

## LICENSE AND USE AGREEMENT

**THIS LICENSE AND USE AGREEMENT** (the “Agreement”) is entered into this **23rd** day of **January, 2024** (the “Effective Date”) by and between the Town of Miami Lakes, a Florida municipal corporation (the “Town”) and The Optimist Club of Miami Lakes, Inc., a Florida not-for profit corporation, (the “Licensee”), mailing address of P.O. Box 4034, Miami Lakes, FL 33014.

### RECITALS:

1. The Town is the fee simple title holder of that certain real property located in Miami-Dade County, Florida, commonly known as Miami Lakes Optimist Park and Royal Oaks Park (and as more fully defined in Section 1.12 hereof); and

2. The Town has agreed to allow the Licensee to utilize the Properties (as defined in Section 1.12) for general organized recreation programs, concessions, activities and/or events for the use and benefit of both residents and non-residents of the Town in accordance with this Agreement.

**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. This Agreement, together with all exhibit’s amendments and modifications hereto.

1.2. Council. The Town Council of the Town of Miami Lakes, Florida.

1.3. Event of Default. Any one or more of the occurrences constituting a default under this Agreement as set forth herein.

1.4. Force Majeure. Any one or more of the following occurrences: Acts of Nature (including, without limitation, hurricanes, windstorms, earthquakes, floods); war, declaration of a state of national, state or local emergency; civil unrest; strikes, boycotts, lockouts or labor disputes beyond the control of the parties.

1.5. Governmental Authority. Any federal, state, county, municipal or other governmental department, entity, authority, commission, board, bureau, court, agency or any instrumentality of any of them.

1.6. Governmental Requirement. Any law, enactment, statute, code, ordinance, rule, regulation, judgment, decree, writ, injunction, order, permit, certificate, license, authorization, agreement, or other direction or requirement of any Governmental Authority now existing or hereafter enacted, adopted, promulgated, entered, or issued.

1.7. Hazardous Substances. Any hazardous, toxic or dangerous waste, substance or material including, but not limited to, any elements or compounds which are now or hereafter (a) identified in Section 101(14) of the CERCLA, 42 U.S.C. § 376.301, as same may be amended from time to time, (b) determined to be toxic, a pollutant or contaminant, under any Governmental Requirement, (c) contained in the list of hazardous substances adopted by the United States Environmental Protection Agency, (d) defined as “petroleum” and “petroleum Products” as defined in Fla. Stat. § 376.301, as same may be amended from time to time, and (e) asbestos, radon, polychlorinated biphenyls and such other elements, compounds, materials, substances or waste which are otherwise dangerous, hazardous, harmful or deleterious to human or animal health or safety, or the environment.

1.8. Improvements. All improvements, structures and landscaping now or hereafter installed or constructed on the Properties as well as all additions, alterations, modifications, renovations, and replacements thereto.

1.9. Joint Use Agreement. That certain Joint Use Agreement between the Town and the School Board of Miami-Dade County, Florida as approved by the Town Council on November 12, 2002, a copy of which is attached hereto as Exhibit “C” and is incorporated into and made a part of this Agreement.

1.10. Liabilities. Any and all liabilities (including strict liability), losses, suits, proceedings, settlements, judgments, orders, penalties, fines, liens, assessments, claims, demands, damages, injuries, obligations, costs, disbursements, expenses or fees of any kind or nature, including attorneys’ fees and expenses (at both the trial and appellate levels) paid or incurred in connection therewith.

1.11. Licensee. The Optimist Club of Miami Lakes, Inc., a Florida not-for profit corporation, including its agents, volunteers, coaches, umpires, contractors, members, and players authorized by Licensee to be on the Properties.

1.12. Properties. The real property commonly known as Miami Lakes Optimist Park and Royal Oaks Park as more fully set forth in Exhibit “A” attached hereto and made a part hereof (the “is part of the definition of Properties”).

1.13. Public Areas. Those areas of the Properties which are open for use by the general public.

1.14. Town. The Town of Miami Lakes, Florida, a Florida municipal corporation.

1.15. Town Manager. The Town of Miami Lakes, Florida Town Manager or his/her designee.

1.16. Program Manager means the individual designated by the Town Manager to administer the Agreement.

1.17. Resident means all Town of Miami Lakes & Unincorporated Miami-Dade County Residents.

1.18. Non-Resident means all Incorporated areas (Cities) & Non-Miami-Dade County Residents.

**Section 2. Term.**

2.1. The term (“Term”) of this Agreement for the use of the Properties shall be from the Effective Date to the fifth (5<sup>th</sup>) anniversary of the Effective Date, January 23<sup>rd</sup>, 2029 (the “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.

**Section 3. Termination of Agreement.**

Either party may, with cause, terminate this Agreement upon thirty (30) days written notice to the other party. If the Town Manager determines that an Event of Default has occurred, the Town Manager shall provide the Licensee with written notice and thirty (30) days to cure the default. If the Licensee fails to timely cure the default, then the Town Manager may terminate this Agreement as soon as practical so as to minimize the disruption to programs currently operating.

**Section 4. Use of Properties.**

4.1. The Town grants to the Licensee a priority but non-exclusive right of the Miami Lakes Optimist Park and the non-exclusive right to use the Royal Oaks Park in “as-is” condition as contemplated herein and subject to the terms and conditions of the Joint Use Agreement. This Agreement is subject and subordinate to all terms and conditions of the Joint Use Agreement. The Licensee represents to the Town that it has read the entire Joint Use Agreement and agrees to be bound under the terms of the Joint Use Agreement to the extent applicable to the use of the Property by the Licensee hereunder. Notwithstanding anything herein to the contrary, if the Joint Use Agreement expires or is terminated for any reason, then this Agreement shall also automatically expire or terminate as of the expiration or termination date of the Joint Use Agreement.

4.2. The Licensee agrees to operate the Properties only for the following uses permitted pursuant to this Agreement:

1. Year-round youth baseball/softball, youth basketball, youth flag football, youth cheerleading, and youth educational programs (“Programs”), activities, camps, team practices, meetings and events on the Properties.

