venture agreement governing ICE, the articles of incorporation or bylaws of ICE, or any indenture, agreement or other instrument to which ICE is a party.

17.3 Board of Directors. ICE covenants and agrees that during the Term, (a) its Board of Directors shall have at least ten (10) members (b) at least eighty percent (80%) of the members of the Board of Directors of ICE shall consist of Village residents and/or property owners, and (c) the members of the Board of Directors shall not receive any compensation from ICE for their services.

18. Village's Representations and Warranties. Village represents and warrants to ICE as follows:

18.1 Validity of Agreement. The execution, delivery and performance by Village of the Agreement are within the powers and purposes of Village, have been duly authorized by all requisite action of Village, do not require the approval of any Governmental Authority other than Village, and will not violate any Governmental Requirement or the Village Charter.

19. ICE Events of Default. Each of the following occurrences constitutes an Event of Default by ICE under the Agreement:

19.1 Failure to Perform. ICE's failure to perform any material obligation or fulfill any covenant or agreement set forth in the Agreement after receipt of written notice from Village of the non-performance and expiration of a fifteen (15) day period of time to cure such non-performance; provided, however, if such non-performance cannot be cured within the fifteen (15) day period, ICE shall not be deemed in default provided that ICE has commenced and is diligently proceeding in good faith to cure the non-performance.

19.2 False Representation. If any representation or warranty made in the Agreement by ICE is false, misleading, or breached in any material respect.

19.3 Voluntary Bankruptcy. If ICE (a) is voluntarily adjudicated a bankrupt or insolvent, (b) seeks or consents to the appointment of a receiver or trustee for itself or for all or any part of its property, (c) files a petition seeking relief, including reorganization, arrangement or similar relief, under the present Bankruptcy Code or other similar present or future applicable laws of the United States or any state or other competent jurisdiction, (d) makes a general assignment for the benefit of creditors, or (e) admits in writing its inability to pay its debts as they mature.

19.4 Involuntary Bankruptcy. If a receiver or trustee is appointed for ICE or for all or any part of its properties without consent and such appointment is not vacated within sixty (60) days, or if a petition is filed against ICE seeking relief, including reorganization, arrangement or similar relief, under the present bankruptcy code or other similar present or future applicable laws of the United States or any state or other competent jurisdiction, and such petition is not dismissed within sixty (60) days after the filing thereof.

19.5 Assignment of Agreement. The assignment, pledge or mortgaging by ICE of this Agreement or any assignment by ICE of its rights or obligations hereunder except as expressly permitted in this Agreement.

19.6 Dissolution. If ICE voluntarily or involuntarily dissolves or liquidates, unless the dissolution or liquidation is part of a transaction specifically approved by Village or is otherwise permitted under this Agreement.

19.7 Development Agreement. The termination of the Development Agreement by either party shall entitle the Village to immediately terminate this Agreement for cause upon written notice by the Village. Additionally, if the Village elects to proceed under Section 5.2(b) and require ICE to pay the Village the amount of the TDC Grant (as defined in the Development Agreement) not being disbursed to the Village due to the acts or omissions of ICE or its employees, contractors or agents and ICE fails to pay to the Village any amount required by Section 5.2, such shall be considered an Event of Default under this Agreement entitling the Village to its remedies set forth in Section 21 below. Such payment is required to be made by ICE to the Village as soon as funds are available to the ICE and in no case later than one (1) year following Final Completion (as defined in the Development Agreement).

20. Village Events of Default.

20.1 Failure to Perform. Village's failure to perform any obligation or fulfill any covenant or agreement set forth in the Agreement after receipt of written notice from ICE of the non-performance and expiration of a fifteen (15) day period of time to cure such non-performance; provided, however, if such performance cannot be cured within the fifteen (15) day period, the Village shall not be deemed in default provided that the Village has commenced and is diligently proceeding in good faith to cure the non-performance.

21. Remedies for Events of Default. If an Event of Default occurs, either party may seek all legal and equitable remedies available, including, without limitation, cancellation of the Agreement, removal of ICE from the Facility, specific performance, injunctive relief, and damages. In the event of a termination by the Village, ICE shall have no further rights under this Agreement and shall cease forthwith all operations at the Facility.

