VILLAGE OF KEY BISCAYNE

Office of the Village Manager

MEMORANDUM

Village Council
Franklin H. Caplan, *Mayor*
Mayra P. Lindsay, *Vice Mayor*
Michael W. Davey
Theodore J. Holloway
Michael E. Kelly
Ed London
James S. Taintor

Village Manager
John C. Gilbert

DATE: August 27, 2013

TO: Honorable Mayor and Members of the Village Council

FROM: John C. Gilbert, Village Manager

RE: Approving the Second Amendment to the Lease Agreement between the School Board of Miami Dade County and Village of Key Biscayne

RECOMMENDATION

It is recommended that the Village Council approve the attached Resolution and Agreement between the School Board of Miami-Dade County and the Village for the use of the Key Biscayne Community School's field.

BACKGROUND

The Village of Key Biscayne and School Board of Miami Dade County agreed upon lease terms for the Village's use of the Key Biscayne Community School on August 25, 1999. The lease agreement was extended on June 18, 2003 for a term to expire on December 31, 2013. Attached as Exhibit "A", is the Second Amendment to the Lease Agreement a ten (10) year term to expire on December 31, 2023.

The School Board of Miami-Dade County authorized the Second Amendment to the Lease Agreement at their August 7, 2013 School Board Meeting.

The attached Resolution was prepared by Lynda Rodriguez from the Village Attorney's Office for legal form and sufficiency.

88 West McIntyre Street • Suite 210 • Key Biscayne, Florida 33149 • (305) 365-5514 • Fax (305) 365-8936

RESOLUTION NO. 2013-

A RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, APPROVING THE SECOND AMENDMENT TO LEASE AGREEMENT BY AND BETWEEN THE VILLAGE OF KEY BISCAYNE, FLORIDA, AND THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA, IN SUBSTANTIALLY THE FORM ATTACHED AS EXHIBIT "A"; PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS,the Village of Key Biscayne (the "Village"), and the School Board of Miami-Dade County, Florida, a body corporate and politic existing under the laws of the State of Florida (the "School Board"), entered into that certain Lease Agreement, dated August 25, 1999 (the "Lease"); and

WHEREAS, the Village and the School Board are desirous of entering into an amendment to the Lease by extending the term of the Lease, and amending other terms and conditions of the Lease, as provided in the Second Amendment To Lease Agreement (the "Lease Amendment") in substantially the form attached as Exhibit "A" hereto; and

WHEREAS, the Village Council desires to authorize the Village Manager to execute the Lease Amendment in substantially the form attached as Exhibit "A" hereto; 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 VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, AS FOLLOWS:

Section 1. **Recitals Adopted.** Each of the above stated recitals are hereby adopted, confirmed and incorporated herein.

Section 2. **Lease Amendment Approved.** The Village Council hereby approves the Lease Amendment in substantially the form attached as Exhibit "A" hereto.

Section 3. **Village Manager Authorized.** The Village Manager is hereby authorized to execute the Lease Amendment in substantially the form attached as Exhibit "A" hereto subject to approval as to form, content, and legal sufficiency by the Village Attorney.

Section 4. **Implementation.** The Village Manager is hereby authorized to take any and all necessary action to implement the purposes of this Resolution.

Section 5. **Effective Date.** This Resolution shall be effective immediately upon adoption.

PASSED AND ADOPTED this ____ day of _____, 2013.

_____
MAYOR FRANKLIN H. CAPLAN

ATTEST:

_____
CONCHITA H. ALVAREZ, MMC, VILLAGE CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

_____
VILLAGE ATTORNEY

Exhibit A

SECOND AMENDMENT TO LEASE AGREEMENT

THIS SECOND AMENDMENT TO LEASE AGREEMENT (the "**Second Amendment**") is made and entered into this _____ day of _____ 2013, by and between THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA, a body corporate and politic existing under the laws of the State of Florida (hereinafter referred to as the "**Lessor**"), and the VILLAGE OF KEY BISCAYNE, a municipal corporation of the State of Florida (hereinafter referred to as the "**Lessee**"). The Lessee and Lessor are sometimes referred to in this Second Amendment individually as "**Party**" and collectively as "**Parties**".

WITNESSETH

WHEREAS, Lessor and Lessee entered into that certain Lease Agreement dated January 1, 1994 (the "**Agreement**"), for Lessee's use of the playfield area at Key Biscayne K-8 Center (f/k/a Key Biscayne Elementary School) (the "**School**"), located at 150 W. McIntyre Street, Key Biscayne, Florida, for recreational purposes (the "**Demised Premises**"); and

WHEREAS, Lessor and Lessee entered into that certain Lease Amendment, dated as of August 25, 1999; and

WHEREAS, Lessor and Lessee are desirous of entering into this Second Amendment to extend the term of the Agreement, and amend other terms and conditions of the Agreement, as provided below; and

WHEREAS, The School Board of Miami-Dade County, Florida has authorized this Second Amendment in accordance with Board Action No. 116,512, at its meeting of August 7, 2013.

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

1. The foregoing recitals are true and correct and are incorporated herein by reference.

2. Article II (TERM OF LEASE AGREEMENT) of the Agreement is amended to add the following paragraph:

   "The term of this Agreement shall be extended from January 1, 2014 through December 31, 2023. In addition, said term may be further extended subject

to the consent of the Lessor for one (1) additional term of ten (10) years, upon the same terms and conditions, provided Lessee gives written notice to the Lessor of its desire to extend the lease term no later than ninety (90) days prior to the expiration of the then current term."

3. Article XVII (NOTICE AND GENERAL CONDITIONS) of the Agreement is hereby deleted and replaced with a new Article XVII that shall read as follows:

"A. All notices or communications under this Agreement by either Party to the other shall be sufficiently given or delivered if dispatched by (1) certified U.S. mail, postage pre-paid, return receipt requested, (2) hand delivery, (3) Federal Express or other comparable overnight mail service, (4) telephone facsimile transmission with transmission receipt, or (5) electronic mail to the following addresses, or as the same may be changed in writing from time to time:

In the case of notice or communication to the Lessor:

The School Board of Miami-Dade County, Florida
c/o Superintendent of Schools
School Board Administration Building
1450 N.E. Second Avenue, Room 912
Miami, Florida 33132
Fax: 305-995-1488

With a copy to:

Miami-Dade County Public Schools
Planning, Design and Sustainability
Attention: Deputy Chief Facilities and Eco-Sustainability Officer
1450 N.E. Second Avenue, Room 525
Miami, Florida 33132
Fax: 305-995-4760
E-mail: arjio@dadeschools.net

With a copy to:

The School Board of Miami-Dade County, Florida
School Board Attorney's Office
1450 NE 2nd Avenue, #400
Miami, FL 33132

Attn: School Board Attorney
Fax: 305-995-1412
E-mail: Walter.Harvey@dadeschools.net

In the case of notice or communication to the Lessee:

Village of Key Biscayne, Florida
Attn: Village Manager
88 West McIntyre Street
Key Biscayne, Florida 33149
Phone: (305) 365-5514

With a copy to:

Stephen J. Helfman, Esq.
Weiss Serota Helfman Pastoriza Cole & Boniske, P.L.
VILLAGE Attorneys
2525 Ponce de Leon Blvd.
Suite 700
Coral Gables, FL 33134
Phone: (305) 854-0800
Facsimile:(305)854-2323

B. Title and paragraph headings are for convenient reference and are not intended to confer any rights or obligations upon the Parties to this Agreement.

C. For purposes of this Agreement, the Superintendent of Schools or his/her designee shall be the party designated by the Lessor to grant or deny any and all approvals required under this Agreement, including, without limitation, establishing use schedules, modifying the areas or periods of use, amending or modifying Exhibit "A", placing the Lessee in default, and reviewing and approving all matters relating to the Lessee's construction of improvements on the Demised Premises, if any. The Superintendent of Schools or his/her designee shall also be the party designated by the Lessor to grant or deny any approvals required by this Agreement for the renewal, cancellation and/or termination of this Agreement as provided herein.

D. Except as otherwise provided in this Agreement, any Notice shall be deemed received only upon actual delivery at the address set forth above. Notices delivered after 5:00 PM (at the place of delivery) or on a non-business day, shall be deemed received on the next business day. If any

time for giving Notice contained in this Agreement would otherwise expire on a non-business day, the Notice period shall be extended to the next succeeding business day. "**Day**" as used in this Agreement shall be defined as calendar day, unless otherwise provided. Counsel for the Lessor and counsel for the Lessee may deliver Notice on behalf of the Lessor and the Lessee, respectively. Any party or other person to whom Notices are to be sent or copied may notify the other parties of any change in name or address to which Notices shall be sent by providing the same pursuant to this provision."

