

75-8

LEASE/USE AGREEMENT BETWEEN THE CITY OF CORAL GABLES
AND PLUMER MANAGEMENT, L.L.C.

THIS LEASE/USE AGREEMENT, made and entered into *August 8, 2001*, 2001, by and between the CITY OF CORAL GABLES, a municipal corporation of the State of Florida, (hereinafter called the "LESSOR"), and PLUMER MANAGEMENT, L.L.C., a Florida limited company, (hereinafter called the "LESSEE").

WITNESSETH:

WHEREAS, the LESSOR has under its jurisdiction certain property that is capable of being utilized for LESSEE's parking purposes, on a temporary basis; and

WHEREAS, the LESSEE is interested in and concerned with providing and making available an enlarged substitute right of way on a temporary basis, for the use of the public, located adjacent to the alleyway in the vicinity of their property located at 5915 Ponce de Leon Blvd.; and

WHEREAS, these objectives may be best achieved through joint and coordinated action of the LESSOR and the LESSEE in making the LESSOR's property available for such purposes; and

WHEREAS, the City of Coral Gables, by adoption of Resolution No. 30051 at their meeting on February 27, 2001, approved this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants hereinafter contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

I.

PREMISES TO BE LEASED

LESSOR does hereby lease to LESSEE, and LESSEE does hereby lease from LESSOR the following described parcel of land, hereinafter called the "DEMISED PREMISES", lying and being in the County of Miami-Dade, State of Florida, and known as the alleyway :

Legal Description

LESSOR'S ALLEYWAY:

South Easterly 25 ft. of Lot 9, Block 196 of Coral Gables Riviera
Section 14, 2nd Revision, Plat Book 28, at Page 32

LESSEE'S PROPERTY:

North Easterly 25 feet of Lot 9, Block 196, Coral Gables Riviera
Section 14, 2nd Revision, Plat Book 28 at Page 32

II.

TERM OF LEASE/USE AGREEMENT

The original term of this Lease/Use Agreement shall be for three years commencing on January 1, 2001, and ending on December 31, 2003. Said term may be extended at the option of the LESSOR, upon review and approval of the City Commission of the City of Coral Gables at the end of the three-year period.

III.

USE OF PROPERTY

LESSEE shall have exclusive use of the LESSOR'S PROPERTY, for the purpose of providing 12 parking spaces.

The LESSEE'S PROPERTY shall be utilized for substitute alleyway purposes.

LESSEE shall make any request for a change in the usage or additional usage to the City Manager's Office.

IV.

IMPROVEMENTS

LESSEE agrees that no construction, alterations or improvements may be undertaken by it upon the DEMISED PREMISES without the express written agreement of the LESSOR. Upon the termination, cancellation or expiration of the Lease/Use Agreement, or any extension thereof, all permanent improvements, in their then existing condition, shall become the property of LESSOR, or shall be removed by LESSEE at LESSOR's option.

V.

CONSIDERATION

LESSEE does hereby covenant and agree to provide, as consideration for the use and occupancy of the LESSOR's ALLEYWAY throughout the term of this Lease/Use Agreement and any renewal thereof, the reduced amount of Thirty Dollars (\$30.00) per month per parking space.

LESSEE is requesting LESSOR to take certain actions regarding use of the LESSOR's ALLEYWAY, which LESSEE believes is in the public interest and also in its own commercial interest, but which the parties recognize may subject LESSOR to certain liabilities. As consideration for LESSOR's actions in taking such actions, LESSEE is entering into this Use Agreement. By entering into this Agreement, LESSEE agrees that sufficient consideration exists to bind it to this Agreement and, should a dispute between the parties arise concerning this Agreement, LESSEE agrees not to contest the adequacy or legality of the consideration. After full and complete review of existing law, LESSEE also waives any defense to enforcement of this Agreement based on an

argument that this Agreement is illegal, void or contrary to public policy.

VI.