21.1 Remedies Cumulative and Concurrent. No right, power or remedy of Village or ICE provided in this Agreement is intended to be exclusive of any other right, power, or remedy; each right, power and remedy is cumulative, concurrent and in addition to any other right, power or remedy of either party now or hereafter existing at law or in equity. Either party may pursue its rights, powers and remedies separately, successively or together against the other party. Failure by either party to exercise any right, power or remedy will not be construed as a waiver or release of such right, power or remedy.

21.2 Waiver, Delay or Omission. No waiver of any Event of Default extends to or affects any other Event of Default or impairs either party's rights, powers or remedies as to

any other Event of Default. No delay or omission by a party to exercise any right, power or remedy may be construed to waive an Event of Default or to constitute acquiescence therein.

21.3 Proofs of Claim. In case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition, seizure of ICE's property by any Governmental Authority, or other judicial proceedings affecting ICE, or any of its properties, Village, to the extent permitted by law, may file such proofs of claim and other documents as may be necessary or advisable in order to have its claim allowed in such proceedings for the entire unpaid amounts due Village hereunder at the date of the institution of such proceedings, and for any additional amounts which may become due and payable after such date.

22. Casualty. If any portion of the Facility is damaged or destroyed by fire or other casualty, Village, to the extent insurance proceeds are available, will repair the damage so as to restore the Facility to the condition existing prior to the casualty. If the entire Facility is rendered unusable by the casualty for the purposes contemplated by this Agreement, ICE's obligation is hereunder will abate until the damage is repaired. If the entire Facility is rendered unusable and is not restored within a reasonable time after the casualty, either party may terminate the Agreement by sending written notice to the other party. For purposes of determining what is a "reasonable time" after a casualty, the parties will take into account the specific circumstances of the casualty, as well as the amount of time customarily required in the County to make repairs to or restore a Facility of comparable size and cost during the time period following the casualty.

23. Force Majeure. If the occurrence of a Force Majeure delays, hinders or prevents either Village or ICE from performing any obligation or covenant under this Agreement, the performance of the obligation or covenant will be excused for the period during which performance is delayed, hindered or prevented, and the period for performing the covenant or obligation will be extended by the number of days equal to the period during which the performance was delayed, hindered or prevented.

24. Indemnification. ICE shall indemnify, defend and hold harmless, the Village, its council members, ICE, agents and employees against all Liabilities concerning, relating to, arising out of or in connection with ICE's obligations and/or failure of performance under this Agreement and/or the use or operation, of the Facility, except for Liabilities arising solely out of Village's gross negligence or willful misconduct. This indemnification will survive any termination of this Agreement.

25. Non-Discrimination. In the operation of the Facility, ICE, its employees, agents, Third Party Contractors, ICE Affiliates and any parties under the direction or control of ICE may not discriminate against any person on the basis of sex, age, race, color, religion, ancestry, national origin, physical handicap or sexual orientation by refusing to furnish to such person any accommodation, facility, service or privilege offered to or enjoyed by the general public. In the performance of this Agreement, ICE, its employees, agents, Third Party Contractors, ICE Affiliates and any parties under the control or direction of ICE may not discriminate against any employee or applicant for employment on the basis of sex, age, race, color, religion, ancestry, national origin, physical handicap, or sexual orientation. ICE, its employees, agents, Third Party

Contractors, ICE Affiliates, and all parties under the direction or control of ICE must take affirmative action to assure that applicants are employed, and that employees are treated during employment, without regard to their sex, age race, color, religion, ancestry, national origin, physical handicap, or sexual orientation. ICE will permit Village access at reasonable times to its records of employment, employment advertising, application forms and other pertinent data and records of ICE, subject to confidentiality laws and other applicable restrictions.

26. Village's Right to Inspect. Village has the right at all reasonable times to make whatever inspections Village deems reasonably necessary to determine if ICE is complying with the terms and conditions of this Agreement. ICE agrees to provide Village with reasonable access to its operations for such inspection purposes, as long as Village's inspections do not unreasonably interfere with the operation of the Facility.

