



# VILLAGE OF KEY BISCAINE

Office of the Village Manager

*Village Council*

Robert L. Vernon, *Mayor*  
Michael Davey, *Vice Mayor*  
Enrique Garcia  
Robert Gusman  
Michael E. Kelly  
Jorge E. Mendia  
Thomas Thornton

## MEMORANDUM

*Village Manager*

Genaro "Chip" Iglesias

DATE: August 27, 2009

TO: Honorable Mayor and Members of the Village Council

FROM: Genaro "Chip" Iglesias, Village Manager *CM* for Genaro Iglesias

RE: Amendment and Extension to the Agreement for use of Athletic Fields between the Village of Key Biscayne and the Archdiocese of Miami

### RECOMMENDATION

It is recommended that the Village Council approve this resolution executing an extension and amended agreement between the Village of Key Biscayne and the Archdiocese of Miami for the use of the St. Agnes athletic fields.

### BACKGROUND

The Village of Key Biscayne youth athletic programs have greatly benefited from the use of the lighted playing fields located at St. Agnes for the past five (5) years. In the annual meeting representatives of the Church and School expressed their desire to increase the annual payment.

Attached as Exhibit "A" is the "Amendment to the Agreement for use of St. Agnes Catholic Church athletic field". This amendment makes the following changes to the original agreement attached as Exhibit "B":

1. Beginning October 1, 2009, the annual license fee increases from \$36,000 to \$40,000.
2. The term of the Agreement now runs through September 30, 2014 without the annual renewal requirement in the previous agreement.
3. Termination of the agreement can occur on October 1 of any calendar year or with twelve (12) months prior notice. Therefore, to terminate on October 1, 2012 notice would need to be provided on October 1, 2011. The previous agreement had a six (6) month notice of termination.

RESOLUTION NO. 2009- \_\_\_\_\_

**A RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, APPROVING AN AMENDMENT TO THE AGREEMENT FOR USE OF ST. AGNES CATHOLIC CHURCH ATHLETIC FIELD BETWEEN THE VILLAGE OF KEY BISCAYNE AND THE ARCHDIOCESE OF MIAMI; PROVIDING FOR IMPLEMENTATION; PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, pursuant to Resolution 2004-28, the Village Council of the Village of Key Biscayne (the “Village”) approved and authorized an Agreement For Use of St. Agnes Catholic Church Athletic Field (the “Agreement”) between the Village and the Archdiocese of Miami; and

**WHEREAS**, the Village Council and the Archdiocese of Miami desire to, among other things, extend the term of the Agreement and adjust fees to be paid to the Archdiocese of Miami under the Agreement as particularly described in the Amendment to Agreement For Use of St. Agnes Catholic Church Athletic Field attached hereto as Exhibit “A” (the “Amendment”); and

**WHEREAS**, the Village Council finds that approval of the Amendment between the Village and the Archdiocese of Miami is in the best interest of the Village.

**NOW, THEREFORE, IT IS HEREBY RESOLVED BY THE VILLAGE 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.**     **Amendment Approved.** That the Amendment between the Village of Key Biscayne and the Archdiocese of Miami, in substantially the form attached hereto, is hereby approved, and the Village Manager and Village Clerk are authorized, in their respective

capacities, to execute the Agreement on behalf of the Village, once approved by the Village Attorney as to form and legal sufficiency.

**Section 3.**     **Implementation.**     That the Village Manager is hereby authorized to take any necessary action to implement the purposes of this resolution and the Agreement.

**Section 4.**     **Effective Date.**     That this Resolution shall be effective immediately upon adoption hereof.

PASSED AND ADOPTED this 1st day of September, 2009.