2. Use and operation of the food and drink concession facilities located on the Properties during Program operations.

a) The Licensee, at their expense, shall be responsible for obtaining all required food licenses and permits relevant to the operation of the Concession. Copies of any applicable licenses and/or permits related to the Concession shall be provided to the Town within thirty (30) days of the beginning of the Contract Term and annually thereafter.

- b) The Licensee shall designate a “Concessions Manager” who shall be responsible for all the work to be performed by the Licensee under this Contract and shall serve as the point of contact. The Licensee must provide to the Town a copy of the selected Concessions Manager’s qualifications in writing. The selection of the Concessions Manager must be approved by Town’s Representative.
- c) The Concessions Manager shall be on property at the request of the Town’s Representative and shall be reachable seven (7) days per week, twenty- four hours a day.
- d) The Concessions Manager must provide an overall annual operations/maintenance schedule and monthly detailed maintenance schedules to the Town in writing within thirty (30) days of the execution of the Contract. All schedules must be approved by the Town.
- e) The Concessions Manager shall meet with the Town’s Representative, at a mutually determined schedule, to discuss Concession-related matters and any Contract issues.
- f) The Concessions Manager or any Licensee employee shall submit incident reports forms in a Town approved format, when any noteworthy event occurs at the Concessions, including but not limited to injuries, trespassing, equipment/inventory loss or other significant event.
- g) Access control responsibilities for the Concession Facility are defined as follows: Two (2) copies of all required keys will be furnished to the Licensee. Additional keys will be at the expense of the Licensee. Lost/stolen/misplaced keys will result in change of lock/key at the Licensee’s expense. The Licensee is responsible for opening and closing all Concession Facility doors during operating hours.
- h) The Licensee agrees to operate the Concession on the dates and times as mutually determined with the Licensee at the Park and other compatible uses as permitted under applicable law for which the Town Manager or his designee has given prior written consent in each instance.
- i) The Licensee shall not display or affix any signs on or about the Concession without first obtaining the advance written approval of the Town Manager or designee.
- j) If the Licensee wishes to make any changes to the above schedule the Licensee must provide 72 hours written notice subsequently approved by the Town.

k) Staff must be able to speak and understand English. Staff working together must be able to communicate with one another. Staff is encouraged to be bilingual.

l) Staff must be clean, groomed and in uniform while on Park property.

m) Staff shall not smoke in the Parks and alcohol is prohibited. The Licensee shall purchase and provide to staff a uniform that meets the Town's approval.

n) Staff shall not wear a Town approved uniform or display Town decals on Licensee's vehicles to conduct non-Town related business or personal matters while inside or outside the Town's limits.

o) Staff shall wear a Town issued ID badge at all times while on the property. The ID must be returned to the Town upon resignation or termination.

p) The use of the Concession shall be limited to the sale of prepackaged foods and non-alcoholic beverages, unless otherwise approved by the Town. Soda fountains may be permitted. The cooking and/or reheating of food products within the Concession shall be limited to activities that do not require the use of a stove, gas grill, barbecue grill or other similar equipment, unless approved. The use of a microwave, electric grill, electric fryer or sandwich press may be permitted. Licensee shall provide to the Town a list of equipment for approval in the sole discretion of the Town. Licensee shall not sell or distribute any glass bottles or containers. Other than the uses stated above, the Concession may not be used by Licensee for any other purpose.

q) Prior to the execution of this Agreement, Licensee agrees to provide to the Town a menu with a list of sale items and prices for approval by the Town Manager, or his designee. The Licensee shall at all times hereunder stock and display a reasonable supply of food and beverages sufficient to satisfy demand at competitive prices comparable with the prices charged for food and beverages at other public parks in the area. The Licensee agrees that the level of services in the bid cannot change without the Town's approval.

r) The Licensee will keep accurate and complete records of all revenue and expenses in connection with the operation of the concession facility. Such revenue and expenses will be supported by cash register tapes, invoices, sales slips bills, vouchers, payroll records, purchase orders and other pertinent records that, under recognized accounting and industry practices, contain information relating to costs, including gross sales or profits. In addition to any and all such documents or statements

("records") identifying total concession stand revenues for the time periods of operation as specified herein. Said records shall be provided to the Town Manager, or his designee, no later than 5:00 pm on the Monday following each Sunday date, as specified herein.

s) The Licensee shall not permit any intoxicated person or persons to remain at the Concession or allow profane or indecent language, or improper, boisterous or loud conduct to take place in or about the Concession.

t) The Licensee shall inspect the facility and schedule a deep cleaning prior to initial use at Licensee's cost. Licensee shall be responsible for inspecting the condition of the facilities and equipment in the Concession, every day prior to its use. Inspection reports shall be made in writing and presented to the Town Manager or designee if requested.

u) The Licensee shall, on each day of operation of the Concession, properly dispose of all litter and trash generated through its use of the Concession upon the close of the operation day in the dumpster located at the Park and fully clean the concession area for use the following day. The Town will not have any responsibility for the disposal or removal of any litter or trash or cleaning costs generated as a result of the Licensee's operation of the Concession. Failure to maintain the concession to an acceptable standard will result in a \$25 per day penalty until concession is cleaned to an acceptable standard.

v) The Licensee agrees that it will be responsible for the installation, maintenance, repair, cleaning and all costs associated therewith for any equipment that the Licensee desires to place into the Concession, as may be permitted under this Agreement. The Town will have no responsibility for the cost of installation, maintenance, repair or any other costs related to any equipment placed into the Concession by the Licensee. The Town will have no responsibility to obtain any permits that may be required in connection with the installation, maintenance or repair of any equipment placed in the Concession.

w) The Licensee will keep accurate and complete records of all revenue and expenses in connection with the operation of the concession facility. Such revenue and expenses will be supported by cash register tapes, invoices, sales slips bills, vouchers, payroll records, purchase orders and other pertinent records that, under recognized accounting and industry practices, contain information relating to costs, including gross sales or profits. In addition to any and all such documents or statements identifying total concession stand revenues for the time periods of operation as specified herein. Said records shall be provided to the Town Manager, or his designee, on a quarterly basis to the Town.

4.3. Town shall have the ability to enter into written agreements with other organizations, entities or persons for the use of the Properties as permitted by this Agreement. Licensee shall be notified of any agreements that may impact scheduled Programs and activities, and Town shall to the best of its ability attempt to not impact same.