27. Governing Law. This Agreement is governed exclusively by the laws of the State of Florida. Venue for any litigation concerning this Agreement must be Monroe County, Florida.

28. No Third Party Beneficiaries. Except as expressly set forth herein, this Agreement is not intended to create any rights or benefits in or to third parties.

29. Notices. All notices, demands, requests and other communications required under this Agreement may be given by telex, telegram, or telecopy, or in writing delivered by hand or mail and will be conclusively deemed to have been received if delivered or attempted to be delivered by United States first class mail, return receipt requested, postage prepaid, addressed to the party for whom it is intended at its address set forth in Section 1 of this Agreement. Any party may designate a change of address by written notice to the other party, received by such other party at least ten (10) days before such change of address is to become effective.

30. Attorneys' Fees. If any litigation or arbitration arises out of this Agreement (including litigation to enforce this Attorneys' Fees provision), the prevailing party is entitled to recover its attorneys' fees and costs, including the fees and expenses of any paralegals, law clerks, and legal assistants, and including fees and expenses charged for representation at the trial level, in all appeals, and in any bankruptcy proceedings.

31. Headings. The headings of the sections of this Agreement are for convenience only and do not affect meanings of any provisions hereof.

32. Entire Agreement. This Agreement, including all exhibits, contains all of the terms, covenants, conditions and agreements between Village and ICE relating in any manner to the operation of the Facility. No prior agreement or understanding pertaining to the same is valid or of any force or effect, and the terms, covenants, conditions and provisions of this Agreement cannot be altered, changed, modified or added to, except in a writing signed by Village and ICE.

33. Construction. Village and ICE acknowledge that both parties have participated in the negotiation and drafting of this Agreement, and that therefore no provision of the Agreement should be construed more strictly against one party or the other.

34. No Waiver. The failure by any party to insist in any one or more instances upon the strict performance of any covenant, agreement, term, provision or condition of this Agreement will not be construed as a waiver or relinquishment for the future of such covenant, agreement, term, provision, or condition, but the same will continue and remain in full force and effect. No waiver by Village or ICE of any condition will be deemed to have been made unless expressed in writing and signed by the waiving party.

35. No Joint Venture. Nothing herein contained may be deemed in any way to constitute Village or ICE a partner of the other in its business or otherwise, or a joint venturer or a member of a joint enterprise with the other. ICE shall be considered an independent contractor for all purposes.

36. Invalidity. If any term or provision of this Agreement, or the application thereof to any person or circumstance is determined to be invalid or unenforceable, then to the extent that the invalidity or unenforceability thereof does not deprive a party of a material benefit afforded by this Agreement, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, will not be affected thereby, and each term and provision of this Agreement will be valid and will be enforced to the full extent permitted by law.

37. Village Representative. Village designates its Village ICE to be the Village Representative, who is authorized to act on behalf of Village under this Agreement. Village may, from time to time, change the individual who is the Village Representative by giving ICE written notice of the change. Any action, consent or Reasonable Approval by Village Representative under this Agreement will be binding on Village.

38. ICE Representative. ICE shall, by written notice to Village, designate a person to be ICE Representative, who is authorized to act on behalf of ICE under this Agreement. ICE may, from time to time, change the individual who is ICE Representative by giving Village written notice of the change. Any action, consent or Reasonable Approval by ICE Representative under this Agreement will be binding on ICE.

39. Authority to Execute. Village and ICE each warrant and represent to the other that the individuals signing this Agreement on behalf of the Village and ICE, respectively, have full power and authority to execute and deliver the Agreement and to bind the respective parties hereto.

