

Town of Miami Lakes

License and Use Agreement

THIS LICENSE AND USE AGREEMENT (“Agreement”) is entered into this **(7th)** day of March, **2017** by and between the Town of Miami Lakes, a Florida municipal corporation (“Town”) and American Legion Post #144, a Florida Not-For-Profit Organization (“Licensee”), located at PO Box 174158, Hialeah, FL 33017-4158.

WHEREAS, the Town is the operator of Royal Oaks Park and Roberto Alonso Community Center located at 16500 NW 87th Avenue, Miami Lakes, FL 33018; Miami Lakes Picnic Park West and Mary Collins Community Center West located at 15151 NW 82nd Avenue, Miami Lakes, FL 33016; Miami Lakes East Park and Miami Lakes Youth Center located at 6075 Miami Lakes Drive East, Miami Lakes, FL 33014; Miami Lakes Optimist Park and Clubhouse located at 6411 NW 162nd Street, Miami Lakes, FL 33014; and mini parks located at various addresses around the Town (“Property”).

WHEREAS, The Town has agreed to allow the Licensee to utilize a portion of the Property as described in Section “3” for the program and activities as described in Section “3” (“Program”).

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties, the parties hereto do hereby agree as follows:

Section 1. Definitions.

The following terms used in this Agreement will have the following meanings:

- 1.1. Agreement means this Agreement, as may be amended from time to time, all changes, directive, payments and other such documents issued under or relating to the License and Use Agreement.
- 1.2. Licensee means the person, firm, entity, or corporation with whom the Town has contracted and who will be responsible for the Programs and the performance under this Agreement.
- 1.3. Town Manager means the duly appointed chief administrative officer of the Town of Miami Lakes or his designee.

Section 2. Term.

- 2.1. The “Term” of this Agreement shall commence on **(March 16, 2017)** (“Commencement Date”) and terminate on **(March 15, 2020)** (“Termination Date”).
- 2.2. The Town Manager may at his sole discretion extend or agree to a change in dates due to circumstances beyond the control of the Licensee or the Town.
- 2.3. The Town Manager may at his sole discretion renew the agreement on an annual basis.

Section 3. Use of Property.

- 3.1 Town grants to the Licensee a non-exclusive license for the limited use of the parks and community centers of the Property in “as-is” condition for American Legion Meetings and events at days and times submitted in writing fourteen (14) business days prior to activity/event and approved in advance by the Town Manager. Such approval shall be at the sole discretion of the Town Manager.
- 3.2 The Licensee shall only be entitled to utilize the Property as described above. The Town Manager may coordinate alternative days and/or hours based upon the Town’s needs.
- 3.3 The Licensee understands and agrees that the Property shall not be used for the storage of any items without the express, prior written approval of the Town Manager.

- 3.4 The Licensee shall pay the Town a fee of \$0.
- 3.5 Town Manager shall have the authority to stop an event, program or service being held or provided where the Town Manager determines that such event or services does not fall within the scope of this Agreement.
- 3.6 Town Manager, in his/her sole discretion, may change or cancel any activity due to inclement weather, special events, conflicting schedules, Town recreation programs or unforeseen emergencies including, but not limited to, maintenance of the Property, or for any reason that is in the best interest of the Town.
- 3.7 The Licensee shall comply with all federal, state, county, and local laws, codes, ordinances, rules, and regulations including all Town Park rules and regulations.

Section 4. Termination of Agreement.

- 4.1. Either party may, without cause, terminate this Agreement anytime upon written notice to the other party (the "Termination Date").
- 4.2. If the Licensee fails to timely perform a material term or condition of the Agreement ("Event of Default") the Town Manager may immediately terminate this Agreement and revoke the license granted to the Licensee at any time.

Section 5. Maintenance.

- 5.1. Town shall provide routine maintenance of the Property.
- 5.2. Maintenance above and beyond what is normally provided for use of the Property shall be provided by the Licensee, subject to the prior written approval of the Town Manager.
- 5.3. The Town shall provide all utilities and solid waste management services.
- 5.4. Licensee shall be responsible for picking up debris, garbage, papers, etc. generated as part of the Program and leave the Properties in the same condition existing prior to the Program.

Section 6. Programming, Costs, Expenses and Deposit.

The Licensee shall be solely responsible for all costs incurred by Licensee in providing the Program(s).

Section 7. Organizational Status and Governing Regulations of Licensee.