4.4. If Licensee ceases operation of the food and drink concession, the Town may solicit proposals and enter into written agreements with other entities to operate the food and drink concession facilities, which shall include revenue sharing with the Licensee. The Town will consult with the Licensee on the selection of any other entities to operate the concession and establishing a revenue share.

4.5. The Licensee shall not commit nor permit any violations of applicable federal, state, county and municipal laws, ordinances, resolutions and governmental rules, regulations and orders, as may be in effect now or at any time during the Term of this Agreement, all as may be amended, which are applicable to Town, the Licensee, the Properties or the operations conducted at the Properties. A violation of any such laws, ordinances, resolutions, rules, regulations or orders, as amended, shall constitute a material breach of this Agreement, and in such event, Town shall be entitled to exercise any and all rights and remedies hereunder and at law and in equity.

4.6. Any other requested uses of the Properties beyond those listed in Paragraph 4.2 (i.e., camps, Fund-raising tournaments and/or activities, etc), shall be submitted for approval to the Town Manager or his/her designee, in writing at least thirty (30) days prior to the date of the event.

4.7. Town Manager or his/her designee, in their sole discretion, may change or cancel any activity due to inclement weather, special events, or unforeseen emergencies including, but not limited to, maintenance of the fields, or for any reason that is in the best interest of the Town. Licensee shall be notified of any agreements that may impact scheduled Programs and activities, and Town shall to the best of its ability attempt to not impact same.

4.8. The Licensee shall abide by all Town park rules and regulations, attached hereto as Exhibit "D", , Article 7 of the Miami-Dade County Charter, attached hereto as Exhibit "E", collect and submit to the Town any surcharges authorized by the Council, and abide by any applicable requirements for use of the particular park properties through any joint use agreements entered into between the Town and the Miami-Dade County School Board, as they may be modified from time to time . A copy of the Town park rules and regulations has been provided to the Licensee and by this reference are incorporated into and made a part of this Agreement.

4.9. The Town Manager will 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, in whole or part, fall within the scope of this Agreement, presents a health or safety risk, or is not previously approved by the Town.

## **Section 5. Maintenance.**

5.1. The Town agrees that it shall be responsible for routine maintenance of the Properties during the Term of this Agreement. Optimist Club shall be solely responsible for any maintenance, repairs, replacements or restoration related to damages to the Properties caused by the acts or inactions of the Optimist Club, its agents, employees, guests and invitees. Any damages found to the Properties, the Licensee will promptly report to the Town.

5.2. The Town shall provide all utilities and solid waste management services.

5.3. Town shall provide athletic field lighting, for activities as described in Paragraph 4.2, accommodating scheduled league games and/or practices previously approved by the Town Manager, subject to Section 4.6 of the Agreement.

5.4. The Town shall groom and ready the fields for play, including field lining, in accordance with accepted standards for youth and/or adult recreational athletic league fields.

5.5. Maintenance above and beyond what is normally provided for use of the Property must be provided by the Licensee, at its own cost. Such maintenance is subject to the prior written approval of the Town Manager.

5.6. Licensee will be responsible for any damage to the Roberto Alonso Community Center ("RACC") or Miami Lakes Optimist Park Clubhouse ("MLOPCH") that may result from the Program, including that which is caused by spectators and guests.

**Section 6. Programming, Costs, Expenses and Deposit.**

6.1. Licensee is solely responsible for all costs incurred by Licensee in providing Programs and services at the Properties and the staging of any events by Licensee approved by the Town Manager pursuant to this Agreement. Costs include, but not be limited to, athletic equipment, uniforms, the registration and selection of all players, coaches, managers, officials and volunteers required for the operation of the Licensee's organized recreational activities.

6.2. The Licensee, at the Licensee's expense shall obtain all required permits and licenses from appropriate Governmental Authorities for any Programs, services and/or events operated by the Licensee on the Properties. The Town shall use its best efforts to expedite the issuance of any Town controlled permits.

6.3. The Licensee shall pay the Town a fee of \$5 per registered participant to assist with covering the cost to the town for volunteer background checks, ID badges, and coach's certifications. Fee shall be paid to the Town no later than fourteen (14) days from the end of each sports activity season. The Licensee understands and agrees that the fee will be reevaluated and subject to increase once construction for the Miami Lakes Optimist Park Master Plan improvements are completed.

6.4. The Licensee shall submit to the Town Manager, at least fourteen (14) days prior to the beginning of the league season, a schedule of registration dates, try-out dates, practices, games, and game times for the entire season for approval by the Town Manager. In the event of an



unexpected circumstance such as inclement weather, the Town Manager, in his/her sole discretion, may approve make up game schedules with less than fourteen (14) days notice.

6.5. The Licensee shall submit to the Town Manager, in writing, at least fourteen (14) days prior to scheduled games, actual field dimensions desired for league play for approval by the Town Manager. In the event of an unexpected circumstance such as inclement weather, the Town Manager, in its sole discretion, may accept written field dimensions with less than fourteen (14) days notice. However, no exceptions will be made with less than three (3) days written notice.

6.6. Should the Licensee fail to timely submit a request for use of the Properties as described in Sections 6.3 and 6.4 of this Agreement, such use shall be in the sole discretion of the Town Manager. No unapproved or unscheduled event shall take place on the Properties. The Town Manager may terminate any events not previously approved.

6.7. All registration fees shall be agreed upon by the Licensee and the Town Manager at least thirty (30) days prior to the commencement of the registration period. Registration may be delayed should the fees not be timely submitted for approval. Licensee will provide an “early registration” period lasting two (2) weeks for Residents at a 10% discounted rate.

6.8. Licensee shall limit registration to one thousand (1,000) as the maximum number of participants based on Program type and field availability at Town parks between its Programs and Licensee shall not make demands for additional facilities which are not available or do not exist with the Town. If the Licensee requests an increase of the registration limit, the Licensee shall submit its request in writing, for approval by the Town Manager.

6.9. The Town shall be responsible for providing a site(s) for conducting league registration(s). Such site(s) shall have open access for the public and shall be accessible by the public in conformance with all applicable laws including, but not limited to, the Americans with Disabilities Act. If the Licensee requests the use of Town property other than Properties specified herein to conduct the registration, the Licensee shall submit its request in writing at least fourteen (14) days prior to its use, for approval by the Town Manager.