40. Waiver of Claims. Village shall not be liable for any loss, damage or injury of any kind or character to any person or property (i) arising from any use of the Facility or any part thereof; (ii) caused by any defect in any building, structure, or other Improvements thereon or in any equipment or other facility located therein; (iii) caused by or arising from any act or omission of ICE, or of any of its agents, employees, licensees or invitees; (iv) arising from any accident on the Facility or any fire or other casualty thereon; or (v) arising from any other cause; unless, in any of such events, caused by the gross negligence or willful act of Village. ICE agrees that Village shall not be liable for injury to ICE's business for any loss of income

therefrom or from loss or damage to property of ICE or its employees, invitees, customers, or other persons in or about the Facility, nor shall Village be liable for injuries to any persons on or about the Facility whether such damage is caused by or as a result of theft, fire, electricity, water, rain or from breakage, leakage, obstruction or other defect of pipes, sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures or for any other condition arising upon the Facility, or from any new construction or repair, alteration or improvement on the part of ICE or Village or the equipment, fixtures or appurtenance thereof, other than as a result of Village's default of its obligations under this Agreement. The Village does not waive any rights of sovereign immunity that it has under applicable law. Notwithstanding anything contained in this Agreement to the contrary, in no event shall Village be liable for any consequential or punitive damages in connection with this Agreement.

41. Public Entity Crimes Act. ICE represents that the execution of this Agreement will not violate the Public Entity Crimes Act (Section 287.133, Florida Statutes), which essentially provides that a person or affiliate who is a contractor, consultant or other provider and who has been placed on the convicted vendor list following a conviction for a Public Entity Crime may not submit a bid on a contract to provide any goods or services to Village, may not submit a bid on a contract with Village for the construction or repair of a public building or public work, may not submit bids on leases of real property to Village, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with Village, and may not transact any business with Village in excess of the threshold amount provided in Section 287.017, Florida Statutes, for category two purchases for a period of thirty six (36) months from the date of being placed on the convicted vendor list. Violation of this Section 50 shall result in termination of this Agreement and recovery of any monies paid by Village, and may result in debarment from Village's competitive procurement activities. In addition to the foregoing, ICE further represents that there has been no determination, based on an audit, that it committed an act defined by Section 287.133, Florida Statutes, as a "public entity crime" and that it has not been formally charged with committing an act defined as a "public entity crime" regardless of the amount of money involved or whether ICE has been placed on the convicted vendor list.

42. Drug-Free Workplace Certification. ICE hereby covenants and agrees to implement a policy consistent with Governmental Requirements with respect to maintaining a drug-free workplace and otherwise to provide and maintain during the Term of this Agreement a drug-free workplace at the Facility.

43. Financial Interests. No elected official, officer, agent or employee of the Village shall have a financial interest directly or indirectly in this Agreement or any compensation to be paid under it, and further, no Village employee who acts in the Village as a "purchasing agent" as defined by Section 112.312 (20), Florida Statutes, nor any elected or appointed officer of the Village, nor any spouse or child of such purchasing agent, employee or elected or appointed officer, may be a partner, officer, director or proprietor of and, further, no such Village purchasing agent, employee or elected or appointed officer, or the spouse or child of any of them, alone or in combination, may have a material interest in ICE. Material interest means direct or indirect ownership of more than five percent (5%) of the total assets or capital stock of ICE.



44. Police/Regulatory Powers. Village 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 Facility, any improvements thereon, or any operations at the Facility. Nothing in this Agreement shall be deemed to create an affirmative duty of Village 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.

45. Encumbrances. ICE hereby represents, warrants and covenants to the Village that the fee simple title to the Facility shall be at all times free and clear of all liens, claims and encumbrances created by or through ICE (other than those created or consented to by Village). If any lien or notice of lien shall be filed against the fee simple title of the Facility created by or through ICE, ICE shall, within thirty (30) calendar days after notice of the filing thereof, cause the same to be discharged of record by payment, deposit, bond, or order of a court of competent jurisdiction. ICE shall not be deemed to be Village's agent so as to confer upon any contractor or subcontractor providing labor or services that are material to the Facility a construction lien, mechanic's lien or both against Village's estate under the provisions of Chapters 255 and 713, Florida Statutes, as amended from time to time. The foregoing shall be contained in a notice or memorandum to be recorded in the Public Records of Monroe County in accordance with Chapters 255 and 713, Florida Statutes.