- 7.1. Licensee agrees to monitor and control all program participants, including, but not limited to Licensee staff, instructors, volunteers, program participants, guests and invitees while at the Property and during any activities organized by the Licensee on the Property.
- 7.2. Licensee's overall Program shall include safety guidelines as well as guidelines and standards for the conduct of Licensee staff and volunteers in interfacing with the general public and Town officials in a courteous and professional manner. Licensee shall at all times have a competent supervisor on site who shall be responsible for management and supervision, of the Program(s). Such guidelines and standards may be subject to the review and approval of the Town.
- 7.3. Licensee shall not engage in any for-profit or fundraising activities on the Property without obtaining the express, prior written approval of the Town Manager.
- 7.4. Licensee shall comply, at its own cost, with the Town's Administrative Order 07-01, requiring the Licensee to conduct background investigations for all instructors, employees, or volunteers prior to the Licensees use of the Property under this Agreement. Licensee shall not allow any instructor, employee, or volunteer who does not meet the requirements of the Town's Administrative Order 07-01 to provide any



service under this Agreement. Licensee shall provide an affidavit stating that all employees or volunteers have been background checked in accordance with the Town's Administrative Order 07-01.

- 7.5. Licensee shall, upon receipt of a written request from the Town, immediately exclude any employee of Licensee from working on the Program.

Section 8. Security.

- 8.1. Licensee shall be responsible for providing at its sole cost, all security during the Term necessary to protect the Property and persons therein. The Town shall have sole discretion and be the final authority in determining the security needs and/or requirements based on the Program.
- 8.2. Where an armed security officer(s) is required, the Licensee shall contract with the Miami Lakes Police Department for off-duty police officers.

Section 9. Alterations and Improvements.

- 9.1. Licensee shall not make any permanent or temporary alterations, improvements or additions to the Property, including all signs and banners, without the prior written consent of the Town Manager. Any alteration, improvement or addition to the Property approved by the Town Manager shall be designed, constructed with appropriate permitting, installed, and maintained in a good, safe and workmanlike manner, and shall be provided solely at the Licensee's expense.
- 9.2. Unless otherwise agreed in writing by the Town, any alteration, improvement or addition to the Property made by Licensee shall be removed by Licensee at the expiration date or earlier termination date of the Agreement. If the Town desires to retain any alteration, Town shall notify Licensee in writing of its intent prior to the termination date of this Agreement.

Section 10. Insurance.

Commencing upon its execution of this Agreement and all times during the Term, Licensee shall carry the following insurance:

- 10.1. General liability insurance in an amount no less than One Million and No/100 Dollars (\$1,000,000.00) per occurrence, and automobile insurance for owned and non-owned vehicles in an amount not less than \$300,000. The liability policy to be provided by Licensee must be written by a carrier rated B and Class V or better as rated by A.M. Best Oldwick, New Jersey, or its equivalent. The required insurance policies must name the Town as an additional insured and loss payee, refer specifically to this Agreement, and must provide that the policy cannot be materially altered or canceled without thirty (30) days written notice to Town.

Section 11. Damage and Restoration.

- 11.1. In the event of any damage by the Licensee or any of its representatives, including but not limited to; employees, contractors, volunteers, program spectators, guests and participants, the Licensee shall be responsible for restoring the Property or any other damaged area to its pre-existing condition prior to the damage.

Section 12. Indemnification.

- 12.1 The Licensee shall indemnify and hold harmless the Town, its officers, agents employees, and representatives from and against all liability, claims, damages, losses and expenses, including reasonable attorney's fees and costs at both trial and appellate levels arising out of or resulting from the performance of the Work under this Agreement resulting from the delivery or non-delivery of the Program, or caused by negligence, recklessness, intentional misconduct, or any act or omission of the Licensee or anyone directly or



indirectly employed by Contractor or anyone for whose acts the Licensee may be liable. The Licensee expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by Licensee shall in no way limit the responsibility to indemnify, keep and save harmless and defend the Town or its officers, employees, agents and instrumentalities as herein provided.

12.2 The Licensee agrees and recognizes that the Town shall not be held liable or responsible for any claims which may result from any actions or omissions of the Licensee in which the Town participated either through review or concurrence of the Licensee's Program

12.3 The provisions of this Section shall survive the termination or expiration of this Agreement.

Section 13. Assignment.