\_\_\_\_\_  
ROBERT VERNON, MAYOR

ATTEST:

\_\_\_\_\_  
CONCHITA H. ALVAREZ, CMC, VILLAGE CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

\_\_\_\_\_  
Village Attorney

**Exhibit "A"**

**Amendment**

**AMENDMENT TO**  
**AGREEMENT FOR USE OF ST. AGNES CATHOLIC CHURCH ATHLETIC FIELD**

**THIS AMENDMENT TO AGREEMENT FOR USE OF ST. AGNES CATHOLIC CHURCH ATHLETIC FIELD** (this "Amendment") is entered into as of this \_\_\_ day of August, 2009 by and between the **VILLAGE OF KEY BISCAYNE** ("Village") and **THE MOST REVEREND JOHN C. FAVALORA**, Archbishop of the Archdiocese of Miami, a Florida corporation not for profit (hereinafter the "Owner").

**WITNESSETH:**

**WHEREAS**, Village and Owner entered into that certain Agreement dated June 23<sup>rd</sup>, 2004 (the "Agreement") regarding the Village's use of the St. Agnes Catholic Church's athletic field; and

**WHEREAS**, Village and Owner wish to modify the Agreement in accordance with the terms and conditions set forth below.

**NOW, THEREFORE**, for and in consideration of the mutual promises set forth herein, the parties do hereby agree as follows:

1. The above recitals are true and correct and are incorporated herein by this reference. All initially capitalized terms used but not otherwise defined herein shall have the meaning ascribed thereto in the Agreement.
2. Owner agrees that the Village has paid the annual license fee under the Agreement entitling the Village to use the St. Agnes Catholic Church's athletic field through September 30, 2009.
3. Section 4 of the Agreement is hereby deleted and replaced as follows:
  4. Fees. Beginning October 1, 2009, the Village shall pay the Owner an annual license fee of Fourty Thousand and 00/100 Dollars (\$40,000.00) for the licenses granted to Owner herein, which fee shall be paid in equally monthly installments of Three Thousand Thirty-Three and 33/100 Dollars (\$3,333.33) on the first day of each month during the Term. For any partial month during the Term, the monthly installment payment of Three Thousand Thirty-Three and 33/100 Dollars (\$3,333.33) shall be prorated on a per diem basis based on the number of days in such month. Owner hereby directs the Village to make all payments required hereunder directly to St. Agnes Catholic Church at 100 Harbor Drive, Key Biscayne, Florida 33149.

4. Section 3.1 of the Agreement is hereby deleted and replaced as follows:

3.1 The term of this Agreement has previously commenced and shall expire at 11:59 p.m. on September 30, 2014. (the "Initial Term").

5. Section 3.2 of the Agreement is hereby deleted.

6. The first sentence of Section 24 of the Agreement is hereby deleted and replaced as follows:

The Owner or Village shall be entitled to terminate this Agreement for any reason whatsoever upon at least twelve (12) months prior written notice to the Village. To prevent termination of this Agreement during an athletic sport season, this Agreement may only be terminated as of October 1<sup>st</sup> of a particular calendar year (e.g. to terminate the Agreement on October 1, 2012, notice must be given no later than October 1, 2011)

7. In the event of any conflict or ambiguity between the terms and provisions of this Amendment and the terms and provisions of the Agreement, the terms and provisions of this Amendment shall control.

8. Except as otherwise specifically set forth herein, the Agreement is hereby ratified and affirmed and shall remain unmodified and in full force and effect in accordance with its terms.

9. This Amendment may be executed in several counterparts, each of which shall be deemed an original, but all of which, when taken together, shall constitute one and the same instrument. An executed facsimile or electronic copy of this Amendment shall have the same force and effect as an original hereof.

**[Signatures of parties follow on next page]**

IN WITNESS WHEREOF the parties have executed this Amendment as of the date first set forth above.

