

RESOLUTION NO. 2014-

A RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, APPROVING THE SECOND AMENDMENT TO THE EMPLOYMENT AGREEMENT BETWEEN JOHN C. GILBERT AND THE VILLAGE OF KEY BISCAYNE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, on December 3, 2013, the Village Council of the Village of Key Biscayne (the "Village") approved Resolution No. 2013-43 providing for a First Amendment to the Employment Agreement (the "Agreement"), whereby John C. Gilbert would serve as Village Manager from February 11, 2014 through September 30, 2014; and

WHEREAS, the Village Council desires to enter into a Second Amendment to the Agreement whereby John C. Gilbert would serve as Village Manager attached as Exhibit "A" to this Resolution; and

WHEREAS, the Village Council finds that this Resolution is in the best interest and welfare of the residents of the Village.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, AS FOLLOWS:

Section 1. Recitals Adopted. That each of the recitals stated above is hereby adopted and confirmed.

Section 2. Approval of Amendment. That the Village Council hereby approves the Second Amendment to the Agreement attached as Exhibit "A." The Village Mayor is authorized to execute the Agreement on behalf of the Village, in the form which is attached hereto, once approved as to form, content and legal sufficiency by the Village Attorney.

Section 3. Effective Date. That this Resolution shall be effective immediately upon adoption.

PASSED AND ADOPTED this ____ day of September, 2014.

MAYOR FRANKLIN H. CAPLAN

ATTEST:

CONCHITA H. ALVAREZ, MMC, VILLAGE CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

VILLAGE ATTORNEY

**SECOND AMENDMENT TO
EMPLOYMENT AGREEMENT BETWEEN
THE VILLAGE OF KEY BISCAYNE
AND
JOHN C. GILBERT**

This Second Amendment to the Employment Agreement (the "Second Amendment") between the Village of Key Biscayne and John C. Gilbert is made and entered into this ____ day of September, 2014, by and between the Village of Key Biscayne, Florida, a municipal corporation of the State of Florida (the "Village") and John C. Gilbert ("Employee"). Collectively, the Village and Employee shall be referred to as the Parties.

WITNESSETH

WHEREAS, on February 12, 2012, the Parties entered into an Employment Agreement whereby the Employee agreed to serve as Village Manager (the "Agreement"); and

WHEREAS, on December 3, 2013, the Parties entered into a First Amendment to Employment Agreement modifying various terms and conditions of Employee's employment; and

WHEREAS, the Parties desire to further amend the Agreement by entering into this Second Amendment.

NOW THEREFORE, in consideration of the mutual covenants set forth in this First Amendment the Parties agree as follows:

Section 1. Amendment to the Agreement. That Section 2 "Term" of the Agreement is hereby amended as follows:

* * *

SECTION 2. TERM

2.1 This Agreement commenced on October 1, 2014 and shall terminate on September 30, 2016, unless earlier terminated as provided in this Agreement.

- 2.2 No later than June 30, 2016, unless this Agreement terminated earlier as provided in Sections 3 and 4 of this Agreement, the Village Council shall notify Employee of its intention to enter into a new agreement, extend this Agreement for such term as the parties may agree or allow this Agreement to expire. If the Village Council and Employee mutually agree, the Term will be extended for one two-year renewal period, commencing on October 1, 2016 and ending on September 30, 2018. Failure of the Village Council to act on a timely basis shall be deemed a decision by Council that the Term should continue for the renewal period. If either Council or Employee determine not to extend the Term and provide notice to that effect not later than June 30, 2016, and if Employee is nevertheless ready, willing and able to continue his employment as Village Manager for a transition period, the Term will continue and the Village will continue providing Employee with his regular bi-weekly salary and benefits as provided herein through November 30, 2016.
- 2.3 Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Village Council to terminate the services of Employee at any time, subject only to the provisions set forth in Section 3 of this Agreement.