Licensee shall not assign, transfer, or otherwise dispose of this Agreement, or any portion thereof, or permit the Property to be occupied by other organizations, entities or persons.

Section 14. Town Right to Observe and Inspect.

Town shall have the right, but not the obligation, at all times to have one or more of its representatives present at the Property to observe the Licensee's use of the Property and make any inspections the Town deems necessary. The purpose of such observations and inspections is to ensure the Licensee's compliance with the terms and conditions of this Agreement.

Section 15. Non-Discrimination.

Licensee shall not unlawfully discriminate against any person, shall provide equal opportunities for employment and equal opportunities for access to and participation in the Program(s). Licensee shall not discriminate against any person or group and shall comply with all applicable provisions of the Americans with Disabilities.

Section 16. Notices.

Whenever either party desires to give written notice to the other relating to the Agreement, such must be addressed to the party for whom it is intended at the place specified below; and the place for giving the notice shall remain until it shall have been changed by written notice. Notice shall be deemed given on the date received or within 3 days of mailing, if mailed through the United States Postal Service. Notice shall be deemed received on the date sent via e-mail or facsimile. Notice shall be deemed given via courier/delivery service upon the initial delivery date by the courier/delivery service.

For Town:

Mr. Alex Rey
Town Manager
Town of Miami Lakes
6601 Main Street
Miami Lakes, FL 33014
(305)-364-6100
reya@miamilake-fl.gov

For Licensee:

Gary Cardenas
American Legion Post #144
PO Box 174158
Hialeah, FL 33017-4158



(786) 942-5700
gcardenassr@gmail.com

Section 17. Entire Agreement.

This Agreement, including the attached exhibits, contains all of the terms, covenants, conditions and agreements between Town and Licensee relating in any manner to the use and occupancy of the Property by Licensee. No prior agreement or understanding pertaining to the same shall be valid or of any force or effect, and the terms, covenants, conditions and provisions of the Agreement shall not be altered, changed, modified or amended, except in writing signed by Town and Licensee.

Section 18. No Waiver.

The failure by any party to insist in any one or more instances upon the strict performance of any covenant, agreement, term, provision or condition of this Agreement shall not be construed as a waiver or relinquishment for the future of such covenant, agreement, term, provision, or condition, but the same shall continue and remain in full force and effect. No waiver by Town or Licensee of any condition shall be deemed to have been made unless expressed in writing and signed by the waiving party.

Section 19. Independent Contractor.

Nothing herein contained shall be deemed in any way to constitute Town or Licensee a partner of the other in its business or otherwise, or a joint venturer or a member of a joint enterprise with the other. For all intents and purposes hereunder, Licensee shall be considered an independent contractor.

Section 20. Severability.

If any term, covenant, condition or provision of this Agreement (or the application thereof to any circumstance or person) shall be invalid or unenforceable to any extent, the remaining terms, covenants, conditions and provisions of this Agreement shall not be affected thereby; and each remaining term, covenant, condition and provision of this Agreement shall be valid and shall be enforceable to the fullest extent permitted by law unless the enforcement of the remaining terms, covenants, conditions and provisions of this Agreement would prevent the accomplishment of the original intent of the agreement between the parties.

Section 21 Authority to Execute.

Town and Licensee each warrant and represent to the other that the individuals signing this Agreement on behalf of the Town and Licensee, respectively, have full power and authority to execute and deliver the Agreement and to bind the respective parties hereto.

Section 22. Governing Law; Venue; Waiver of Jury Trial.

- 22.1 This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida.
- 22.2 The parties agree that venue for any legal action instituted in connection with this Agreement shall be in Miami-Dade County, Florida.
- 22.3 THE PARTIES HEREBY EXPRESSLY, KNOWINGLY, AND IRREVOCABLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO, OR ARISING OUT OF THIS AGREEMENT.



Town of Miami Lakes License and Use Agreement

IN WITNESS WHEREOF, Town and Licensee have executed this Agreement as of the dates set forth above.

Attest:

TOWN OF MIAMI LAKES

By: _____
Gina Inguanzo, Town Clerk

By: _____
Alex Rey, Town Manager

Signed, sealed and witnessed in the presence of:

As to the Licensee:

American Legion Post #144

By: _____

By: _____

Name: _____

Title: _____

(*) In the event that the Licensee is a corporation, License shall be attached the corporate resolution authorizing the officer who signs the Agreement to do so in its behalf.