6.10. Licensee agrees to encourage Miami Lakes resident participation through target marketing and promotional materials. Licensee must provide a marketing plan to the Town thirty (30) days prior to the start of scheduled activities, showing how Licensee will target and encourage Miami Lakes resident participation. The Town’s Program Manager must be added to all marketing material email lists.

6.11. All signage, marketing materials, and graphics which advertise, designate, or locate the Licensee at the Property must incorporate in their content, either in written type designation or logo designation, a recognition of the Town in reasonable form, which is subject to the prior review and approval of the Program Manager. All signage and banners for advertising, sponsorships, or donors are excluded from this requirement. No signage, marketing materials, or graphics making reference to the Town or from advertisements, sponsors, or donors will be placed on or about the Property, until such has been reviewed and approved by the Town.

6.12. Licensee agrees to maintain a minimum of a 50% Resident participation ratio in its recreational programs and a minimum of a 25% Resident participation ratio in its travel and competitive programs through the Agreement term. In the case that resident participation falls below the minimums, the Licensee agrees to provide an action plan to the Town to encourage and increase the participation numbers of residents in the program.

6.13. Licensee agrees to update its website with relevant and up to date information regarding Licensee's programs and activities on a quarterly basis.

6.14. The Licensee agrees to provide a minimum of one (1) in-kind community service hour per registrant annually to the park. The Licensee will provide a community service plan with proposed service projects to the Town due August 1<sup>st</sup> of each Agreement year to meet this requirement.

6.15. The Licensee shall provide each coach, assistant coach, and parent access/direction to its website, that provides relevant information about the Licensee, Licensee's programs, board members and contact information, meeting schedules, and any other relevant information about the Licensee's activities or programs.

## **Section 7. Organizational Status and Governing Regulations of Licensee.**

7.1. Licensee must be maintained as a 501 (c) (3) not for profit organization and must comply with all regulations, as may be amended, required to maintain said status. Licensee must provide the Town with documentation on an annual basis demonstrating that Licensee has maintained its status as a 501 (c) (3) not for profit organization

7.2. Licensee must conduct a minimum of two (2) public meetings per year to hold, at a minimum, an election of the Board of Directors and one general membership meeting for membership feedback. Licensee agrees to make available all information regarding meetings to all registered participants and parents of registered participants of the Licensee and the Town of the date, time, location, and purpose of the public meeting at a minimum of fourteen (14) days prior to the scheduled meeting date via email or posting on Licensees website. During one or both of the public meetings, the Licensee shall elect and maintain a governing Board of Directors, allowing parents of registered participants, managers, and other league volunteers to offer nominations from the floor to then been considered in accordance with Licensee bylaws. Official minutes must be recorded at each meeting, and a copy of these minutes must be forwarded to the Program Manager not later than 14 days following each meeting. The Licensee must advise the Program Manager in writing of the names and contact information of the Board of Directors and the dates of all meetings, as changes occur.

7.3. Licensee agrees to monitor and maintain the actions of, conduct, and behavior of all Program participants, including, but not limited to players, coaches, umpires, volunteers, and parents during any activities organized by the Licensee on the Properties.

7.4. Licensee agrees to maintain standards of conduct and disciplinary penalties and/or action as may be necessary to ensure a safe and amicable environment for participants, spectators,

guests, invitees and other park patrons.

7.5. Licensee's overall Program shall include guidelines for the conduct of league officials in interfacing with the general public and Town officials. This includes, but is not limited to, abusive language and/or profanity, drug/alcohol use, and vandalism, which are unacceptable and will not be tolerated, and nothing less than a professional demeanor will be expected.

7.6. Within thirty (30) days from the Effective Date of this Agreement, and at least once per year during the Term, Licensee, at its sole cost and expense, shall provide to the Town current annual financial documentation to include 501c Status, Federal Tax Returns and Licensee's current individual operating budget for each program offered through this agreement. The Licensee, with Town Assistance, shall provide the numbers and demographics of participants served, number of volunteers. The Town, with Licensee assistance, shall create an electronic listing of all participants identifying by name, address, phone numbers, zip code and emergency contact information. The Licensee, with Town assistance, shall be responsible for supplementing the list of participants upon any change to the registration lists.

7.7. The Town shall conduct background investigations, in accordance with the Town's criminal background check policy, Administrative Order #07-01, for all coaches, managers, officials, umpires, members, employees, and/or volunteers or participant associated with the operation of programs and/or activities for the Licensee prior to any of the foregoing having any contact with program participants. Licensee's coaches, managers, officials, umpires and/or volunteers associated with the operation of programs and/or activities for the Licensee shall submit applications for background checks to a professional vendor and/or organization approved by the Town Manager. Any person resulting in a negative background investigation may not participate in Licensee's programs and/or activities. No additional operational participants shall be utilized by the Licensee without the Licensee first submitting a background check to the Town Manager. All background check applications shall be submitted no later than fourteen (14) days prior to the commencement of a Program.

7.8. Licensee shall require all coaches to complete a coach's training course and have parents sign a code of ethics/conduct. Said training may be through Licensee's state or national affiliations with its respective members or another state or nationally recognized coach's training program, such as the National Alliance for Youth Sports (NAYS) which is provided by the Town, and the Licensee shall provide all coaches a practical, on-field training prior to the start of each program season. Proof of said training must be received no later than fourteen (14) days prior to the start of the particular recreational Program. In the event of an unexpected circumstance where a coach cannot complete the training by the above period, the Town Manager, in its sole discretion, may accept proof of said training with less than (14) days notice.

7.9. Licensee shall require all coaches, managers, officials, umpires and/or volunteers associated with the operation of programs and/or activities for the Licensee that will have continuous contact with Program participants to wear an official Town of Miami Lakes Coaches identification card, provided by the Town while on the Properties. Failure to wear the identification card while in direct contact with Program participants, guests or attendees may result in the coach, manager, official, referee, or volunteer being denied access to participate with Program participants while on

the Property. Repeated failure to comply may result in the individual being denied access to participate in the Program. Licensee must provide all coaches, managers, officials, umpires, or volunteers with the Town of Miami Lakes Recreation Programs Volunteer Background Checks and Photo Identification Badge Enforcement Policies and Procedures.