46. Signs. ICE shall have the right to install directional signage and monument and other signage within the Facility identifying ICE's name or Facility's name, provided that such signage is consistent with Village's sign ordinances and applicable Governmental Requirements, and approved by all applicable Governmental Authorities. Any exterior signage other than as aforesaid including, but not limited to, signage on the Facility shall require the approval of the Village. Notwithstanding anything herein to the contrary, billboard signs are expressly prohibited on the Property. ICE shall have the right, subject to the Reasonable Approval of the Village to use the marquee sign installed by Village on the Property.

[THE REST OF THIS PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the respective dates under each signature.

ISLAMORADA COMMUNITY ENTERTAINMENT, INC.,  
a Florida non-profit corporation

By: [Signature]  
Name: \_\_\_\_\_

Its: \_\_\_\_\_

28 day of Aug, 2005

ISLAMORADA, VILLAGE OF ISLANDS,  
a Florida municipal corporation

By: [Signature]  
Robert Johnson, Mayor

16 day of July, 2005

ATTEST:

By: [Signature]  
Beverly Raddatz, Village Clerk

(VILLAGE SEAL)

Approved as to form and legality (for use and reliance by Islamorada, Village of Islands only):

[Signature]  
Village Attorney  
Weiss Serota Helfman  
Pastoriza Cole & Boniske, P.A.

15 day of July, 2005

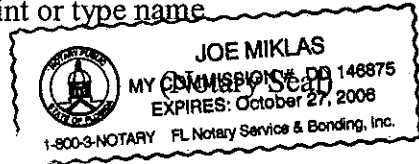


STATE OF FLORIDA )  
 ) SS:  
COUNTY OF MONROE )

The foregoing instrument was acknowledged before me this 29 day of July, 2005, by Steve Fein, as President of Islamorada Community Entertainment, Inc., a Florida non-profit corporation, on behalf of the \_\_\_\_\_ who (check one) is [ ] personally known to me or [X] has produced a Florida drivers license as identification.

My commission expires:

Print or type name



STATE OF FLORIDA )  
 ) SS:  
COUNTY OF MONROE )

The foregoing instrument was acknowledged before me this 16 day of July, 2005, by Robert Johnson, as Mayor of ISLAMORADA, VILLAGE OF ISLANDS, a Florida municipal corporation, on behalf of the corporation, who (check one) is [X] personally known to me or [ ] has produced a Florida drivers license as identification.

My commission expires:

Print or type name

Beverly Raddatz

(Notary Seal)



**EXHIBIT "A"**

Legal Description of the Land

[Home](#)

[Departments](#)

[Exemptions](#)

[Online Data Center](#)

[Forms](#)

Jul 6, 2005 9:25AM

[Contact the Webmaster](#)



# ONLINE DATA CENTER

## RECORDS SEARCH

### PROPERTY INFORMATION FOR:

Alternate Key: 1107913  
RE Number: 00093330-000000

[Print](#) [Search Again](#) [Search Results](#)

[Email this office about this parcel.](#)

#### Property Details

##### OWNER OF RECORD

ISLAMORADA VILLAGE OF ISLANDS  
P O BOX 568  
ISLAMORADA FL 33036  
Business Name: ISLAMORADA VILLAGE OF ISLANDS

##### PHYSICAL LOCATION

87000 OVERSEAS HWY PLANTATION KEY

##### LEGAL DESCRIPTION

18 63 38 PLANTATION KEY OR LONG ISLAND PT LOT 10  
PB1-101 & BAY BTM N'LY & ADJ & PT GOV LOT 1 PT E1/2  
OF SE1/4 OF SE1/4 OR404-1031/1032-E OR486-41/43 OR807-  
2267E OR832-1558/1559

##### SECTION, TOWNSHIP, RANGE

18 - 63 - 38

##### MILLAGE GROUP

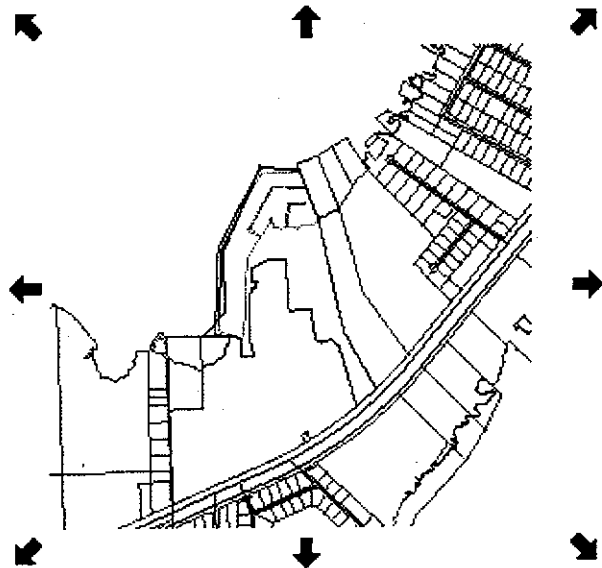
50VI

[Estimate Taxes](#)

##### PC CODE

89 - MUNICIPAL OTHER THAN (PC/LIST)

#### PROPERTY MAP



Map Size

None  Small  Medium  Large

#### Building Details

NUMBER OF BUILDINGS

6

TOTAL LIVING AREA

18834

NUMBER OF COMMERCIAL BUILDINGS

6

YEAR BUILT

1965

#### Land Details

LAND USE CODE

8900 - MUNICIPAL

9500 - SUBMERGED

9500 - SUBMERGED

LAND AREA

9.07 AC

8.71 AC

1.09 AC

#### Parcel Value History

TAX ROLL YEAR	BUILDING	MISCELLANEOUS IMPROVEMENTS	LAND	JUST	EXEMPTIONS (NOT INCLUDING SENIORS)	TAXABLE
2004	1,749,343	1,453,022	2,551,918	5,754,283	3,400,206	2,354,077
2003	1,213,436	1,464,007	2,551,918	5,229,417	3,090,063	2,139,354
2002	945,242	548,635	2,041,730	3,535,607	1,469,045	2,066,562

**Parcel Sales History**

NOTE - OUR RECORDS ARE TYPICALLY TWO TO THREE MONTHS BEHIND FROM THE DATE OF SALE. IF A RECENT SALE DOES NOT SHOW UP PLEASE GIVE OUR OFFICE TIME TO PROCESS IT.

SALE DATE	OFFICIAL RECORDS BOOK/PAGE	PRICE	INSTRUMENT
02/1999	1562/749	9000000	WD

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Jul 6, 2005 9:28AM

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## ONLINE DATA CENTER

### RECORDS SEARCH

**PROPERTY INFORMATION FOR:**

Alternate Key: 8932243  
 RE Number: 00093330-000100

[Print](#)   [Search Again](#)   [Search Results](#)

[Email this office about this parcel.](#)

**Property Details**

**OWNER OF RECORD**

ISLAMORADA VILLAGE OF ISLANDS  
 P O BOX 568  
 ISLAMORADA FL 33036

**PHYSICAL LOCATION**

PLANTATION KEY

**LEGAL DESCRIPTION**

18-63-38 PLANTATION KEY LOT 9 & PT LOT 10 & PT TRACT 1 OLLIEWOOD #2 PB1-101 OR404-1031/32 OR486-41/43 OR807-2267/68E OR832-1558/59E OR1562-749/61(CW) PARCEL SPLIT PER SURVEY 6-7-

