RESOLUTION NO. 2014-16

A RESOLUTION OF THE VILLAGE COMMISSION OF THE VILLAGE OF BISCAYNE PARK, FLORIDA; AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT BETWEEN JOE A. DE MADET AND THE VILLAGE OF BISCAYNE PARK TO PROVIDE YOUTH BASEBALL AND SOCCER PROGRAMS AT THE ED BURKE RECREATION CENTER; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Village's Parks & Recreation Department strives to provide quality fitness and sports programs for the benefit of the residents; and,

WHEREAS, Joe A. De Madet, also known as "Coach Joe", has previously provided youth soccer and youth t-ball programs for the Village of Biscayne Park; and,

WHEREAS, the Village Commission of the Village of Biscayne Park finds it to be in the best interests of the residents of the Village to enter into an agreement with Joe A. De Madet to provide youth sports programs at the Ed Burke Recreation Center.

NOW THEREFORE BE IT RESOLVED BY THE VILLAGE COMMISSION OF THE VILLAGE OF BISCAYNE PARK, FLORIDA:

Section 1. The foregoing "Whereas" clauses are hereby ratified and confirmed as being true and correct and hereby made a specific part of this Resolution upon adoption hereof.

Section 2. The Village Commission of the Village of Biscayne Park hereby authorizes the Mayor to execute the Agreement for the Provision of Youth Baseball and Soccer Programs between Joe A. De Madet and the Village of Biscayne Park. The Agreement, in substantial form, is attached and incorporated by reference into this resolution as exhibit 1.

Section 3. This Resolution shall become effective upon adoption.

PASSED AND ADOPTED this 4th day of March, 2014

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

Mayor Coviello: Yes
Vice Mayor Watts: Yes
Commissioner Anderson: Yes
Commissioner Jonas: Yes
Commissioner Ross: Yes

David Coviello, Mayor

Attest:

Maria C. Camara, Village Clerk

Approved as to form:

John J. Hearn, Village Attorney

AGREEMENT BETWEEN VILLAGE BISCAYNE PARK AND JOE DE MADET FOR THE PROVISION OF YOUTH BASEBALL AND SOCCER PROGRAMS

THIS AGREEMENT is entered into this 4th day of March, 2014 between the Village of Biscayne Park, a Florida municipal corporation, (VILLAGE), and Joe de Madet (INSTRUCTOR).

WHEREAS, the VILLAGE desires to retain the professional services of INSTRUCTOR to provide youth baseball and soccer programs; and

WHEREAS, the INSTRUCTOR desires to provide youth baseball and soccer programs at the Ed Burke Recreation Center.

ARTICLE I
SCOPE OF SERVICES

The INSTRUCTOR agrees to:

1.1 Provide youth baseball and soccer programs for youths aged four to twelve to be based at the Ed Burke Recreation Center.

1.2 Conduct the youth baseball and soccer programs for children 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 baseball and soccer programs.

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

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, activity, event, league, and service.

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 any 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 this Agreement.

The VILLAGE agrees to:

1.15 Allow INSTRUCTOR the use of the Ed Burke Recreation Center for INSTRUCTOR's baseball and soccer program.

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

1.17 Register all program participants.

1.18 Process Village Activity Fee in accordance with VILLAGE revenue processing procedures.

1.19 Provide INSTRUCTOR with goal posts, including set up, at the request of the INSTRUCTOR. INSTRUCTOR shall provide all other equipment necessary for its operation.

1.20 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 All participants shall pay a Village Activity Fee payable directly to the Village.

2.2 INSTRUCTOR shall insure that all participants are registered in accordance with Village procedures.

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 youth baseball and soccer 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.

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:_____
David Coviello, Mayor

ATTEST:

Maria C. Camara
Maria C. Camara, Village Clerk

Approved as to form:

By:_____
John J. Hearn, Village Attorney

JOE DE MADET

_____

STATE OF FLORIDA)
COUNTY OF DADE)

BEFORE ME, an officer duly authorized by law to administer oaths and take acknowledgments, personally appeared Joe de Madet and acknowledged he 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 25th day of March, 2014.

Maria C. Camara
NOTARY PUBLIC

My Commission Expires:

MARIA C. CAMARA
MY COMMISSION # EE 044308
EXPIRES: November 21, 2014
Bonded Thru Notary Public Underwriters