7.10. Except as provided for herein, Licensee shall not engage in any concession or sale of food or beverages on the Properties, as permitted under this Agreement, except with the prior written permission from the Town Manager.

7.11. The Licensee shall have a competent representative on site who thoroughly understands the activities and uses of the Properties pursuant to this Agreement, who shall, as the Licensee's agent, supervise, direct and otherwise conduct the activities and uses of the Properties pursuant to this Agreement. Licensee's agents, representatives and employees shall serve the public in a courteous, helpful, and impartial manner.

7.12. Licensee shall, upon receipt of a written request from the Town, immediately exclude any contractor, employee of Licensee or volunteer of Licensee from providing services under this Agreement. The Licensee agrees that the removal of any such individual(s) does not require the termination or demotion of said individual(s).

7.13. Prior to the expiration date of the Agreement, Licensee must provide an Annual Report to the Town. This will be developed through a scheduled annual review of contract deliverables, requirements, program activities and accomplishments with the Town and the Licensee.

7.14. Licensee agrees to notify the Program Manager of any and all proposed changes to the programs, schedules, marketing materials, or any other relevant change that involves Licensee's participants, coaches, employees, or volunteers for review and approval by the Town at least fourteen (14) calendar days **prior** to any changes being made by Licensee. Licensee shall establish a point of contact to meet with the Program Manager regularly to discuss contract deliverables and program matters as often as deemed necessary by the Program Manager.

7.15. Licensee must at all times have a competent English-speaking representative ("Representative") on site who will be responsible for management and supervision of the Program(s) during operations. In the instance no supervisor can be on site, Licensee agrees to inform the Town prior to absence and will be subject to Town's approval. Such guidelines and standards may be subject to the review and approval of the Town. The representative will embody the Licensee in the field and all directions given to the Representative will be as binding as if given to the Licensee.

7.16. Licensee shall include a privacy policy agreement on its registration forms that specifies what kind of personal data is collected from registrants and what is done with that data. The privacy policy agreement shall be included in any document or website registration application that collects personal information. The sale, transfer, or sharing of personal data from registrants to third parties is prohibited unless agreed to by the registrant.

7.17. The Licensee is expressly prohibited from making the registration in any of

Licensee's programs contingent on any third- or outside-party transaction.

7.18. The Town strongly encourages that all youth Program participants complete an EKG screening prior to their participation in any program that requires physical exertion.

7.19. The Licensee will give its best efforts to adhere to all Town policies and procedures for coaches and youth programs including, but not limited to, the Town's EKG Screening and CPR Training policies. In the instance that no CPR certified representative will be on site, the Licensee agrees to inform the Town with written notice. The Town may make changes anytime to policies and procedures related to the selection, training and certification requirements for the program. The Town will provide written notice to the Licensee prior to implementation of any changes. Licensee agrees to comply with any and all changes.

### **Section 8. Security.**

The Town shall be responsible for providing at its sole cost, all security during the Term necessary to protect the Properties and persons therein. The Town of Miami Lakes Community and Leisure Services Department (the "MLCLSD") in conjunction with the Town of Miami Lakes Police Department (the "MLPD") shall have sole discretion in determining the Properties security needs and/or requirements based on an evaluation of planned Licensee activities, and Licensee shall abide by the determination set forth by the MLPRD and MLPD. If security needs are determined by the Town to be above and beyond what is typically required for Licensee's Programs, the Town may require the use of Off-Duty officers at the Licensee's expense.

### **Section 9. Alterations and Improvements.**

9.1. Licensee shall not make any permanent or temporary alterations, improvements or additions to the Properties without the prior written consent of the Town Manager. Any alteration, improvement or addition to the Properties 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 Properties made by Licensee shall be removed by Licensee at the expiration date or earlier termination date of the Agreement without damage to the Properties. If the Town desires to retain any alteration, Town shall notify Licensee in writing of its intent within thirty (30) days of either the expiration date or earlier 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, naming the Town of Miami Lakes and the School Board of Miami-Dade County, Florida as additional insured as their interests may appear. The liability policy to be provided by Licensee must be written by a carrier rated A or better by A.M. Best Insurance Reports. The required insurance policies must name the Town as an additional insured and loss payee, and must provide that the policy cannot be materially altered or canceled without thirty (30) days written notice to Town.

10.2. Licensee shall furnish to the Town certificates of insurance evidencing the insurance coverages specified by this Section prior to the Effective Date of this Agreement and prior to the expiration date set forth in each successive certificate. The required certificates of insurance shall name the type of policy provided and shall list the Town of Miami Lakes and the School Board of Miami-Dade County as an additional insured, refer specifically to this Agreement, and state that such insurance is required by this Agreement.

10.3. The required insurance coverage is not to cease and is to remain in full force throughout the Term of this Agreement. All policies must be endorsed to provide the Town with at least thirty (30) calendar days' notice of cancellation and/or restriction. If any of the insurance coverage will expire prior to the termination of this Agreement, copies of renewal policies shall be furnished at least sixty (60) calendar days prior to the date of their expiration.

#### **Section 11. Damage and Restoration.**

11.1. In the event of any damage by the Licensee or its contractors, agents, players, coaches, umpires, volunteers, arising out of the Licensee's use of the Properties, the Licensee shall be responsible for restoring the Properties or any surrounding damaged area to its condition prior to the use of the Property by Licensee.

11.2. If the Properties or any part thereof shall be damaged or destroyed by fire, hurricane, flood or other casualty as to render the Properties unusable by either party for a consecutive period of more than thirty (30) days, either Town or Licensee may terminate this Agreement by giving fourteen (14) days notice to the other party. If the Agreement terminates pursuant to this Section, this Agreement shall expire as of the date on which such termination shall be effective, as if such date were the Expiration Date.

11.3. If the occurrence of a Force Majeure delays, hinders or prevents either Town or Licensee from performing any obligation or covenant under this Agreement, the performance of the obligation or covenant will be excused for the period during which performance is delayed, hindered or prevented.

#### **Section 12. Taxes.**

12.1. Ad Valorem Taxes. Town and Licensee acknowledge that the Properties is currently exempt from ad valorem taxes. If ad valorem taxes are assessed against the Properties, arising from or related to, Licensee's operation of the Properties or the Licensee's interest in this Agreement or any part thereof, the Licensee is solely responsible for the payment of such taxes and any interest or penalties with respect to such taxes.

12.2. Non-Ad Valorem Taxes and Assessments. The Licensee is solely responsible for the payment of all taxes (other than ad valorem taxes) and assessments on the Properties or this Agreement, arising from or related to, Licensee's operation of the Properties, including, without limitation, any tangible personal property taxes on property owned by Licensee, intangible personal property taxes, sales taxes, use taxes and assessments. Licensee must pay all taxes and assessments prior to delinquency and must present proof of payment to Town prior to delinquency.

### **Section 13. Indemnification.**

13.1. Licensee shall indemnify and hold harmless the Town, its elected officials, employees, consultants, agents, attorneys, volunteers and the School Board of Miami Dade County, from and against any and all Liabilities, damages (property and bodily injury), costs or expenses (including reasonable attorneys fees, costs and expenses at both the trial and appellate levels) arising from the acts or omissions of the Licensee, its agents, employees, volunteers, coaches, umpires, contractors, and members in the performance of this Agreement.

13.2. The Licensee shall indemnify and hold harmless the Town, its elected officials, employees, consultants, agents, attorneys, volunteers and the School Board of Miami Dade County from and against any and all Liabilities arising out of or by reason of (a) the use and operation of the Properties by Licensee, its agents and contractors; (b) any acts or omissions of Licensee its agents or contractors on or about the Properties resulting in the contamination of air, soil, surface waters or groundwaters over, on or under the Property; (c) the presence of any Hazardous Substances on, in or under the Properties; or (d) any events, conditions, circumstances, activities, practices, incidents, actions or plans involving the manufacture, processing, distribution, use, transport, handling, treatment, storage, disposal, cleanup, emission, discharge, seepage, spillage, leakage, remediation or threatened remediation of any Hazardous Substance on, in, under or from the Properties, and arising out of Licensee's operations at the Properties.

13.3. Licensee hereby assumes all financial, administrative, and legal responsibility in connection with, related to, or arising out of Licensee's operation of the Properties under this Agreement. Except as otherwise set forth in this Agreement, Town shall have no liability to Licensee, or its employees, contractors, agents, members, players, coaches, umpires, and volunteers in connection with this Agreement and Licensee hereby releases the Town with respect to the foregoing.

13.4. Nothing in this Agreement will be construed to affect in any way the Town's rights, privileges, and immunities, including the monetary limitations of liability set forth therein, under the doctrine of "sovereign immunity" and as set forth in Section 768.28 of the Florida Statutes.

13.5. The provisions of this Section will survive the termination or expiration of this Agreement.

**Section 14. Third Party Users.**

Licensee acknowledges that this Agreement does not give Licensee an exclusive right to use the Properties.

**Section 15. Assignment.**

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

**Section 16. Town's Right to Supervise.**

Town shall have the right, but not the obligation, at all times to have one or more of its representatives present at the Properties to supervise Licensee's use of the Properties. The purpose of such supervision is to ensure the Licensee's compliance with the terms and conditions of this Agreement.

**Section 17. Town's Right to Inspect.**

Town has the right at all reasonable times to make whatever inspections Town deems reasonably necessary to determine if Licensee is complying with the terms and conditions of this Agreement.

**Section 18. Condition of Property.**

18.1. The Town makes no representation, warranty, or guaranty of any nature whatsoever concerning the physical condition of the Properties and Licensee hereby accepts the Properties in its "as-is" condition.

18.2. Licensee acknowledges and agrees that the Properties shall be returned to the Town in acceptable condition, normal wear and tear excepted. Both parties acknowledge that ongoing repair is being conducted at Miami Lakes Optimist Park during 2013 and possibly a portion of 2014.

**Section 19. Licensee's Representations.**

Licensee represents and warrants to the Town that as of the date of this Agreement and at all times during the Term:

19.1. All required action has been taken by or on behalf of Licensee to authorize the execution and delivery by Licensee of this Agreement and the performance by Licensee of its obligations under this Agreement. This Agreement is a valid and binding obligation of Licensee, enforceable in accordance with its terms.

19.2. The execution and delivery by Licensee of this Agreement and the performance by Licensee of its obligations under this Agreement do not conflict with or violate any provisions of any other agreement or any law to which Licensee is subject.



**Section 20. Compliance with Laws.**

20.1. Licensee shall not commit nor permit any violations of applicable federal, state, county and municipal laws, ordinances, resolutions and governmental rules, regulations and orders, as may be in effect now or at any time during the term of this Agreement, all as may be amended, which are applicable to Town, Licensee, the Property or the operations conducted at the Property.

20.2. Licensee shall, at its sole expense, execute, file and obtain, as applicable, punctually when due, all forms, reports, licenses, permits and returns required by law in connection with its operations on the Properties.

**Section 21. Non-Discrimination.**

21.1. In the operation, pricing and programming of the programs at the Properties, Licensee, its contractors, agents, volunteers, and any parties under the direction or control of Licensee may not discriminate against any person on the basis of sex, age, race, color, religion, ancestry, national origin, physical handicap or sexual orientation by refusing to furnish to such person any accommodation, Property, service or privilege offered to or enjoyed by the general public.

21.2. In the performance of this Agreement, Licensee, its contractors, agents, volunteers, and any parties under the control or direction of Licensee may not discriminate against any employee or applicant for employment on the basis of sex, age, race, color, religion, ancestry, national origin, physical handicap, or sexual orientation.

**Section 22. Equipment.**

22.1. Subject to the approval of the Town, the Licensee may use the equipment belonging to the Town located at the Property in connection with the permitted uses hereunder.

22.2. Licensee shall not remove any Town owned equipment or any portion thereof from the Property, unless otherwise approved by the Town Manager.

22.3. Normal wear and tear excepted, Licensee shall be responsible for the repair or replacement of damaged equipment caused by Licensee, its contractors, agents, volunteers, and any parties under the direction or control of Licensee at any time during the Term of this Agreement.

**Section 23. Notices.**

All notices, demands, requests and other communications required under this Agreement shall be given in writing and provided by either hand delivery, electronic mail, private postal service or public postal service, return receipt requested. Any party may designate a change of address by written notice to the other party, received by such other party at least ten (10) days before such change of address is to become effective.