WITNESSES:

OWNER:

\_\_\_\_\_  
Print Name: \_\_\_\_\_

\_\_\_\_\_  
THE MOST REVEREND JOHN C. FAVALORA,  
Archbishop of the Archdiocese of Miami, his  
successors in office, a corporation sole

\_\_\_\_\_  
Print Name: \_\_\_\_\_

VILLAGE:

VILLAGE OF KEY BISCAYNE,  
a Florida municipal corporation

\_\_\_\_\_  
Print Name: \_\_\_\_\_

By: \_\_\_\_\_  
Genaro "Chip" Iglesias, Village Manager

\_\_\_\_\_  
Print Name: \_\_\_\_\_

Attest:

By: \_\_\_\_\_  
Village Clerk

Approved as to legal form and  
sufficiency:

By: \_\_\_\_\_  
Village Attorney

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

The foregoing Agreement was acknowledged before me this \_\_\_\_\_ day of August, 2009 by THE MOST REVEREND JOHN C. FAVALORA, Archbishop of the Archdiocese of Miami, who (check on) [ ] is personally known to me or [ ] has produced a Florida drivers license as identification.

\_\_\_\_\_  
(Signature of person taking acknowledgment)

\_\_\_\_\_  
(Name of acknowledged typed, printed or stamped)

\_\_\_\_\_  
(Title or rank)

\_\_\_\_\_  
(Serial number, if any)

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

The foregoing Agreement was acknowledged before me this \_\_\_\_\_ day of August, 2009 by Genaro “Chip” Iglesias, as Village Manager of the Village of Key Biscayne, a Florida municipal corporation, who (check on) [ ] is personally known to me or [ ] has produced a Florida drivers license as identification.

\_\_\_\_\_  
Notary Public, State of Florida

My Commission Expires:

Exhibit "B"

Original Agreement

**RESOLUTION NO 2004-28**

**A RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, APPROVING THE AGREEMENT BETWEEN THE MOST REVEREND JOHN C FAVALORA, ARCHBISHOP OF THE ARCHDIOCESE OF MIAMI, HIS SUCCESSORS IN OFFICE, A CORPORATION SOLE, AND THE VILLAGE OF KEY BISCAYNE, PROVIDING FOR LICENSES TO BE GRANTED IN FAVOR OF THE VILLAGE FOR THE USE OF THE ATHLETIC FIELD LOCATED AT THE ST AGNES CATHOLIC CHURCH, AUTHORIZING THE VILLAGE MANAGER TO EXECUTE THE AGREEMENT ON BEHALF OF THE VILLAGE, AUTHORIZING THE VILLAGE MANAGER TO TAKE ALL ACTION NECESSARY TO IMPLEMENT THE AGREEMENT, PROVIDING FOR AN EFFECTIVE DATE**

WHEREAS the Village of Key Biscayne (the Village ) desires to obtain licenses in favor of the Village for the use of the Athletic Field located at the St Agnes Catholic Church (the Athletic Field ) at certain times

WHEREAS the Village desires to make certain improvements to the Athletic Field and

WHEREAS the Village Council finds that the approval of the Agreement is in the best interest of the Village

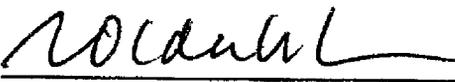
**NOW, THEREFORE, BE IT RESOLVED BY THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, AS FOLLOWS**

**Section 1** That the Agreement in substantially the form attached hereto between the Village and The Most Reverend John C Favalora, Archbishop of the Archdiocese of Miami his successors in office a corporation sole is hereby approved and the Village Manager and Village Clerk are authorized to execute such Agreement, in their respective capacities on behalf of the Village

**Section 2** That the Village Manager is authorized to take all action necessary to implement the Agreement including the expenditure of appropriated funds in accordance with the requirements of the Agreement.

**Section 3** That this resolution shall become effective upon its adoption

PASSED AND ADOPTED this 22nd day of June 2004

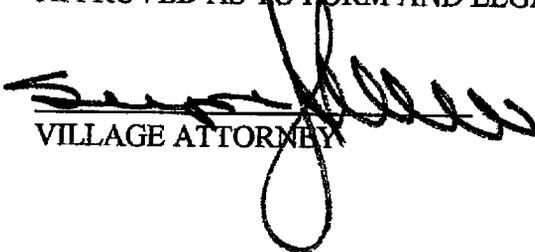
  
MAYOR ROBERT OLDAKOWSKI

ATTEST



CONCHITA H. ALVAREZ CMC VILLAGE CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

  
VILLAGE ATTORNEY



## AGREEMENT

THIS AGREEMENT (hereinafter the ' Agreement ) is made as of this 23rd day of June 2004 by and between the THE MOST REVEREND JOHN C FAVALORA Archbishop of the Archdiocese of Miami his successors in office a corporation sole (hereinafter the Owner ) and the VILLAGE OF KEY BISCAYNE, a Florida municipal corporation (hereinafter the Village )

## RECITALS

A The Owner is the owner of fee simple title to certain real property located in the Village known as St Agnes Catholic Church (the Property ) which includes among other improvements an athletic field legally described as Exhibit A attached to this Agreement (the Athletic Field )

B The Village desires to use the Athletic Field for youth athletic programs and activities

C The Owner has agreed to allow the Village to use the Athletic Field during certain hours upon the terms and conditions hereinafter set forth

NOW THEREFORE in consideration of the mutual promises set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged the parties agree as follows

1 Recitals The foregoing recitals are true and correct and are hereby incorporated into this Agreement by reference

2 License Owner does hereby grant to the Village, its invitees agents, employees contractors guests officials and representatives, the following licenses (i) an exclusive license over on across under through and upon the Athletic Field during those after school hours set forth on the schedule attached hereto as Exhibit B on weekdays and weekend days during the Initial Term (hereinafter defined) as the Initial Term may be renewed in accordance with the provisions of subsection 3 2 below (the "Term ") as well as such other times as mutually agreed to by the parties for use by the Village for the purposes set forth in Section 7 below and (ii) a non exclusive license over on across under through and upon the Athletic Field during the Term for construction inspection and maintenance of the Field Improvements (hereinafter defined) of the Athletic Field and performance of the Village s other obligations contained in this Agreement.

3 Term

3 1 The initial term of this Agreement shall be for five (5) years commencing as of the date hereof and expiring on June 22 2009 (the Initial Term )

3 2 Owner hereby grants to Village the option to renew this Agreement and the licenses granted to the Village herein commencing as of the date immediately following the expiration date of the Initial Term for five (5) successive terms of one (1) year each, provided that (i) the Village shall give the Owner written notice of its election to exercise its renewal option as contained herein not later than ten (10) days prior to the expiration date of the then current term of this Agreement and (ii) the Village is not then in default of this Agreement after the expiration of any applicable notice and cure period. The terms, covenants and conditions of this Agreement, as the same may be modified from time to time, shall continue to be in effect during each such renewal term.

4 Fees The Village shall pay the Owner an annual license fee of Thirty Six Thousand and 00/100 Dollars (\$36,000 00) for the licenses granted to Owner herein, which fee shall be paid in equally monthly installments of Three Thousand and 00/100 Dollars (\$3,000 00) on the first day of each month during the Term. For any partial month during the Term, the monthly installment payment of Three Thousand Dollars and 00/100 Dollars (\$3 000 00) shall be prorated on a per diem basis based on the number of days in such month. Owner hereby directs the Village to make all payments required hereunder directly to St. Agnes Catholic Church at 100 Harbor Drive, Key Biscayne, Florida 33149

5 Improvements by the Village

5 1 In consideration of the Owner's agreements set forth herein, the Village agrees to cause the Athletic Field to be renovated including grading, drainage, irrigation and lighting improvements and the installation of a Bermuda grass surface thereon (collectively, the Field Improvements). A schedule of the Field Improvements is attached as Exhibit C to this Agreement. Subject to force majeure, the Village agrees to use its diligent efforts to complete the Field Improvements by September 1, 2004. The term force majeure as used in this Agreement shall mean any emergency cause or event which results in the prevention or delay of performance by the Village of its obligations under this Agreement and which is beyond the reasonable control of the Village including but not limited to strikes, lockouts or other labor troubles, fire or other casualty, governmental preemption in connection with a national emergency, any rule, order or regulation of any governmental agency or any department or subdivision thereof (provided that the Village's actions cannot delay the performance of the Village's obligations under this Agreement) or inability to secure materials or labor because of any such emergency, rule, order, regulation, war, civil disturbance or other emergency cause or event beyond the reasonable control of the Village.

5 2 The Village will cause separate water and electricity meters to be installed for the Athletic Field and will pay for all water and electricity charges incurred by the Village in connection with its use of the Athletic Field. Owner agrees to grant FPL and the Miami-Dade County Water and Sewer Authority reasonable access to the Athletic Field and any easements over, on, across, through and upon the Athletic Field which are reasonably required for the installation and maintenance of such separate water and electricity meters.

6 Ownership of Athletic Field Owner covenants that it is the owner of the Athletic Field. Except as may be otherwise provided in this Agreement during the Term, Owner shall maintain the Athletic Field in good repair and suitable condition for the Village's purposes as described herein.

7 Use of the Premises

7.1 During the Term of this Agreement the Village shall have use of the Athletic Field for the following purpose(s) for organized youth oriented activities and recreational programs (such as by way of example and not limitation, softball and basketball games). During the times designated for use of the Athletic Field by the Village hereunder the Village shall have sole and uninterrupted use and control of the Athletic Field.

7.2 The Village agrees to restrict its use of the Athletic Field for the purposes set forth in this Agreement and not to use or permit the use of the Athletic Field for any other purpose without first obtaining the consent of the Owner. Owner and the Village acknowledge and agree that the Village's use of the Athletic Field shall include use of the Athletic Field by other organizations, entities, and persons who have separate written agreements with the Village and which have received the prior written consent of the Owner, such consent not to be unreasonably withheld or delayed. Without limiting the foregoing, the Owner acknowledges and agrees that the Key Biscayne Athletic Club (KBAC) is permitted to use the Athletic Field pursuant to a separate written agreement between the Village and KBAC.

7.3 The Village agrees not to use the Athletic Field for any use that is morally offensive to the reasonable sensibilities of the Roman Catholic Church.

8 Covenants of the Village During the Term of this Agreement, the Village covenants and agrees as follows:

(i) On the morning following each use of the Athletic Field by the Village, the Village will conduct a maintenance inspection of the Athletic Field and clean up the Athletic Field so that it is ready for use by the Church school.

(ii) The Village will contract with a field maintenance company to maintain the Bermuda grass field at the Village's expense.

(iii) On each day that the Village uses the Athletic Field, the Village will turn off all lighting at the Athletic Field by 9:15 p.m. without exception.

(iv) The Village will post a "no trespassing" sign on the Athletic Field.

(v) The Village will abide by and conform to reasonable rules and regulations from time to time adopted or prescribed by the Owner for the governance and management of Athletic Field so long as said rules and

regulations do not conflict with the rights granted to the Village in this Agreement

(vi) The Village shall pay Owner on demand any sum which may be due to Owner for additional services accommodations or materials furnished or loaned by Owner at the actual cost thereof

(vii) The Village shall not cause or allow alcoholic beverages of any kind to be sold given away or used upon the Athletic Field except after obtaining the express written consent of Owner In such event, the Village shall possess the necessary liquor license and permit

(viii) In connection with the exercise of the Village's rights hereunder during its period of usage the Village shall not allow or permit the following on the Athletic Field dogs any type of skating (i.e. rollerskating, rollerblading and skateboarding) or vehicles other than vehicles of the Village

(ix) Other than the Field Improvements, the Village will only make those alterations additions or improvements in, to or about the Athletic Field which have been approved in advance and in writing by Owner Owner hereby gives the Village, the right, but not the obligation, to install and maintain temporary backstops and base cut outs for the baseball field, provided that such do not unreasonably interfere with the after-school athletic activities of the Church At the end of each season, the Village shall be responsible for returning the Athletic Field to the condition existing prior to such season (including maintenance of the Field Improvements), ordinary wear and tear excepted

(x) The Village shall provide permits to all groups permitted by the Village to use the Athletic Field The Village shall require that such permits must be available for inspection by the Village police

(xi) The Village Parks and Recreation Department will supervise and manage the Village's use of the Athletic Field in accordance with the terms of this Agreement.