INSPECTION

The design and construction of facilities improvement or alterations shall be owned by the LESSOR and shall conform to LESSOR's standards and regulations. The LESSOR shall have the right but not the obligation to make engineering inspections of all the construction work performed by the LESSEE under the terms of this Agreement. Such inspections shall not be construed to constitute any guarantee on the part of the LESSOR as to the quality and condition of materials and workmanship. Any inspections by the LESSOR shall not relieve the LESSEE of any responsibility for proper construction of said facilities in accordance with approved plans and specifications. Furthermore, any inspections by the LESSOR shall not relieve the LESSEE or any responsibility for the quality and condition of materials and workmanship.

VII.

APPROVALS AND PERMITS

The LESSEE shall be fully responsible for obtaining all required approvals from all appropriate governmental and regulatory agencies and all necessary permits for all facilities contemplated in this Agreement.

VIII.

LESSOR AS PERMITTEE

Certain federal, state and county agencies may require that LESSOR be named as permittee for certain construction activities even though the LESSEE's contractor will actually perform the work. To insure that LESSOR will incur no costs or liability as a result of being named permittee on such permits, LESSEE shall provide sufficient security as acceptable to LESSOR which shall indemnify and protect LESSOR from all claims, actions, judgements, liability, loss, cost and expense, including reasonable attorney's fees, related to work performed by the LESSEE pursuant to such permits. The security shall be furnished prior to the start of construction and shall be in an amount equal to the LESSOR's cost estimate for the permit work. The LESSEE shall have sixty (60) days to resolve any claims by a permittee. Otherwise, the LESSOR shall be entitled to pay said claims for the security. The LESSEE shall be liable for all costs in excess of the security.

IX.

MAINTENANCE

The LESSEE warrants any improvements or alterations to be owned by LESSOR shall be free from defects in materials and workmanship for a period of one (1) year from final acceptance by the LESSOR. Upon demand by the LESSOR, the LESSEE shall cause to be corrected all such defects which are discovered within the warranty period or periods as set forth above, failing which the LESSOR shall make such repairs and/or replacements of defective work and/or materials and the LESSEE and/or its Surety shall be liable to the LESSOR for all costs arising therefrom. The LESSEE also warrants that it shall be solely responsible for the repair of any damages to said improvements and/or alterations caused by persons in its employment.

X.

NO LIABILITY FOR PERSONAL PROPERTY

LESSOR and LESSEE agree to insure or self insure their respective interests in personal property to the extent each deems necessary or appropriate and hereby mutually waive all rights to recovery for loss or damage by any means and waive all rights to recovery for loss and damage to such property by any cause whatsoever. LESSOR and LESSEE hereby waive all rights of subrogation against each other under any policy or policies they may carry or on property placed or moved on the DEMISED PREMISES.

XI.

INDEMNIFICATION

LESSEE does hereby agree to fully indemnify and save harmless the LESSOR, its Mayor, Commissioners, employees and agents, from any and all liability claims, losses, causes of action or damages, including attorney's fees and costs, which may arise as a result of the LESSEE'S omissions, willful, unlawful or negligent act(s) in its use, maintenance or operation of the prescribed property, and shall obtain insurance to satisfy the indemnification provisions in this section. LESSEE shall pay all claims and losses of any nature whatsoever in connection herewith and shall defend all suits in the name of the City, when applicable, and shall pay all costs and judgments including Attorney's fees which may issue thereupon including all administrative trial and appellate proceedings brought by any person or entity. The indemnification and hold harmless provision shall include, but not be limited to, all of the following:

- a. Damages awarded to any person or party.
- b. Attorney's fees and costs incurred in defending such claims. The City of Coral Gables may use the attorney or law firm of its choice in which event LESSEE will

pay such firm the fees it charges the City, provided such fees are reasonable in light of the prevailing market rate for similar legal services. Such fees shall be deemed reasonable if they are no greater than the fees that LESSEE pays other counsel for representation in similar cases. If the City Attorney's Office provides the defense, LESSEE will reimburse the City at the prevailing market rate for similar legal services.

- c. Attorney's fees and cost of any party that a court orders the City of Coral Gables to pay.
- d. Lost time that results from the City of Coral Gables or its officials or employees responding to discovery or testifying by deposition or in court. In this regard, for any time the City of Coral Gables spends in responding to document requests or public records requests relating to such claims whether from LESSEE or any other party, LESSEE will reimburse LESSOR \$50 for each employee work hour spent reviewing or responding to such requests. For any time spent testifying in court or in depositions, or preparing for such testimony, LESSEE will reimburse LESSOR on a per hour basis as follows:

— For the Mayor or City Commissioner:	\$300 per hour
— For the City Manager:	\$250 per hour
— For an Assistant City Manager or Department Director:	\$250 per hour
— For an Assistant Department Director:	\$100 per hour
— For City Attorney:	Prevailing market rates
— For other employees:	\$ 50 per hour

In addition, LESSEE recognizes that LESSOR will expect that its City Attorney's Office will monitor such claims; review pleadings, orders, memorandums and motions; oversee such discovery; and independently or jointly prepare such witnesses and attend such depositions for which LESSEE will reimburse LESSOR at prevailing market rates. For any documents so produced LESSEE shall reimburse LESSOR \$.25 per page.

- a. The expenses incurred by LESSOR in complying with any administrative or court order that may arise from such claims.
- b. Miscellaneous expenses relating to such claims including expenses of hotels and transportation in trips relating to such claims; and
- c. Any other direct or indirect expense that LESSOR would not have occurred but for a claim that arises out of this use agreement.

XII.

LESSOR'S CONTROL OF LAWSUITS

The parties agree that in any lawsuit brought in its name or defended in its name, LESSOR must retain all final control and authority of the lawsuit. Therefore, in any lawsuit envisioned in this agreement in which LESSOR is a party, LESSOR retains full control of the lawsuit, including full authority to determine what legal actions or positions may be asserted to the courts in the name of LESSOR and the full authority to settle or compromise any claim. LESSEE agrees that its responsibilities under this Agreement continue in full force and effect regardless of any decision of LESSOR in this regard.

XIII.

MAINTENANCE OF LEASED PREMISES

LESSOR shall have sole responsibility for the maintenance of the DEMISED PREMISES, in exchange for a reduced cost of parking in accordance with Section V herein. LESSEE will be responsible for all costs and any other maintenance work which, in the LESSOR's opinion, may be necessitated as a direct result and consequence of the LESSEE's usage of the LESSOR'S PROPERTY.

XIV.

INSURANCE

LESSEE agrees to maintain at all times during the lease term, at LESSEE=s cost, a comprehensive public liability insurance policy protecting LESSOR against all claims or demands that may arise or be claimed on account of LESSEE's use of the premises, in an amount of at least \$1,000,000.00 for injuries to persons per occurrence, \$2,000,000.00 annual aggregate,

and value for full replacement cost for damages to property. This insurance shall be written by a company or companies acceptable to LESSOR, authorized to engage in the business of general liability insurance in the state of Florida. LESSEE shall deliver to LESSOR annual certificates demonstrating that insurance is paid up and copies of insurance policies issued by the insurance companies. LESSEE further agrees to maintain at all times during the lease term, at LESSEE's cost, broad-coverage fire and casualty insurance on its property (including inventory) and to provide LESSEE with a copy of the policy and a certificate issued by the insurance company demonstrating that insurance is paid up. LESSEE shall obtain a certified statement by each insurance carrier containing a clause providing that the insurance carrier will give LESSOR 30 days written notice before any cancellation shall be effective. The insurance policies shall be provided by LESSEE and shall be for a period of at least one year. If LESSEE fails to furnish policies or certificates showing policies to be paid in full as provided in this lease, LESSOR may obtain the insurance, and the premiums on that insurance will be deemed additional rental to be paid by LESSEE to LESSOR on demand. LESSOR shall be named an additional insured under such policies of insurance.

XV

EXAMINATION OF PREMISES

LESSEE, upon reasonable notice from LESSOR, agrees to permit the LESSOR's designee to enter upon the DEMISED PREMISES for any purpose LESSOR deems necessary, provided LESSOR does not unreasonably interfere with or unduly burden LESSEE's operations.