If to Town:

Mr. Edward Pidermann, Town Manager  
Town of Miami Lakes  
6601 Main Street  
Miami Lakes, FL 33016  
Telephone: (305) 364-6100  
pidermanne@miamilakes-fl.gov

With a copy to:

Thomas Fossler  
Procurement Manager  
6601 Main Street  
Miami Lakes, FL 33016  
Telephone: (305) 364-6100  
fossler@miamilakes-fl.gov

If to Licensee:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Telephone: \_\_\_\_\_  
Email: \_\_\_\_\_

With copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

**Section 24. Attorneys' Fees.**

In the event of any litigation arising out of this Agreement, the prevailing party shall be entitled to recover its attorneys' fees and costs, including the fees and expenses of any paralegal, law clerks, and legal assistants, and including fees and expenses charged for representation at the trial level, in all appeals, and in any bankruptcy proceedings.

**Section 25. Third Parties.**

Neither the Licensee nor the Town intends to directly or substantially benefit a third party by this Agreement. Therefore, the parties agree that there are no third-party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against either of them based upon this Agreement. Additionally, the Licensee acknowledges and agrees that it is not a third-party beneficiary of the Joint Use Agreement, and the Licensee agrees not to assert any claims against the Town or the School Board of Miami-Dade County, Florida based upon the Joint Use Agreement.

**Section 26. Police/Regulatory Powers.**

The Town cannot, and hereby specifically does not, waive or relinquish any of its regulatory approval or enforcement rights and obligations as it may relate to regulations of general applicability which may govern the Properties, any improvements thereon, or any operations at the Property. Nothing in this Agreement shall be deemed to create an affirmative duty of the Town to abrogate its sovereign right to exercise its police powers and governmental powers by approving or disapproving or taking any other action in accordance with its zoning and land use codes, administrative codes, ordinances, rules and regulations, federal laws and regulations, State laws and regulations, and grant agreements. In addition, nothing herein shall be considered zoning by contract.

**Section 27. Encumbrances.**

The Licensee hereby represents, warrants and covenants to the Town that the fee simple title to the Properties shall be at all times free and clear of all liens, claims and encumbrances created by or through Licensee. If any lien or notice of lien shall be filed against the fee simple title of the Properties created by or through Licensee, the Licensee shall, within thirty (30) calendar days after notice of the filing thereof, cause the same to be discharged of record by payment, deposit, bond, or order of a court of competent jurisdiction. Licensee shall not be deemed to be the Town's agent so as to confer upon any contractor or subcontractor providing labor or services that are material to the Properties a construction lien, mechanic's lien or both against the Town's estate under the provisions of Chapters 255 and 713, Florida Statutes, as amended from time to time.

**Section 28. 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 Properties 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 29. 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 30. No Joint Ventures.**

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 31. Drug-Free Workplace Certification.**

Licensee hereby covenants and agrees to implement a policy consistent with governmental requirements with respect to maintaining a drug-free workplace and otherwise to provide and maintain during the Term of this Agreement a drug-free workplace at the Properties.

**Section 32. Casualty.**

In the event that any casualty causes damage to one or both of the Properties rendering one or both of the entire Properties unusable by Licensee, this Agreement shall automatically terminate, and neither Town nor Licensee shall have any further rights or obligations hereunder.

**Section 33. Counterparts.**

This Agreement may be executed in two or more counterparts, each of which constitutes the agreement of the parties and each of which will be treated as an original

**Section 34. Invalidity.**

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 35. 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 36. Recitals.**

The Recitals set forth at the beginning of this Agreement are true and correct, and incorporated herein by this reference.

**Section 37. No Lease.**

Licensee acknowledges and agrees that its use of the Properties does not in any way constitute or establish any form of tenancy under Florida law. Licensee hereby waives any claims that its use of the Property constitutes a tenancy under Florida law.

**Section 38. Governing Law; Venue; Waiver of Jury Trial.**

38.1 This agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida.

38.2 The parties agree that venue for any legal action instituted in connection with this agreement shall be in Miami-Dade County, Florida.

38.3 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.

[Remainder of page intentionally left blank.]

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

TOWN:

TOWN OF MIAMI LAKES, a Florida municipal corporation:

By: \_\_\_\_\_  
Edward Pidermann, Town Manager

Attest: \_\_\_\_\_  
Gina Inguanzo, Town Clerk

LICENSEE:

THE OPTIMIST CLUB OF MIAMI LAKES, INC.,  
a Florida not for profit corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

EXHIBIT "A"