9 Damage to Athletic Field The Village will (a) assume full responsibility for the character acts, and conduct of persons admitted to Athletic Field by the Village including damage to any portion of the Athletic Field or any equipment therein (b) not injure nor mar, nor in any manner deface the Athletic Field or any equipment contained therein, and (c) if the Athletic Field or any equipment contained therein is damaged by the act, default or negligence of the Village or its invitees agents employees contractors guests officials and representatives the Village shall cause the Athletic Field and/or equipment to be returned to their condition as existed immediately prior to such damage The Village hereby assumes full responsibility for the character acts and conduct of all persons admitted to the Athletic Field by the Village or any person acting on behalf of the Village The obligations of the Village under this paragraph are subject to the provisions and monetary limitations of Section 768.28 Florida Statutes as amended or superseded

10 Ordinances and Statutes The Village shall comply with all applicable statutes ordinances and requirements of all municipal state and federal authorities now in force or which may hereinafter be in force, pertaining to the Athletic Field, occasioned by or affecting the use thereof by the Village

11 Assignment The Village shall not assign this Agreement.

12 Nuisance The Village shall not use the Athletic Field for any unlawful purpose or in any way which will constitute a nuisance

13 Liability/Indemnification of Owner

13.1 The Village shall save the Owner harmless from and indemnify it against any claim or liability for any use arising in connection with the use of the Athletic Field by the Village its invitees agents employees contractors guests officials and representatives The Village further agrees to hold Owner harmless for any injury, loss or damage to any person or property on the Athletic Field occurring during the times that the Village has exclusive use and control thereof or by virtue of any act, error or omission of the Village except to the extent the same is caused by or results from the carelessness negligence or improper conduct of Owner its agents or employees The obligations of the Village under this paragraph are subject to the provisions and monetary limitations of Section 768.28 Florida Statutes as amended or superseded

13.2 Except to the extent caused by the negligent or willful acts or omissions of Owner it is expressly understood and agreed by and between the parties hereto that in no case shall the Owner be liable to the Village or its invitees agents employees contractors guests officials and representatives for any injury loss and/or damage to any person or property on the Athletic Field during the Village's use thereof the Village hereby taking all risk in connection with its use of the Athletic Field

14 Independence of the Village It is expressly understood and agreed by and between the parties hereto that the Village is not owned, operated sponsored affiliated or otherwise under the direction or control of Owner Owner has no authority or control over any aspect of the Village's operations except as provided in this Agreement The Village is an entity entirely independent of Owner related only by the independent contractual terms of this Agreement

15 Warranties by the Owner It is further expressly understood and agreed by and between the parties hereto that, other than as expressly set forth in this Agreement this Agreement does not contain or embody and shall not be construed to contain or embody any covenant warranty or agreement on the part of the Owner and there are no verbal agreements whatever between the Owner and the Village

16 Insurance The Village at its cost, shall provide liability insurance coverage in the amount of One Million Dollars (\$1 000 000 00) per occurrence and Three Million Dollars (\$3 000 000 00) in the aggregate

All insurance shall be placed with companies admitted to do business in the State of Florida or which shall have an AM Best rating of at least an "A". The Owner must be a certificate holder on any policy of insurance purchased by the Village in compliance with this Agreement and it is entitled to receive a copy of any policies of insurance within thirty (30) days of the effective date of the policy. The Village shall obtain the insurer's agreement to give not less than thirty (30) days advance notice to the Owner before cancellation, expiration or alteration of any policy of insurance. The Village agrees to maintain such policies of insurance during the term of this Agreement, and any failure to do so will constitute a breach of the terms of the Agreement. Owner shall be named as an additional insured and said policy will be primary over any other collectible insurance for any liability arising out of claims in connection with this Agreement.