XVI.

TERMINATION

LESSEE shall have the right to terminate this Lease/Use Agreement by giving LESSOR written notice sixty (60) days prior to the effective date of such termination. In the event of termination by the City, LESSOR shall provide LESSEE with written notice sixty (60) days prior to the effective date of such termination and shall compensate LESSEE for the expense of any improvements to the DEMISED PREMISES made by the LESSEE, and approved by the LESSOR pursuant to Article IV herein. Such compensation shall be paid to the LESSEE by LESSOR at a rate of 5% of the total costs expended by LESSEE for each month, or portion thereof, remaining in the lease term.

LESSOR shall provide LESSEE with written notice of any failure to perform or comply with the terms and conditions contained herein to be performed by that party. If LESSEE fails to cure, or make a reasonable effort to cure, said default within thirty (30) days, LESSOR shall give LESSEE notice of such fact and shall have the right to terminate this Lease/Use Agreement.

LESSEE shall provide LESSOR with written notice of any failure to perform or comply with the terms and conditions contained herein to be performed by LESSOR. If LESSOR fails to cure, or make a reasonable effort to cure, said default within thirty (30) days, LESSEE shall give LESSOR notice of such fact and shall have the right to terminate this Lease/Use Agreement, upon which event the only remaining obligations shall be as set forth in the compensation schedule as provided for in Section X.

XVII.

LIBERAL INTERPRETATION TO PROTECT LESSOR

The purpose of this Agreement is to protect LESSOR from any direct or indirect expenses that may arise from any claim stemming directly or indirectly from LESSOR's Agreement. Accordingly, this Agreement will be liberally interpreted to protect LESSOR from the expenses, damages, costs, attorney's fees and expenses of such claims that would not have arisen but for the Agreement. Any and all provisions of law that might require or suggest a strict construction of this document, which would lessen the protections provided to LESSOR, or limit or restrict such protections, are hereby waived by the parties. The provisions of this Agreement shall be severable, and if any part is deemed illegal and void, the remainder of the Agreement shall continue to have full force and effect.

XVIII.

NOTICE AND GENERAL CONDITIONS

A. All notices or other communications which shall or may be given pursuant to this Lease/Use Agreement shall be in writing and shall be delivered by personal service or by registered mail addressed to the parties at their respective addresses indicated below or as the same may be changed in writing from time to time. Such notice shall be deemed given on the day on which personally served, or if by mail, on the fifth day after being posted or the date of actual receipt, whichever is earlier.

2. In the case of notice or communication to LESSOR:
The City of Coral Gables

Office of the City Manager

405 Biltmore Way

Coral Gables, Florida 33134

3. In the case of notice of communication to LESSEE:
PLUMER MANAGEMENT, L.L.C.

5915 Ponce De Leon Blvd., Suite 19

Coral Gables, Florida 33146

XIX.

SURRENDER OF PREMISES

At the end of the original term or an extension thereof, or upon termination of this Lease/Use Agreement as set forth under Article X, LESSOR and LESSEE shall promptly and peacefully surrender and deliver possession of the DEMISED PREMISES in its existing condition, normal wear and tear excepted, and in accordance with the covenants herein contained.

XX.

FORCE MAJEURE

Should either party be prevented from performing any obligations herein, including but not limited to water service, due to or resulting from a force majeure or inevitable accident or occurrence, such party shall be excused from performance. As used herein, force majeure shall mean an act of God which includes but is not limited to sudden, unexpected or extraordinary forces of nature such as floods, washouts, storms, hurricanes, fires, earthquakes, landslides, epidemics, explosions or other forces of nature. Inevitable accidents or occurrences shall mean those which are unpreventable by the either party and shall include but not be limited to: strikes,

lockouts, other industrial disturbances, wars, blockades, acts of public enemies, insurrections, riots, federal, state, county and local governmental restraints and restrictions, military action, civil disturbances, explosions, conditions in federal, state, county and local permits, bid protests, manufacturing and delivery delays, unknown or unanticipated soil, water or ground conditions and cave-ins, or otherwise, and other causes reasonably beyond the control of either party, whether or not specifically enumerated herein.