THE PROPERTIES

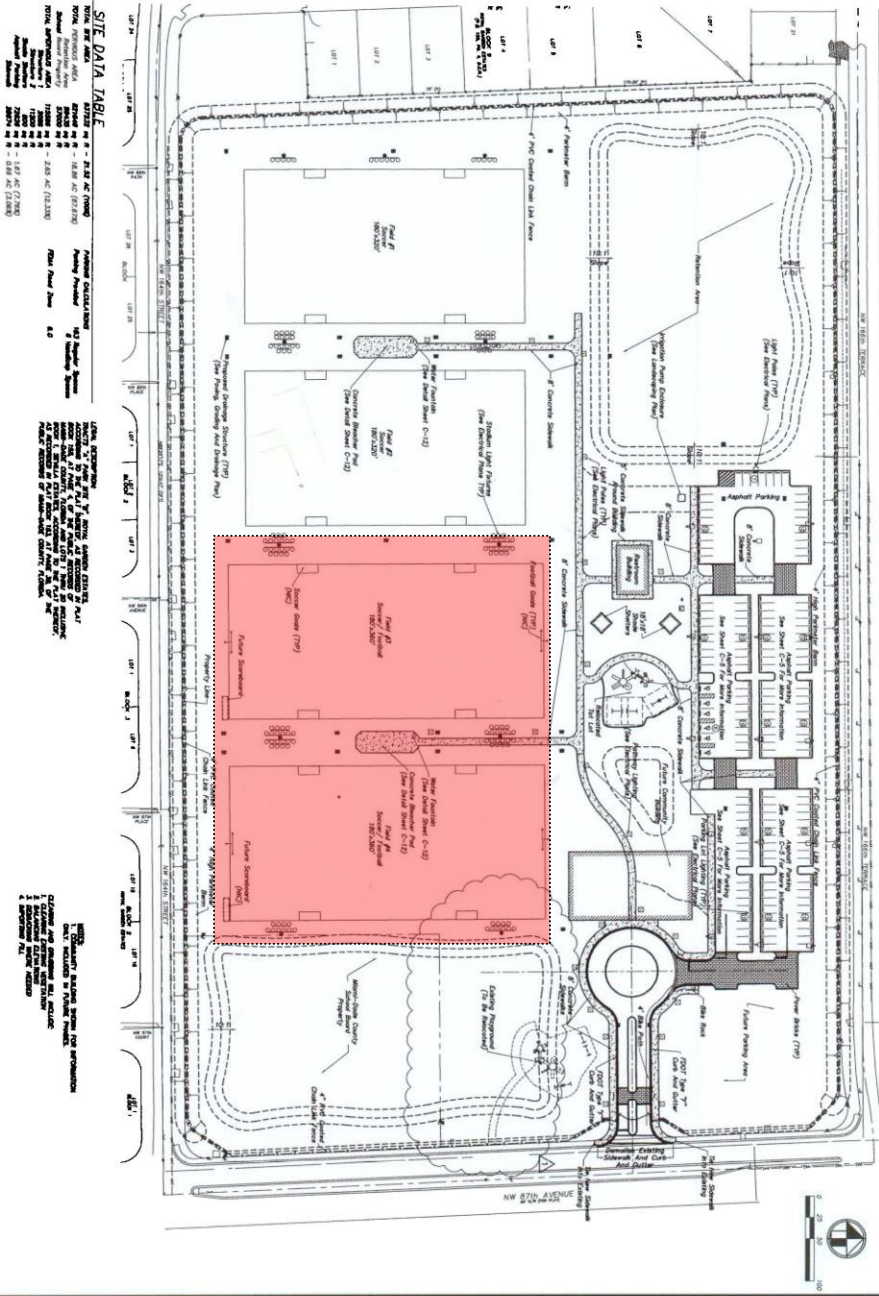
TRACT 25 of Florida Fruit Land Company's Subdivision of the NW 1/4 of Section 13, Township 52 South, Range 40 East, Miami-Dade County, Florida, according to the plat thereof recorded in Plat Book 2 at Page 17 of the Public Records of Miami-Dade County, Florida, LESS the North 65 Feet thereof and LESS that portion lying within the West 35 Feet of the NW 1/4 of said Section 13;

AND

The North 39.88 Feet of Tract 48 of said Florida Fruit Land Company's Subdivision of the SW 1/4 of said Section 13; LESS the East 35 Feet thereof and LESS that portion thereof which lies within the West 35 Feet of the SW 1/4 of said Section 13.

# EXHIBIT "B"

## ROYAL OAKS PARK PROPERTY



**SITE DATA TABLE**

ITEM	DESCRIPTION	VALUE
TOTAL SITE AREA	ACRES	1.12
TOTAL IMPROVED AREA	SQ. FT.	1,120,000
TOTAL UNIMPROVED AREA	SQ. FT.	1,120,000
TOTAL IMPROVEMENTS	SQ. FT.	1,120,000
TOTAL UNIMPROVEMENTS	SQ. FT.	1,120,000
TOTAL IMPROVEMENTS PER ACRE	SQ. FT./ACRE	1,000,000
TOTAL UNIMPROVEMENTS PER ACRE	SQ. FT./ACRE	1,000,000
TOTAL IMPROVEMENTS PER 1000 SQ. FT.	PERCENT	100
TOTAL UNIMPROVEMENTS PER 1000 SQ. FT.	PERCENT	100
TOTAL IMPROVEMENTS PER 1000 SQ. FT.	PERCENT	100
TOTAL UNIMPROVEMENTS PER 1000 SQ. FT.	PERCENT	100

**AREA CALCULATIONS**

ITEM	DESCRIPTION	VALUE
TOTAL IMPROVED AREA	SQ. FT.	1,120,000
TOTAL UNIMPROVED AREA	SQ. FT.	1,120,000
TOTAL IMPROVEMENTS	SQ. FT.	1,120,000
TOTAL UNIMPROVEMENTS	SQ. FT.	1,120,000
TOTAL IMPROVEMENTS PER ACRE	SQ. FT./ACRE	1,000,000
TOTAL UNIMPROVEMENTS PER ACRE	SQ. FT./ACRE	1,000,000
TOTAL IMPROVEMENTS PER 1000 SQ. FT.	PERCENT	100
TOTAL UNIMPROVEMENTS PER 1000 SQ. FT.	PERCENT	100
TOTAL IMPROVEMENTS PER 1000 SQ. FT.	PERCENT	100
TOTAL UNIMPROVEMENTS PER 1000 SQ. FT.	PERCENT	100

**NOTES:**

1. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED.
2. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED.
3. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED.
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10. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED.

**LEGEND:**

- 1. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED.
- 2. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED.
- 3. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED.
- 4. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED.
- 5. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED.
- 6. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED.
- 7. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED.
- 8. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED.
- 9. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED.
- 10. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED.

ROYAL OAKS PARK - PHASE 1  
TOWN OF MIAMI LAKES, FLORIDA

**Architects**  
Engineers  
Planners

**C.P.Z.O.**  
CASTELLO  
FRANZONI  
S.A. (MIAMI)

3070 N.W. 9th Avenue  
Miami, Florida 33135  
(305) 551-1111

**REGISTRATION:**  
Professional Engineer  
Professional Architect  
Professional Planner  
Professional Surveyor

**PROJECT NUMBER:** 1816-106

**DATE:** 10/1/2010

**REVISIONS:**

NO.	DATE	DESCRIPTION
1	9-1-10	Initial Drawing

**SHEET NUMBER:** C-1



EXHIBIT "C"

JOINT USE AGREEMENT

EXHIBIT "D"

TOWN OF MIAMI LAKES PARK RULES AND REGULATIONS

EXHIBIT "E"

ARTICLE 7 OF THE MIAMI-DADE COUNTY CHARTER