



VILLAGE OF KEY BISCAYNE

Office of the Village Manager

MEMORANDUM

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

Village Manager
John C. Gilbert

DATE: May 27, 2014

TO: Honorable Mayor and Members of the Village Council

FROM: John C. Gilbert, Village Manager

RE: Second Amendment to Agreement for Use of St. Agnes Catholic Church Athletic Field

RECOMMENDATION

It is recommended that the Village Council approve the second amendment to the agreement for use of the athletic field at St. Agnes Catholic Church.

BACKGROUND

The Village Council first entered into a use agreement with St. Agnes in June of 2004. The first amendment to the agreement was approved by the Village Council in September of 2009. The term of this amendment will expire on September 30, 2014.

Village staff met with the St. Agnes Finance Committee representatives to discuss the agreement. Agreement proposals including capital improvements were drafted and reviewed. The Committee recommended proceeding with the agreement extension at this time. The Village will explore the feasibility of capital improvements with the representatives in the future.

Reviewed by Mr. Chad Friedman from Weiss Serota Helfman Pastoriza Cole & Boniske as to form and legal sufficiency.

RESOLUTION NO. 2014- _____

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

WHEREAS, the Village of Key Biscayne (the “Village”) and the Archdiocese of Miami (the “Owner”) entered into that certain Agreement dated June 23rd, 2004 (the “Agreement”) regarding the Village’s use of the St. Agnes Catholic Church’s athletic field; and

WHEREAS, the Village and Owner entered into that certain Amendment to Agreement for Use of St. Agnes Catholic Church Athletic Field on August 31, 2009, wherein the parties modified the fees payable, the term of the Agreement and provided for termination of the Agreement; and

WHEREAS, the Village and Owner wish to further modify the Agreement in accordance with the terms and conditions as set forth herein in this Second Amendment to Agreement for Use of St. Agnes Catholic Church Athletic Field (the “Second Amendment”); and

WHEREAS, the Village Council finds that approval of the Second Amendment between the Village and the Owner is in the best interest of the Village.

NOW, THEREFORE, IT IS HEREBY RESOLVED BY THE VILLAGE 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. **Second Amendment Approved.** That the Second Amendment between the Village and the Owner, in substantially the form attached hereto as Exhibit “A,” is hereby approved, and the Village Manager and Village Clerk are authorized, in their respective capacities, to execute

the Second Amendment 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 and all necessary action to implement the intent and purpose of this Resolution.

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

PASSED AND ADOPTED this _____ day of _____, 2014.

FRANKLIN CAPLAN, MAYOR

ATTEST:

CONCHITA H. ALVAREZ, CMC, VILLAGE CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

Village Attorney

Exhibit "A"

Amendment

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

THIS SECOND AMENDMENT TO AGREEMENT FOR USE OF ST. AGNES CATHOLIC CHURCH ATHLETIC FIELD (this "Second Amendment") is entered into as of this ___ day of _____, 2014 by and between the **VILLAGE OF KEY BISCAYNE**, a Florida municipal corporation ("Village") and **THE MOST REVEREND THOMAS G. WENSKI**, Archbishop of the Archdiocese of Miami, his successors in office, a corporation sole (hereinafter the "Owner").

WITNESSETH:

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

WHEREAS, Village and Owner entered into that certain Amendment to Agreement for Use of St. Agnes Catholic Church Athletic Field on August 31, 2009, wherein the parties modified the fees payable, the term of the Agreement and provided for termination of the Agreement ("First Amendment"); and

WHEREAS, Village and Owner wish to further modify the Agreement in accordance with the terms and conditions set forth herein in this Second Amendment.

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, 2014.

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

4. Fees. Beginning October 1, 2014, the Village shall pay the Owner an annual license fee of Forty Five Thousand and 00/100 Dollars (\$45,000) for the license granted to Village herein, which fee shall be paid in equally monthly installments on the first day of each month during the Term. For any partial month during the Term, the monthly installment payment shall be prorated on a per diem basis based on the number of days in such month. The annual license fee shall increase by three percent (3%) on October 1, 2015 and each October 1st thereafter by an additional three percent (3%) over the previous year's annual license fee. The equal monthly installments will be adjusted accordingly starting in October of

each year. 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. Notwithstanding the foregoing, the Village, at its sole option, may elect to pay the annual license fee in one (1) annual payment provided such payment is made to the Owner on or before October 15th of each year of the Term.

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 be extended for an additional five (5) year period commencing on October 1, 2014 and expire at 11:59 p.m. on September 30, 2019 (the "Term").

5. 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 other party. To prevent termination of this Agreement during an athletic sport season, this Agreement may only be terminated as of October 1st of a particular calendar year (e.g. to terminate the Agreement on October 1, 2016, notice must be given no later than October 1, 2015).

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

7. 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.

8. This Second 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 Second 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 Second Amendment as of the date first set forth above.

WITNESSES:

OWNER:

Print Name: _____

THE MOST THOMAS G. WENSKI, 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: _____
John Gilbert, 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 _____, 2014 by THE MOST REVEREND THOMAS G. WENSKI, 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 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 _____ day of _____, 2014 by John Gilbert, 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: