RESOLUTION NO. 2017-34

A RESOLUTION OF THE MAYOR AND VILLAGE COMMISSION OF THE VILLAGE OF BISCAYNE PARK, FLORIDA, AUTHORIZING THE APPROPRIATE VILLAGE OFFICIALS TO EXECUTE AN AGREEMENT FOR THE PROVISION OF A ZUMBA PROGRAM BETWEEN THE VILLAGE OF BISCAYNE PARK AND GUIPXY MARTINEZ; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the Village desires to retain the professional services of an instructor to provide a Zumba program; and

WHEREAS, Guipxy Martinez desires to provide a Zumba program at the Ed Burke Recreation Center; and

WHEREAS, the Village staff has determined that it is in the best interests of the Village and its citizens to authorize the appropriate Village officials to execute the Agreement for the provision of a Zumba program between the Village and Guipxy Martinez, attached hereto and incorporated herein as Exhibit "1";

NOW THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND VILLAGE COMMISSION:

Section 1. The appropriate Village officials are hereby authorized to execute the Agreement for the provision of a Zumba program between the Village of Biscayne Park and Guipxy Martinez, attached hereto and incorporated herein as Exhibit "1".

Section 2. **Effective Date.** This Resolution shall be effective upon adoption.

PASSED AND ADOPTED this 11th day of July, 2017.

The foregoing resolution upon being put to a vote, the vote was as follows:

Tracy Truppman, Mayor

Mayor Truppman: Yes
Vice Mayor Johnson-Sardella: Yes
Commissioner Bilt: Yes
Commissioner Ross: Yes
Commissioner Tudor: Yes

Attest:

Marlen D. Martell, Village Clerk

Approved as to form:

John J. Hearn, Village Attorney

AGREEMENT BETWEEN THE VILLAGE OF BISCAYNE PARK AND Guipy Martinez **FOR THE PROVISION OF** Zumba

THIS AGREEMENT is entered into this 27 day of June, 2017 between the Village of Biscayne Park, a Florida municipal corporation, (VILLAGE), and Guipy Martinez (INSTRUCTOR).

WHEREAS, the VILLAGE desires to retain the professional services of INSTRUCTOR to provide a Zumba program; and

WHEREAS, the INSTRUCTOR desires to provide a Zumba program at the Ed Burke Recreation Center.

ARTICLE I
SCOPE OF SERVICES

The INSTRUCTOR agrees to:

1.1 Provide a Zumba program for Adult/teenager to be based at the Ed Burke Recreation Center.

1.2 Conduct classes in a professional, careful and responsible manner with due regard for the safety of the participants and others, during normal operating hours.

1.3 Be solely responsible, at INSTRUCTOR's sole expense, for providing and paying for all instructors, counselors, and other personnel costs associated with the program.

1.4 Be solely responsible for securing the services of and compensating assistants or other personnel, as may be required, to perform the program.

1.5 Provide to VILLAGE at the close of registration, a list of all participants, along with a signed VILLAGE approved Release form.

1.6 Permit only registered program participants to attend program sessions.

1.7 Vacate the program facility promptly at the conclusion of the program session in equal or better condition than it was found.

1.8 Accept neither fees nor any other payment other than as specifically set forth in this Agreement.

1.9 Immediately notify the Village Manager, or her designee, in the event it becomes necessary to cancel a program session.

1.10 Immediately notify the Village Manager, or her designee, of any injury sustained by a program participant.

1.11 Comply with any other rules adopted by the Village Manager, or her designee, for use of VILLAGE's property, including the facilities used by INSTRUCTOR pursuant to this Agreement.

1.12 Actively supervise the operation of each program.

1.13 Be responsible for enforcing compliance with the approved rules for all programs. The VILLAGE reserves the right to enact other rules, if necessary, at its sole discretion.

1.14 Require that INSTRUCTOR and all other counselors, employees, and/or instructors undergo Level 2 background screening and drug screening prior to supervising children, and furnish all reports to the VILLAGE. The VILLAGE reserves the right to suspend, bar, or expel and employee, counselor, or instructor for any reason, at its sole discretion, without recourse from the subject person or the INSTRUCTOR. Drug screening shall be completed annually on the anniversary of the Agreement.

1.15 The VILLAGE reserves the right to suspend, bar, or expel any employee, counselor, or instructor for any reason, at its sole discretion, without recourse from the subject person or the INSTRUCTOR.

The VILLAGE agrees to:

1.16 Allow INSTRUCTOR the use of the Ed Burke Recreation Center for INSTRUCTOR's Zumba program.

1.17 Allow INSTRUCTOR advertising in VILLAGE's newsletters and publications, at no cost to INSTRUCTOR.

1.18 Process program participants' fees in accordance with VILLAGE revenue processing procedures.

1.19 Grant INSTRUCTOR license, revocable at will, to use the Ed Burke Recreation Center, consistent with the obligations under this Agreement.

ARTICLE 2
FEES AND COMPENSATION

2.1 The INSTRUCTOR shall be compensated from fees collected from participants. The parties agree that VILLAGE shall retain thirty percent (30%) of all registration fees and the INSTRUCTOR shall retain seventy percent (70%) of all registration fees.

2.2 INSTRUCTOR shall not charge any participant for any other services not contained in the Agreement.

2.3 All items sold by INSTRUCTOR shall be approved by the VILLAGE Manager prior to offering any item for sale.

2.4 INSTRUCTOR shall keep all books, rosters and attendance in accordance with standard accounting procedures, and shall make them available to the VILLAGE for inspection and audit at all times.

ARTICLE 3
TERMINATION OF AGREEMENT

3.1 This Agreement may be terminated upon thirty (30) days written notice from the VILLAGE at VILLAGE's sole discretion. INSTRUCTOR may terminate this Agreement, at its sole discretion, by giving thirty (30) days written notice to the VILLAGE.

3.2 The VILLAGE may unilaterally immediately terminate this Agreement and the license granted by this Agreement if VILLAGE determines, in its sole discretion, that INSTRUCTOR is not conducting his operations in complete accord with this Agreement, or in the best interests of the VILLAGE.

ARTICLE 4
INDEPENDENT CONTRACTOR

4.1 The parties agree and affirm that INSTRUCTOR is an independent contractor and not an agent, partner or employee of the VILLAGE, nor shall this Agreement be construed as a partnership nor joint venture between VILLAGE and INSTRUCTOR, the relationship being solely on of licensor and licensee.

4.2 INSTRUCTOR has control over the means and methods by which it performs the services. INSTRUCTOR, its employees and agents shall be deemed independent contractors and not agents or employees of the VILLAGE, and shall not attain any rights or benefits generally afforded VILLAGE employees; further, INSTRUCTOR, its employees and agents shall not be deemed entitled to the VILLAGE's worker's compensation, insurance benefits or similar laws.

ARTICLE 5
INDEMNIFICATION CLAUSE

INSTRUCTOR agrees to defend, indemnify and hold harmless the VILLAGE from and against any and all claims, suits, damages, liabilities or causes of action arising during the term of this Agreement, arising out of, related to, or in any way connected with the performance or non-performance of any provision of this

Agreement required of the INSTRUCTOR, including personal injury, loss of life or damage to property and from and against any orders, judgment or decrees which may be entered, and from and against all costs, attorney's fees, and expenses incurred in and about the defense of any such claim and the investigation thereof. However, nothing shall be deemed to indemnify VILLAGE for any liability or claim arising solely out of the negligent performance or failure of performance of VILLAGE.

ARTICLE 6
INSURANCE

6.1 INSTRUCTOR shall provide, pay for, and maintain in force at all times during the period of this Agreement, a Comprehensive General Liability Insurance Policy with minimum bodily injury coverage of $500,000.00 (five hundred thousand dollars) and $200,000.00 (two hundred thousand dollars) property damage liability; workers compensation insurance as required by State Statue. The INSTRUCTOR'S insurance coverage shall be considered the primary carrier.

6.2 To the extent applicable, the worker's compensation insurance shall be at the statutory amount to apply for all employees in compliance with the "Workers' Compensation Law" of the State of Florida and all applicable federal laws. In addition, the policy(ies) must include: Employers' Liability at the statutory coverage amount.

6.3 The VILLAGE shall be named, as an additional insured on all insurance policies the INSTRUCTOR is required to provide.

ARTICLE 7
MISCELLANEOUS

7.1 INSTRUCTOR shall, without additional expenses to VILLAGE be responsible for obtaining any necessary licenses and for complying with any applicable federal, state, county, and municipal laws, ordinances, and regulations in connection with the performance of the services specified herein. INSTRUCTOR shall take proper safety and health precautions, including the employment of needed assistance, to protect participants, the VILLAGE, the public and property of others. INSTRUCTOR shall be responsible for all services performed until completion of this Agreement.

7.2 The INSTRUCTOR shall not promote any privately owned business in a VILLAGE park facility or solicit any participant in a VILLAGE park for any privately owned business other than the Zumba program. It is further understood that such action(s) may result in immediate termination of the Agreement and the forfeiture of all compensation due to the INSTRUCTOR.