Section 2. Amendment to the Agreement. That Section 3 “Termination by Village and Severance Pay” of the Agreement is hereby amended as follows:

SECTION 3. TERMINATION BY VILLAGE AND SEVERANCE PAY

- 3.1 In the event Employee is terminated by the Village Council prior to September 30, 2016, other than for cause (as is defined in Section 3.2 of this Agreement) and during such time that Employee is willing and able to perform his duties under this Agreement, the Village agrees to pay Employee a lump sum cash payment equal to one (1) week of Employee’s salary for each month Employee has served as Village Manager under this Agreement up to a maximum of twenty (20) weeks (the “Severance Pay”), unless the Village has notified Employee of its intention to allow the contract to expire pursuant to Section 2.2 of this Agreement or the Council failed to act pursuant to Section 2.2 of this Agreement, in which case that provision shall apply. In either such event, Employee shall also receive payment for any and all accrued vacation and sick leave in accordance with the Village's policies governing other general non-police or non-fire employees of the Village ("Administrative Employees"). In accordance with Section 215.425, Florida Statutes, under no circumstances will the Severance Pay provided to Employee exceed an amount greater than twenty (20) weeks of his salary. Severance Pay shall be paid within fifteen (15) working days of termination. The Village shall continue to provide medical coverage for Employee for the same number of weeks as Employee’s Severance Pay in the same manner and in the same amount as Employee is receiving at the time of termination. After the payment described above is made, the Village

shall have no further financial obligation to Employee.

* * *

Section 3. Amendment to the Agreement. That Section 5 “Compensation” of the Agreement is hereby amended as follows:

SECTION 5. COMPENSATION

5.1 The initial annual salary of Employee shall be One Hundred and Seventy-Three Thousand Five Hundred Dollars (\$173,500.00), which shall be payable in installments at the same time as other employees of the Village are paid. Effective May 24, 2013, the annual salary of Employee shall be One Hundred and Eighty-Five Thousand Six Hundred and Thirty-Six Dollars and Thirty-Three Cents (\$185,636.33) also payable in installment at the same time as other employees of the Village are paid. Effective October 1, 2014, annual salary of Employee shall be One Hundred ninety Thousand Two Hundred and Seventy-Seven Dollars and Twenty-Four Cents (\$190,277.24) also payable in installment at the same time as other employees of the Village are paid.

* * *

5.3 For each twelve month period beginning October 1, 2015, Employee shall be entitled to receive an annual “cost of living” salary increase to be effective during the ensuing twelve month period, in an amount equal to the lesser of the change in the Consumer Price Index (“CPI”), which amount will be rounded to the closest tenth of a percentage; or 3.0%. The CPI that will be used is the twelve (12) month change from October 1 to the following September 30 based on the CPI for All Urban Consumers for the Miami-Fort Lauderdale Area (all items index) published by the U.S. Department of Labor Bureau of Labor Statistics. However, if the CPI increase for a given year is more than three percent (3.0%), the salary increase for the following year will be three percent (3.0%), and if the CPI is flat compared to the previous year, or the change compared to the previous year is negative, Employee will not receive a cost-of-living salary increase for the ensuing year.

Section 4. Amendment to the Agreement. That Section 11 “Vacation Leave, Sick Leave and Holidays” of the Agreement is hereby amended as follows:

SECTION 11. VACATION LEAVE, SICK LEAVE AND HOLIDAYS

- 11.1 Employee shall be entitled to vacation leave, sick leave and holidays at the same rate and in the same manner as other Administrative Employees based on Employee's total years of service with the Village. However, during the first year of this Agreement, Employee may use up to seven (7) days of vacation leave prior to the time it is accrued. Beginning October 1, 2014 and during the remainder of the Term, Employee shall be entitled to five weeks paid vacation leave during each twelve month period.
- 11.2 In the event of the death of Employee during the term of this Agreement, his designated beneficiaries shall be entitled to payment of all of his accrued vacation leave and sick leave in accordance with the Village's policies governing Administrative Employees.

Section 5. No Further Modifications. All other terms and conditions of the Agreement not in conflict or superseded by this First Amendment shall remain in full force and effect as if set forth in full herein.

IN WITNESS WHEREOF, the Parties hereto have accepted, made and executed this Second Amendment upon the terms and conditions above stated on the day and year first above written.

Employee

Village of Key Biscayne, Florida

By: _____
John C. Gilbert

By: _____
Franklin H. Caplan, Mayor

Attest:

Conchita H. Alvarez, MMC
VILLAGE CLERK

Approved as to Form and Legal Sufficiency:

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