

**RESOLUTION NO. 2013-**

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

**WHEREAS**, on January 24, 2012, the Village Council of the Village of Key Biscayne (the “Village”) approved Resolution No. 2012-4 approving an Employment Agreement (the “Agreement”), whereby John C. Gilbert would serve as Village Manager from February 12, 2012 through February 11, 2014; and

**WHEREAS**, the Village desires to amend the Agreement to extend its term through September 30, 2014 and make other amendments as set forth in the First Amendment to the Employment Agreement (“First Amendment”) 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 BISCAVNE, 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 First Amendment attached as Exhibit “A.” The Village Mayor is authorized to execute the First Amendment on behalf of the Village, in the form which is attached hereto, once approved as to form and legal sufficiency by the Village Attorney.

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

**PASSED AND ADOPTED** this 3rd day of December, 2013.

\_\_\_\_\_  
MAYOR FRANKLIN H. CAPLAN

ATTEST:

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

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

\_\_\_\_\_  
VILLAGE ATTORNEY

# EXHIBIT "A"

## FIRST AMENDMENT TO EMPLOYMENT AGREEMENT BETWEEN THE VILLAGE OF KEY BISCAYNE AND JOHN C. GILBERT

This First Amendment to the Employment Agreement (the "Agreement") between the Village of Key Biscayne and John C. Gilbert dated February 12, 2012 (the "First Amendment") is made and entered into this 3<sup>rd</sup> day of December, 2013, 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**, the Parties entered into the Agreement, attached as Exhibit "A," that commenced on February 12, 2012 and runs through February 11, 2014, whereby the Employee agreed to serve as Village Manager; and

**WHEREAS**, the Village desires to amend the Agreement to extend its term through September 30, 2014, adjust Employee's compensation to reflect what he is currently receiving, adjust Employee's health insurance benefits so that he receives the same health insurance benefits provided to all other non-represented Village employees and make other minor amendments as set forth herein.

**NOW THEREFORE**, in consideration of the mutual covenants set forth in this First Amendment the Parties agree as follows:<sup>1</sup>

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

\* \* \*

### **SECTION 2. TERM**

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<sup>1</sup> Additions to existing text are shown by underline; deletions are shown by ~~strikeout~~.

2.1 This Agreement ~~commenced on February 12, 2012 and shall terminate on September 30, 2014, shall have a term of two (2) years commencing on February 12, 2012 and ending on February 11, 2014,~~ unless earlier terminated as provided in this Agreement.

2.2 No later than June 30, 2014, ~~November 13, 2013~~, unless this Agreement terminated earlier as provided in Sections 3 and 4 of this Agreement, the 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. Failure of the Council to act shall be deemed a decision to allow this Agreement to expire. In the event this Agreement expires due to the Council's failure to act and Employee is ready, willing and able to continue his employment as Village Manager, the Village agrees to continue providing Employee with his regular bi-weekly salary and benefits as provided herein through ~~April 11, 2014~~ November 30, 2014.

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, 2014, ~~February 11, 2014~~, 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, sick leave and floating holiday time 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.

\* \* \*

**Section 4. Amendment to the Agreement.** That Section 10 “Insurance” of the Agreement is hereby amended as follows:

**SECTION 10. INSURANCE**

Effective December 3, 2013, the Village shall provide Employee with health, vision, dental and life insurance benefits in the same manner as provided to all other non-represented Village employees and Employee shall be responsible for the premiums for such insurance, if any, in the same manner as the Village’s non-represented employees.

~~Employee will be provided with a \$450.00 monthly flexible benefit stipend. Employee may use such stipend towards the payment of any health and life insurance premiums and/or other benefits offered by the Village. Insurance premiums are paid by the Village and charged against the \$450.00 monthly stipend. In those cases where premiums for the benefits selected by Employee exceed the \$450.00 monthly stipend, the balance shall be deducted from Employee’s pay. In those cases where the Employee elects not to participate in any benefits offered by the Village or the benefits that he selects cost less than the \$450.00 monthly stipend, Employee shall retain the balance of the monthly stipend.~~

**Section 5. 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.

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 and holidays in accordance with the Village's policies governing Administrative Employees.

**Section 6. 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 First 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:  
:

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

**ORIGINAL**

**EMPLOYMENT**

**AGREEMENT**

## **EMPLOYMENT AGREEMENT**

**THIS AGREEMENT** (the "Agreement") is made and entered into as of the 12<sup>th</sup> day of February, 2012, between the Village of Key Biscayne (the "Village") and John C. Gilbert ("Employee").

### **BACKGROUND**

The Village wishes to employ Employee as Village Manager and Employee wishes to accept employment as Village Manager under the terms and conditions set forth in this Agreement.

**NOW, THEREFORE**, in consideration of the mutual promises and covenants contained herein, the Village and Employee agree to the following:

### **SECTION 1. DUTIES**

The Village agrees to employ Employee as Village Manager, to perform the duties and exercise the powers as prescribed by state law, the Village Charter and the Village Code, and to perform such other legally permissible and proper duties and functions as assigned by the Village Council from time to time.

### **SECTION 2. TERM**

- 2.1 This Agreement shall have a term of two (2) years commencing on February 12, 2012 and ending on February 11, 2014, unless earlier terminated as provided in this Agreement.
- 2.2 No later than November 13, 2013, unless this Agreement terminated earlier as provided in Sections 3 and 4 of this Agreement, the 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. Failure of the Council to act shall be deemed a decision to allow this Agreement to expire. In the event this Agreement expires due to the Council's failure to act and Employee is ready, willing and able to continue his employment as Village Manager, the Village agrees to continue providing Employee with his regular bi-weekly salary and benefits as provided herein through April 11, 2014.
- 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 3. TERMINATION BY VILLAGE AND SEVERANCE PAY**

- 3.1 In the event Employee is terminated by the Village Council prior to February 11, 2014, 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, sick leave and floating holiday time 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.

- 3.2 If Employee's employment is terminated for cause as defined in this subsection, the Village shall pay to Employee only accrued vacation leave, sick leave and floating holiday time due to Employee as of the date of termination. After the payment described in the immediately preceding sentence, the Village shall have no further financial obligation to Employee pursuant to this Agreement.

"Cause" for the purpose of this agreement is defined as: (i) fraud, misappropriation or embezzlement; (ii) Employee's intentional breach of the provisions of this Agreement; (iii) Employee's repeated willful failure to perform services hereunder; (iv) Employee's conduct unbecoming a public official; (v) Employee's willful and continued failure to substantially perform his duties for the Village (other than as a result of incapacity due to physical or mental illness); (vi) willful conduct by Employee that is demonstrably and materially injurious to the Village, monetarily or otherwise; and/or (vii) misconduct as defined in Section 443.036(30), Florida Statutes. For purposes of this paragraph, an act, or a failure to act, shall not be deemed willful or intentional, as those terms are defined herein, unless it is done, or omitted to be done, by Employee in bad faith or without a reasonable belief that his action or omission was in the best interest of the Village. Failure to meet performance standards or objectives, by itself, does not constitute "Cause." "Cause" also includes any of the above grounds for dismissal regardless of whether the Village learns of it before or after terminating Employee's employment.

#### **SECTION 4. TERMINATION BY EMPLOYEE**

In the event that Employee voluntarily resigns his position during the term of this Agreement, Employee shall give the Village at least sixty (60) days written notice prior to the effective date of such resignation. Employee shall not be entitled to receive any benefits or payments pursuant to Section 3; however, Employee shall be entitled to a payment for any accrued vacation

leave, sick leave and floating holiday time as of the date of resignation.

**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.
- 5.2 The Village Council may evaluate the performance of Employee to determine any adjustment in Employee's annual salary and/or benefits pursuant to the terms of Section 6 of this Agreement. Any adjustment in said annual salary and/or benefits including, but not limited to, longevity and cost of living increases, shall be in the sole discretion of the Village Council.

**SECTION 6. PERFORMANCE EVALUATION**

- 6.1 The Village Council may review and evaluate the performance of the Employee. Any such review and evaluation shall be conducted in accordance with specific criteria developed jointly by the Village and the Employee. Said criteria may be added to or deleted from as the Village Council may from time to time determine, in consultation with Employee, and shall occur during the ninety (90) days prior to the beginning of each fiscal year.
- 6.2 Subsequent to the evaluation of Employee's performance, but prior to the beginning of the fiscal year, the Village Council and Employee may define such goals and performance objectives which they determine necessary for the proper operation of the Village and in attainment of the Village Council's policy objectives and may further establish a relative priority among those various goals and objectives, said goals and objectives to be reduced to writing. Any such goals and performance objectives shall generally be attainable within the time limitations as specified and the annual operating and capital budgets and appropriations provided.

**SECTION 7. HOURS OF WORK**

Employee agrees to remain in the exclusive full-time employ of the Village and shall not accept any other employment during the term of this Agreement. Employee further agrees to devote that amount of time and energy which is reasonably necessary for Employee to faithfully perform his duties under this Agreement.