7.3 INSTRUCTOR shall meet with the Village Manager or her designee as requested.

7.4 No modification, amendment, or alteration of the terms and conditions contained shall be effective unless contained in a written document executed with the same formality and equal dignity herewith.

7.5 This Agreement is non-transferable or assignable, and INSTRUCTOR agrees not to transfer or assign the performance of services called for in the Agreement.

7.6 This Agreement sets forth the full and complete understanding of the parties as of the effective date, and supersedes any and all negotiations, agreements, and representations made or dated prior to this Agreement.

ARTICLE 8

PUBLIC RECORDS

If INSTRUCTOR has questions regarding the application of Chapter 119, Florida Statutes, as to INSTRUCTOR's duty to provide public records relating to this Letter of Understanding, contact Village Clerk, Maria Camara, 640 NE 114 Street, Biscayne Park, FL 33161, villageclerk@biscayneparkfl.gov, (305) 899-8000.

INSTRUCTOR understands, acknowledges and agrees that INSTRUCTOR shall, pursuant to Section 119.0701, Florida Statutes, as amended from time to time, do the following:

(1) Keep and maintain public records required by the Village to perform the service.

(2) Upon request from the Village's custodian of public records, provide the Village with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Ch. 119, Florida Statutes, or as otherwise provided by law or Village policy.

(3) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the INSTRUCTOR does not transfer the records to the Village.

(4) Upon completion of the contract, transfer, at no cost, to the Village all public records in possession of INSTRUCTOR or keep and maintain public records required by the Village to perform the service. If the INSTRUCTOR

transfers all public records to the Village upon completion of the contract, the INSTRUCTOR shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If INSTRUCTOR keeps and maintains public records upon completion of the contract, the INSTRUCTOR shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the Village, upon request from the Village's custodian of public records, in a format that is compatible with the information technology systems of the Village.

REQUEST FOR NONCOMPLIANCE

(a) A request to inspect or copy public records relating to a Village's contract for services must be made directly to the Village. If the Village does not possess the requested records, the Village shall immediately notify the INSTRUCTOR of the request, and INSTRUCTOR must provide the records to the Village or allow the records to be inspected or copied within a reasonable amount of time.

(b) If INSTRUCTOR does not comply with the Village's request for records, the Village shall enforce the contract provisions in accordance with the contract.

(c) Should INSTRUCTOR fail to provide the public records to the Village within a reasonable time INSTRUCTOR may be subject to penalties under s. 119.10.

CIVIL ACTION

(a) If a civil action is filed against INSTRUCTOR to compel production of public records relating to a Village's contract for services, the court shall assess an award against INSTRUCTOR the reasonable costs of enforcement, including reasonable attorney fees, if:

(1) The court determines that INSTRUCTOR unlawfully refused to comply with the public records request within a reasonable time; and

(2) At least eight (8) business days before filing the action, the plaintiff provided written notice of the public records request, including a statement that INSTRUCTOR has not complied with the request, to the Village and to the INSTRUCTOR.

(b) A notice complies with subparagraph (a)2 if it is sent to the Village's custodian of public records and to INSTRUCTOR at INSTRUCTOR's address listed on its contract with the Village or to INSTRUCTOR's registered agent. Such notices must be sent by common carrier delivery service or by registered, Global Express Guaranteed, or certified mail, with postage or shipping paid by the sender and with evidence of delivery, which may be in an electronic format.

(c) Should INSTRUCTOR comply with a public records request within eight (8) business days after the notice is sent it shall not be liable for the reasonable costs of enforcement.

IN WITNESS THEREOF, the parties hereto have made and executed this Agreement on the date above:

VILLAGE OF BISCAYNE PARK, FLORIDA, a municipal corporation, organized and existing under the laws of the State of Florida

By:_____
Tracy Truppman, Mayor

ATTEST:

Marlen D. Martell, Village Clerk

Approved as to form:

By:_____
John J. Hearn, Village Attorney

<Instructor>

Guipxy Martinez

STATE OF FLORIDA)
COUNTY OF DADE)

BEFORE ME, an officer duly authorized by law to administer oaths and take acknowledgments, personally appeared Guipxy Martinez and acknowledged he/she executed the foregoing Agreement as the proper official of INSTRUCTOR, for the use and purposes mentioned in it and that the instrument is the act and deed of INSTRUCTOR.

IN WITNESS OF THE FOREGOING, I have set my hand and official seal at in the State and County aforesaid on this 6th day of July, 2017.

NOTARY PUBLIC

My Commission Expires:

MARLEN MARTELL
MY COMMISSION # GG 061117
EXPIRES: March 9, 2021
Bonded Thru Notary Public Underwriters