**SECTION, TOWNSHIP, RANGE**

18 - 63 - 38

**MILLAGE GROUP**

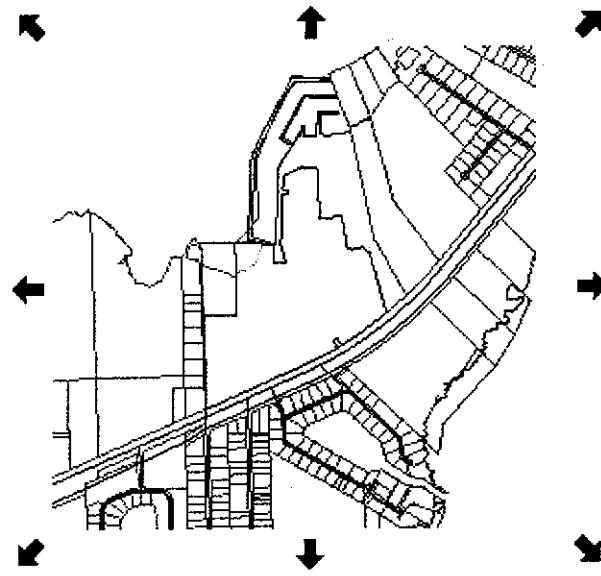
50VI

[Estimate Taxes](#)

**PC CODE**

89 - MUNICIPAL OTHER THAN (PC/LIST)

**PROPERTY MAP**



**Map Size**

None    Small    Medium    Large

**Building Details**

**NUMBER OF BUILDINGS**

**TOTAL LIVING AREA**

**NUMBER OF COMMERCIAL BUILDINGS**

**YEAR BUILT**

**Land Details**

**LAND USE CODE**

**LAND AREA**

100H - COMMERCIAL HIGHWAY

30.31 AC

**Parcel Value History**

TAX ROLL YEAR	BUILDING	MISCELLANEOUS IMPROVEMENTS	LAND	JUST	EXEMPTIONS (NOT INCLUDING SENIORS)	TAXABLE
2004	0	11,360	3,031,000	3,042,360	3,042,360	0
2003	0	11,360	3,031,000	3,042,360	3,042,360	0

2002	0	11,360	3,031,000	3,042,360	3,042,360	0
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**Parcel Sales History**

NOTE - OUR RECORDS ARE TYPICALLY TWO TO THREE MONTHS BEHIND FROM THE DATE OF SALE. IF A RECENT SALE DOES NOT SHOW UP PLEASE GIVE OUR OFFICE TIME TO PROCESS IT.

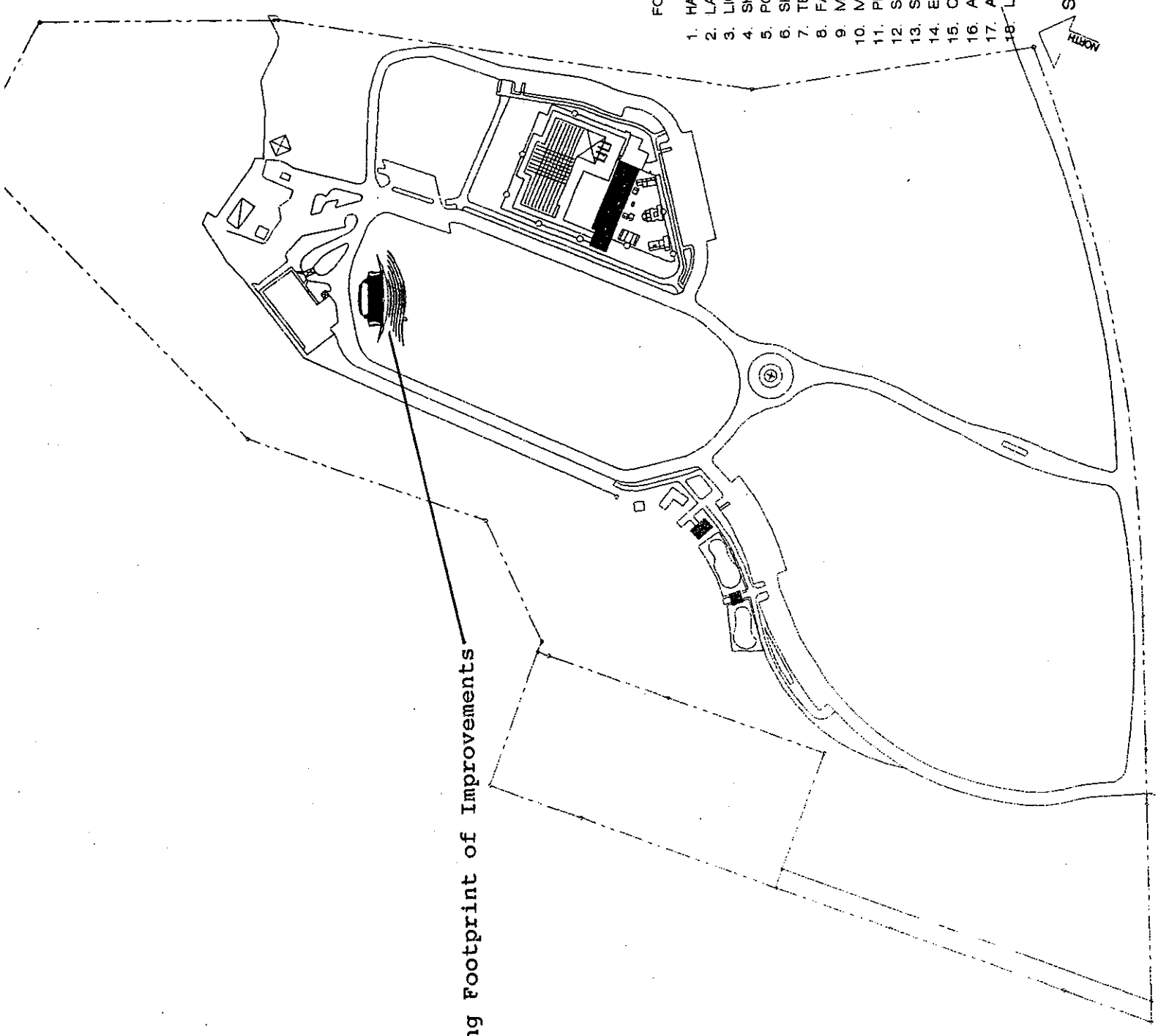
SALE DATE	OFFICIAL RECORDS BOOK/PAGE	PRICE	INSTRUMENT
02/1999	1562/749	1	WD

This page has been visited 1,547 times.



**EXHIBIT "B"**

**Building Footprint of Improvements**



Building Footprint of Improvements

- FOUNDERS PARK
1. HAMMOCK PAVILION / AMPHITHEATER
  2. LAWN
  3. LIGHHOUSE MONUMENT
  4. SHROUDED BANDSHELL
  5. POOL AND BATHHOUSE
  6. SKATE PARK
  7. TENNIS
  8. FACILITIES
  9. MARINA
  10. MANGROVE HAMMOCK
  11. PLAYGROUND
  12. SANDY BEACH
  13. SOCCER / BASEBALL
  14. ENTRY
  15. CATCH BASIN / SERVICE TRENCH
  16. ANGLED RAILING / SHROUD GUIDE
  17. ANGLED RAILING / SHROUD GUIDE
  18. LINE OF SUPPORT WALL

S I T E P L A N  
1/356' = 1''-0'

## **EXHIBIT "C"**

### **Permitted Uses**

1. Cultural and entertainment events, performances, activities, programs and services.
2. Music Series.
3. Dance Series.
4. Theater series.
5. Children's' series.
6. Charitable community events.
7. Holiday (non-religious) events.

Note: The Permitted Uses expressly exclude religious, political and sexually explicit events, performances, activities, programs and services

**EXHIBIT "D"**

List of Personal Property

[TO BE INSERTED PRIOR TO THE EFFECTIVE DATE]



April, 1 2021

Village of Islamorada  
86800 Overseas Hwy  
Islamorada Florida, 33036

To Village of Islamorada Council and Staff,

This letter is to inform you of the willingness of Islamorada Community Entertainment, (ICE) to continue management of the Amphitheater at Founder's Park.

After meeting with the acting village manager and park director, we realized that, at the council's discretion, a new agreement would have to be drafted to reflect the current relationship ICE maintains with The Village. We look forward to a continued cooperation between our organizations.

Thank You,

*David Feder*

Director of Islamorada Community Entertainment

Director@keysice.com

**Islamorada Community Entertainment**

(a not-for-profit 501-c-3 Corporation)

P.O. Box 562 • Islamorada, Florida 33036

www.keysice.com

**Stars Above...Stars Onstage**