XXI.

NON-DISCRIMINATION

LESSEE agrees that there will be no discrimination against any person based upon race, color, sex, religious creed, ancestry, national origin, mental or physical disability, in the use of the DEMISED PREMISES and improvements thereof.

XXII.

AMENDMENTS

LESSOR and LESSEE, by mutual agreement, shall have the right, but not the obligation, to amend this Lease/Use Agreement. Any and all amendments shall be effective only if in writing and signed by LESSOR and LESSEE and shall be incorporated as part of this Lease/Use Agreement.

XXIII.

CONSTRUCTION OF AGREEMENT

This Lease/Use Agreement shall be construed and enforced according to the laws of the State of Florida.

XXIV.

SEVERABILITY

In the event any paragraph, clause or sentence of this Lease/Use Agreement or any future amendment is declared invalid by a court of competent jurisdiction, such paragraph, clause or sentence shall be stricken from the subject Lease/Use Agreement and the balance of the Lease/Use Agreement shall not be affected by the deletion thereof.

XXV.

COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS

All parties hereby agree to comply with all applicable laws, ordinances and codes of Federal, State and Local Governments, including the Americans with Disabilities Act, as applied to this Lease/Use Agreement.

XXVI

WAIVER

No waiver of any provision hereof shall be deemed to have been made unless such waiver be in writing and signed by LESSOR and LESSEE. The failure of any party to insist upon strict performance of any of the provisions or conditions of this Lease/Use Agreement shall not be construed as waiving or relinquishing any such covenants or conditions, but the same shall continue and remain in full force and effect.

XXVII.

ASSIGNMENT OF AGREEMENT

This Agreement shall not be transferred, assigned or otherwise conveyed to any other party without the express written consent of LESSOR or its designee

XXVIII.

ENTIRE AGREEMENT

This Lease/Use Agreement represents the entire agreement between the parties.

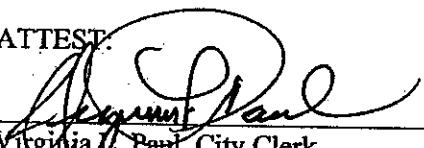
XXIX.

SUCCESSORS AND ASSIGN

This Lease/Use Agreement shall be binding upon the parties herein, their heirs, executors, legal representatives, successors and assigns.

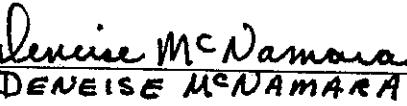
IN WITNESS WHEREOF, the parties hereto have caused this Lease/Use Agreement to be executed the day and year first written.

ATTEST:


Virginia J. Paul, City Clerk

Authority of Resolution No. 30051
duly passed and adopted by the Coral
Gables City Commission on 2-27-01.

ATTEST:


DENISE McNAMARA

WITNESSES

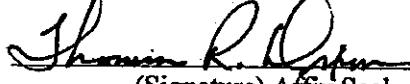

Name Printed: FLORENCE ANDERSON


Name Printed: STUART COX

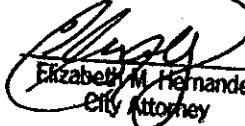
AS TO
THE CITY OF CORAL GABLES


H. C. Eads, Jr., City Manager

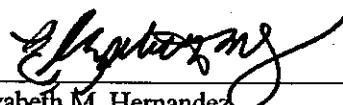
AS TO
PLUMER MANAGEMENT L.L.C.,


(Signature) Affix Seal
Thomas R. Dixon, Treasurer

APPROVED


Elizabeth M. Hernandez
City Attorney

APPROVED AS TO FORM



Elizabeth M. Hernandez
City Attorney

Prepared by: Elizabeth M. Hernandez, City Attorney
405 Biltmore Way, Coral Gables, Florida 33134