**SECTION 8. AUTOMOBILE**

In lieu of a monthly transportation allowance, the Village shall provide a Village vehicle for Employee's use, both professionally and personally, as a benefit of employment. The Village shall provide insurance, maintenance and fuel for the vehicle as it provides for other vehicles in the Village's fleet.

**SECTION 9. RETIREMENT**

- 9.1 As Village Manager, Employee is not eligible to participate in the Village's Police Officers and Firefighters Retirement Plan (the "Plan") and, therefore, Employee will not earn additional service in the Plan during the term of this Agreement. Employee is entitled to retirement benefits accrued under the Plan by virtue of his prior Village employment. However, Employee will not receive any accrued retirement benefits under the Plan until he leaves Village employment.
- 9.2 The Village shall contribute into Employee's defined contribution plan by making a Village contribution as employer in an amount which is equal to twelve percent (12 %) of Employee's annual base salary, which is the percentage that the Village currently contributes for its Administrative Employees. Should the Village change the percentage that it contributes for its Administrative Employees, the Village's contribution into Employee's defined contribution plan shall also be changed to match that percentage. Employee will not be required to make a contribution into his defined contribution plan.

**SECTION 10. INSURANCE**

Employee will be provided with a \$450.00 monthly flexible benefit stipend. Employee may use such stipend towards the payment of any health and life insurance premiums and/or other benefits offered by the Village. Insurance premiums are paid by the Village and charged against the \$450.00 monthly stipend. In those cases where premiums for the benefits selected by Employee exceed the \$450.00 monthly stipend, the balance shall be deducted from Employee's pay. In those cases where the Employee elects not to participate in any benefits offered by the Village or the benefits that he selects cost less than the \$450.00 monthly stipend, Employee shall retain the balance of the monthly stipend.

**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.
- 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 and sick leave in accordance with the Village's policies governing Administrative Employees.

**SECTION 12. PROFESSIONAL DEVELOPMENT**

- 12.1 Subject to Village policy and state law, the Village agrees to pay the reasonable professional dues and subscriptions of Employee necessary for his continuation and participation as a member in national, regional, state and local professional associations and organizations necessary and desirable for his continued

professional participation, growth and advancement, and for the good of the Village. Employee shall not hold office in any local, state, regional or national professional association or organization without prior approval of the Village Council.

- 12.2 Subject to Village policy and state law, the Village agrees to pay the travel and subsistence expenses of Employee for travel to one national and one state association annual conference per year. Employee may, with the approval of the Village Council, attend additional national and/or state conferences.

**SECTION 13. NOTICE**

Notices pursuant to this Agreement shall be given by certified mail through United States Postal Service delivery, addressed as follows:

Village	Mayor and Members of the Village Council Village of Key Biscayne 88 West McIntyre Street Key Biscayne, Florida 33149
Employee	John C. Gilbert Village of Key Biscayne 88 West McIntyre Street Key Biscayne, Florida 33149
Village Attorney	Weiss Serota Helfman Pastoriza Cole & Boniske, P.L. 2525 Ponce de Leon Blvd., Suite 700 Miami, Florida 33134

**SECTION 14. OTHER TERMS AND CONDITIONS**

- 14.1 If any provision, or any portion thereof, contained in this Agreement is held to be unconstitutional, illegal, invalid, or unenforceable, the remainder of this Agreement, or portion thereof, shall not be affected and shall remain in full force and effect.
- 14.2 The waiver by either party of a breach of any provision of this Agreement by the other shall not operate or be construed as a waiver of any subsequent breach by that party.
- 14.3 The rights and obligations herein granted are personal in nature and cannot be transferred by Employee.
- 14.4 This Agreement contains the entire agreement of the parties. It may not be changed verbally, but only by an amendment in writing signed by the parties hereto.
- 14.5 This Agreement shall be governed by Florida law and any litigation which may arise from this Agreement shall be filed and litigated in Miami-Dade County, Florida. Any Employee litigation expenses shall be borne by the Village, if the Employee prevails in

such litigation which involves this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed and executed, in duplicate, on the day and year first written above.

VILLAGE OF KEY BISCAYNE



By: [Signature]  
Mayor

EMPLOYEE

By: [Signature]  
John C. Gilbert

Attest:

[Signature]  
Village Clerk

Approved as to Form and Legal Sufficiency:

[Signature]  
Village Attorney