4. Exhibit "A" to the Agreement is hereby replaced with the revised Exhibit "A" attached hereto and made a part hereof.

5. A new Article XXVIII entitled LEGAL FEES AND COURT COSTS is hereby created and shall read as follows:

   "In the event of any litigation between the Parties under this Agreement, each Party shall be responsible for its own attorney's fees and court costs through trials and appellate levels. The provisions of this paragraph shall survive the expiration or early termination or cancellation of this Agreement."

6. A new Article XXIX entitled FLORIDA PUBLIC RECORDS LAWS; AUDITS AND INSPECTIONS & ACCESS TO RECORDS is hereby created and shall read as follows:

"This Agreement shall be subject to Florida's Public Records Laws, Chapter 119, Florida Statutes. The parties understand the broad nature of these laws and agree to comply with Florida's Public Records Laws and laws relating to records retention. The Lessee acknowledges and accepts the authority of the Lessor to request and authorize audits, inspections, and reviews, including, but not limited to, the authority to access the Lessee's records, its legal representatives' and contractors' records and the obligation of the Lessee to retain and to make those records available upon request, and in accordance with all applicable laws. The Lessee shall keep records to show its compliance with this Agreement. In addition, the Lessee's contractors and subcontractors must make available, upon the Lessor's request, any books, documents, papers and records which are directly pertinent to this specific Agreement for the purpose of making audit, examination, excerpts, and transcriptions.

The Lessee, its contractors and sub-contractors shall (a) retain all records for five (5) years after the completion of construction work, if any, at the Demised Premises; and (b) the Lessee shall retain records for five (5) years after the expiration, early termination or cancellation of this Agreement.

The Lessee shall incorporate this provision into every contract that it enters into relating to the Demised Premises."

7. A new Article XXX entitled USE OF FACILITY AS A REVENUE GENERATOR is hereby created and shall read as follows:

"The Lessor shall at all times retain the exclusive right to be the sole authorizer and recipient of revenue generators, in compliance with the Lessor's Policies, rules and regulations, relating to the Demised Premises, including, without limitation, third party advertising or installation of wireless telecommunications facilities, provided such endeavors do not unreasonably interfere with the Lessee's rights to peaceful enjoyment of the Demised Premises."

8. A new Article XXXI entitled REPRESENTATIONS is hereby created and shall read as follows:

"The Lessee is a municipal corporation under the State of Florida pursuant to Florida Statutes, and the Lessee has full power to execute, deliver, and perform its obligations under this Agreement, as amended.
The execution and delivery of this Agreement, and the performance by the Lessee of its obligations under this Agreement, have been duly authorized by all necessary actions of the Lessee, and do not contravene or conflict with any rules, regulations, policies or laws governing the Lessee, or any other agreement binding on the Lessee. The individual(s) executing this Agreement on behalf of the Lessee has/have full authority to do so.
The Lessor is a body corporate and politic existing under the laws of the State of Florida, and the Lessor has full power to execute, deliver, and perform its obligations under this Agreement, as amended. The execution and delivery of this Agreement, and the performance by the Lessor of its obligations under this Agreement, have been duly authorized by all necessary actions of the Lessor, and do not contravene or conflict with any rules, regulations, policies or laws governing the Lessor, or any other agreement binding on the Lessor. The individual(s) executing this Agreement on behalf of the Lessor has/have full authority to do so."

9. A new Article XXXII entitled SUBORDINATION is hereby created and shall read as follows:

"This Agreement is and shall be subject and subordinate to any conveyance and ground or underlying leases, and the rights of the Lessor under those leases and to all financing that may now or hereafter affect the leases or the Demised Premises, and to all renewals, modifications, consolidations, replacements and extensions thereof. This provision shall be self-operative and no further instrument of

subordination shall be necessary. However, in confirmation of this subordination, the Lessee shall execute promptly any certificate that the Lessor may request."

10. All other terms and conditions of the Agreement shall remain unchanged.

IN WITNESS WHEREOF, the Lessor and Lessee have caused this Second Amendment to be executed by their respective and duly authorized officers the day and year first hereinabove written.

LESSEE:
VILLAGE OF KEY BISCAYNE

By:_____
Name:_____
Title:_____
Date:_____

LESSOR:
THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA

By:_____
Alberto M. Carvalho
Superintendent of Schools
Date: 8/19/13

ATTEST:

By:_____
Village Clerk

TO THE LESSOR: APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

_____ 8/14/13
School Board Attorney

TO THE LESSEE: APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

_____
Village Attorney