

RESOLUTION NO. 2016-

A RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, APPROVING A SETTLEMENT OFFER FROM GREAT AMERICAN INSURANCE COMPANY, AS SURETY FOR GREENSOURCE LANDSCAPE AND SPORTS TURF, INC. RELATING TO THE VILLAGE'S CLAIM ON THE BOND AND CONTRACT FOR RESURFACING TWO ATHLETIC FIELDS ON VILLAGE GREEN; AUTHORIZING VILLAGE OFFICIALS TO PREPARE AND EXECUTE A SETTLEMENT AGREEMENT CONSISTENT WITH THE TERMS OF THE SETTLEMENT OFFER; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, on October 1, 2015, the Village of Key Biscayne ("Village") accepted a service proposal from GreenSource Landscape and Sports Turf, Inc. ("GreenSource") for Resurfacing Two Athletic Fields on Village Green ("Project"); and

WHEREAS, Great American Insurance Company ("GAIC") issued a performance bond securing the performance of GreenSource's construction contract for the Project; and

WHEREAS, the athletic fields at the Village Green deteriorated under the maintenance, care and control of GreenSource and, on June 13, 2016, after having provided GreenSource with multiple opportunities to cure and resolve the issues to no avail, the Village sent a Notice of Termination to GreenSource terminating their contract; and

WHEREAS, since terminating the contract with GreenSource, the Village and GAIC, through their respective representatives, have engaged in discussions and negotiations to attempt to settle the issues related to GreenSource's contract default; and

WHEREAS, on October 4, 2016, GAIC proposed a settlement to the Village valued at \$210,604.24, which is attached hereto as Exhibit "A" ("Settlement Offer"); and

WHEREAS, the Village Council desires to accept the Settlement Offer and authorize the Village Manager and Village Attorney to prepare and execute a settlement agreement and any related

releases consistent with the terms of the Settlement Offer; 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 Settlement Offer. The Village Council hereby approves the Settlement Offer as presented in Exhibit "A" attached hereto and incorporated herein.

Section 3. Authorization of Village Officials. The Village Council authorizes the Village Manager and the Village Attorney to prepare and execute a settlement agreement and any related releases consistent with the terms of the Settlement Offer.

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

PASSED AND ADOPTED this 1st day of November, 2016.

MAYOR MAYRA PEÑA LINDSAY

ATTEST:

CONCHITA H. ALVAREZ, MMC, VILLAGE CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

VILLAGE ATTORNEY

EXHIBIT "A"



301 East Fourth Street, 24th Floor, Cincinnati, OH 45202-4201
P.O. Box 2119, Cincinnati, OH 45201

fax 888.290.3706 (U.S. Only)

GreatAmericanInsurance.com

October 4, 2016

Via Email (jgilbert@keybiscayne.fl.gov)

Mr. John C. Gilbert
Village of Key Biscayne
88 West McIntyre Street, Suite 210
Key Biscayne, FL 33149

RE: Principal: GreenSource Landscape and Sports Turf, Inc.
Bond No.: 303 73 61
Claim No.: 909-506250 01 1
Obligee: Village of Key Biscayne, Florida
Project: Resurfacing Two Athletic Fields on Village Green

Dear Mr. Gilbert:

Thank you for your September 23, 2016 letter in which you stated the Village of Key Biscayne, Florida's (the "Village") rejection of Great American Insurance Company's ("GAIC") settlement offer in the monetary amount of \$81,841.80. GAIC acknowledges and appreciates the Village's counter-demand for settlement in the monetary amount of \$130,000.

It appears from your letter that the main basis for the Village's rejection of GAIC's offer arises from a concern over AllGreen Nursery, Inc.'s ("AllGreen") performance capabilities. AllGreen is able to provide a performance bond assuring the performance of its work. With the backing of a licensed surety, the Village's concern about AllGreen's capabilities is addressed.

Your counter-demand also states that as part of a settlement, the Village requires a general release from GreenSource. Based on the information provided to us, in addition to the unpaid contract proceeds, the Village owes GreenSource Landscape and Sports Turf, Inc. ("GreenSource") \$18,779.04 on its June 10, 2016 invoice, invoice number 13974. Even though that invoice pertains to the separate maintenance contract between the Village and GreenSource, which GAIC did not bond, that amount has to be factored into a global settlement given the Village's requirement of a release from GreenSource.

As a result of these and the factors stated in my prior correspondence to you, GAIC respectfully rejects the Village's counter-demand. However, given the relative positions of the parties, GAIC continues to believe a monetary resolution is possible. As a result, GAIC proposes the following settlement:

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- The Village can keep the remaining contract proceeds (\$98,825.20).
- GAIC will cause an additional \$93,000 to be paid to the Village.
- The Village will fully and completely release GAIC and GreenSource of any and all claims of whatsoever type or nature relating to or arising out of the Resurfacing Two Athletic Fields on Village Green project (the "Project"), Performance Bond No. 3037361 (the "Bond"), or maintenance contract, whether statutory or at common law.
- GreensSource and GAIC will release the Village of any and all claims of whatsoever type or nature relating to or arising out of the Project, Bond, or maintenance contract, whether statutory or at common law.
- The Village will rescind, in writing, its termination of GreenSource.

Please let us know whether the Village accepts GAIC's monetary offer or whether the Village would rather have GAIC take over the project with AllGreen performing under the exact terms and conditions of GreenSource's contract. If the Village elects this option, we will send a takeover agreement for your execution.

In the meantime, GAIC continues to reserve all its rights, claims, and defenses, including those under the performance bond, the construction contract, at law or in equity.

Sincerely,

GREAT AMERICAN INSURANCE COMPANY



Ryan Dierkers
Claim Specialist
(513) 579-6328
rdierkers@gaig.com

CC: Brett D. Divers, Esq., Mills Paskert Divers (via email)
Jon Polenberg, Esq., Polenberg Cooper, PLLC (via email)