17 Expiration At the expiration or termination of this Agreement, as herein provided the Village will within 24 hours remove any of the Village's property located at the Athletic Field. Additionally the Village shall surrender Athletic Field in the same condition as when it took possession (except for the Field Improvements) ordinary wear and tear excepted.

18 Notices Any notice which either party may or is required to give shall be given in writing and shall be given by mailing the same certified mail return receipt requested postage prepaid, or by hand delivery or by overnight courier service to the Village at the address shown below or Owner at the address shown below or at such other places as may be designated by the parties from time to time. Notices may also be delivered by facsimile provided such notice is also sent by one of the methods in the preceding sentence.

If to Village

Village of Key Biscayne  
88 West McIntyre Street  
Key Biscayne Florida 33149  
Attention Jacqueline Menendez, Village Manager  
Facsimile No (305) 365-8936

and

Village of Key Biscayne  
Attn Director Recreation Department  
88 West McIntyre Street  
Key Biscayne Florida 33149  
Facsimile No \_\_\_\_\_

If to Owner

Archdiocese of Miami Inc  
c/o Very Reverend Jose Luis Hernando V F  
St Agnes Church  
100 Harbor Drive  
Key Biscayne Florida 33149  
Facsimile No (305) 361 8514

With a copy to

Archdiocese of Miami  
9401 Biscayne Boulevard  
Miami Shores Florida 33138  
Department of Temporalities  
Facsimile No (305) 758 5261

And

J Patrick Fitzgerald Esq  
J Patrick Fitzgerald, P A  
110 Merrick Way  
Suite 3B  
Coral Gables Florida 33134  
Facsimile No (305) 443 6613

In addition to being the addressee for notices to the Village the principal contact for the Village in connection with this Agreement is the Director of the Recreation Department, which is currently Todd Hofferberth

19 Governing Law and Venue Agreement shall be governed by the laws of the State of Florida and venue for the enforcement of this Agreement shall be in Miami Dade County Florida

20 Severability and Enforceability The terms of this Agreement are severable and in the event that any specific term herein is determined to be unenforceable the remainder of the Agreement shall remain in full force and effect

21 No Bathroom Facilities The Village acknowledges and agrees that, in connection with the Village s use of the Athletic Field as provided herein none of the Church s bathrooms facilities shall be available for use by the Village its invitees agents employees contractors guests officials or representatives

22 Entire Agreement This Agreement including all exhibits attached hereto contains the final complete and entire agreement between the parties and may be modified only by in writing signed by both parties

23 Third Party Beneficiaries Neither Owner nor the Village intends to directly or substantially benefit a third party by this Agreement. Therefore the parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against either of them based upon this Agreement, including but not limited to KBAC.

24 Termination. The Owner shall be entitled to terminate this Agreement for any reason whatsoever upon six (6) months prior written notice to the Village. If the Owner exercises such right of termination during the Initial Term, then the Owner shall reimburse the Village for a portion of the costs incurred by the Village for the Field Improvements calculated as follows: the total costs incurred by the Village for the Field Improvements shall be amortized over the Initial Term and the Owner shall reimburse the Village for the amortized costs remaining from the date of termination until the expiration date of the Initial Term set forth in Section 3.1 hereof.

25 Governing Law This Agreement shall be construed under the laws of the State of Florida.

26 Modification of Agreement. This Agreement may only be amended by a written agreement signed by the parties hereto.

27 Police Protection Owner agrees that the Village shall have no obligation to provide security and police protection for the Athletic Field in excess of the normal level of police protection routinely provided throughout the Village. Furthermore, Owner agrees that neither this Agreement nor anything contained herein shall give rise to any greater liability than the Village would ordinarily be subjected to when providing its normal police services as routinely provided throughout the Village.

28 Prior License Agreement. This Agreement supersedes and replaces that certain Non Exclusive Space Usage Agreement and License entered into as of April 1, 2002 between the Owner and the Village.

[REST OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals the day and year first above written

WITNESSES

OWNER

Ethel Marinelli  
Print Name ETHEL MARINELLI

John C. Favalora  
THE MOST REVEREND JOHN C FAVALORA  
Archbishop of the Archdiocese of Miami his  
successors in office a corporation sole

Janeth McPherson  
Print Name Janeth McPherson

VILLAGE

VILLAGE OF KEY BISCAIYNE  
a Florida municipal corporation

Anade Varona  
Print Name Anade Varona

By Jacqueline Menendez  
Jacqueline Menendez Village Manager

Mate Miyao  
Print Name Mate Miyao

Attest

By Conchita J. Alvarez  
Village Clerk



Approved as to legal form and  
sufficiency

By Edaine M. Gu  
Village Attorney

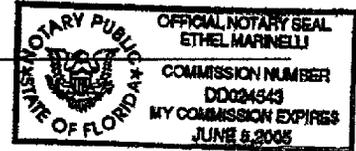
STATE OF FLORIDA )  
 ) SS  
COUNTY OF MIAMI DADE )

The foregoing Agreement was acknowledged before me this 23 day of June 2004 by THE MOST REVEREND JOHN C FAVALORA, Archbishop of the Archdiocese of Miami, his successors in office a corporation sole who (check on)  is personally known to me or [ ] has produced a Florida drivers hcense as identification

Ethel Marinelli  
(Signature of person taking acknowledgment)

\_\_\_\_\_  
(Name of acknowledger typed, printed or stamped)

\_\_\_\_\_  
(Title or rank)



\_\_\_\_\_  
(Serial number if any)

STATE OF FLORIDA )  
 ) SS  
COUNTY OF MIAMI DADE )

The foregoing Agreement was acknowledged before me this 1 day of July, 2004 by Jacqueline Menendez as Village Manager of the Village of Key Biscayne a Florida municipal corporation in the capacity aforestated such person is personally known to me or has produced a driver's hcense as identification

Mayra F Gomez  
Notary Public State of Florida

My Commission Expires

F:\100\103001\Ballfield\Ballfield Agreement v4 doc



**EXHIBIT "A"**

**Legal Description of Athletic Field**

West 250 feet of Tract C 4<sup>th</sup> Addition to Tropical Isles Homes  
Subdivision, as recorded in Plat Book 53 at Page 39 of the Public Records  
of Miami Dade County Florida

**EXHIBIT "B"**

**Schedule of Hours**

<b>TIME OF YEAR</b>	<b>TIME OF DAY</b>	<b>AREA</b>
March through May	5 30PM to 9 15 PM 3 30PM to 9 15 PM	Field Basketball Court
August through October	3 30 PM to 9 15 PM 5 00PM to 9 15 PM	Field Basketball Court
January through February	5 00 PM to 9 15 PM 3.30 PM to 9 15 PM	Field Basketball Court
November through January	3 30 PM to 9 15 PM 5 00 PM to 9 15 PM	Field Basketball Court

\* Schedule subject to change in accordance with the St. Agnes scholastic athletic program

## **EXHIBIT "C"**

### **Field Improvements**

#### **SCOPE OF WORK**

##### **General Sitework**

- Clear and grub field to remove existing sod

##### **Soccer Field**

- Roll and compact grade
- Import fill material to raise
- Grade field to final grade to receive new top soil sand mix.
- Bermuda 419 Sod shall be planted on the entire areas of the field (Sod maintenance and cutting for a 30 day period is included )
- The field will be fully irrigated
- Water service for irrigation will be a 2" line tapped into the City Mains and fitted with a 2' backflow preventer and water meter
- Drainage shall be Catch Basins and French Drains

##### **Lighting**

Sports Lighting System with six poles for soccer field lighting at recreational lighting levels

Sports Lighting System with two poles for basketball court at recreational lighting levels

##### **General Conditions**

- Provide supervision
- Provide bond and insurance
- Provide protection and clean up of site
- Provide plans and permits