

RESOLUTION NO. 13-1040

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF MIAMI LAKES, FLORIDA, TO APPROVE RENEWAL OF THE LICENSE AND USE AGREEMENT WITH THE OPTIMIST CLUB OF MIAMI LAKES FOR A PERIOD OF FIVE (5) YEARS, FOR USE OF MIAMI LAKES OPTIMIST PARK AND ROYAL OAKS PARK; AUTHORIZING THE TOWN MANAGER TO TAKE ALL NECESSARY STEPS TO IMPLEMENT THE TERMS AND CONDITIONS OF THE CONTRACT; AUTHORIZING THE TOWN MANAGER TO EXPEND BUDGETED FUNDS; AUTHORIZING THE TOWN MANAGER TO EXECUTE THE CONTRACT; PROVIDING FOR INCORPORATION OF RECITALS; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, in December 2002, the Town of Miami Lakes (the "Town") approved a License and Use Agreement with the Optimist Club of Miami Lakes; and

WHEREAS, the Agreement allowed the Optimist Club to provide year round general recreation programs, including food and drink concession services, for a five (5) year period, with a five (5) year renewal option; and

WHEREAS, the renewal term ended December 16, 2012, and Town staff proposed changes in the new agreement and after discussion, both parties have agreed on the terms of a renewal which addresses the issues raised by the Town; and

WHEREAS, the Town recognizes the positive impact the Optimist Club has on the lives of the youths in the community, and believes it would be in the best interest to renew the contract with the Optimist Club of Miami Lakes for use of Miami Lakes Optimist Park and Royal Oaks Park.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF MIAMI LAKES, FLORIDA, AS FOLLOWS:

Section 1. Recitals. The foregoing Recitals are true and correct and incorporated herein by this reference.

Section 2. Approval of the Contract. The Town Council hereby approves the renewal of the License and Use Agreement with the Optimist Club of Miami Lakes, with various amendments agreed upon by the parties, as set forth in the attached Exhibit "A".

Section 3. Authorization of Town Officials. The Town Manager and/or his designee and the Town Attorney are authorized to take all steps necessary to implement the terms and conditions of the Contract with the Optimist Club of Miami Lakes.

Section 4. Authorization of Fund Expenditure. The Town Manager is authorized to expend budgeted funds to implement the terms and conditions of the Contract.

Section 5. Execution of the Contract. The Town Manager is authorized to execute the Contract with Optimist Club of Miami Lakes, in substantially the form attached hereto as Exhibit "A".

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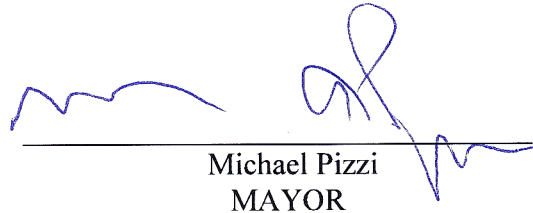
Section 6. Effective Date. This Ordinance shall become effective immediately upon adoption on second reading.

PASSED AND ADOPTED this 22 day of January, 2013.


Motion to adopt by Michael Pizzi, second by Tony Lama.

FINAL VOTE AT ADOPTION

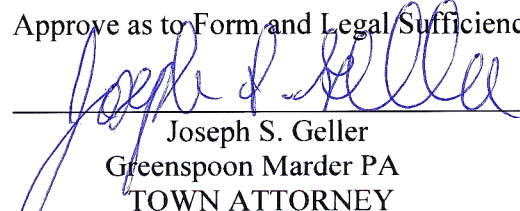
Mayor Michael Pizzi	<u>yes</u>
Vice Mayor Cesar Mestre	<u>yes</u>
Councilmember Manny Cid	<u>yes</u>
Councilmember Tim Daubert	<u>yes</u>
Councilmember Nelson Hernandez	<u>yes</u>
Councilmember Tony Lama	<u>yes</u>
Councilmember Nelson Rodriguez	<u>yes</u>


Michael Pizzi
MAYOR

Attest:


Marjorie Tejada
TOWN CLERK

Approve as to Form and Legal Sufficiency


Joseph S. Geller
Greenspoon Marder PA
TOWN ATTORNEY

LICENSE AND USE AGREEMENT

THIS LICENSE AND USE AGREEMENT (the "Agreement") is entered into this **23rd** day of **January, 2013** (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 exhibits 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.

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 (5th) anniversary of the Effective Date, January 23, 2018 (the “Termination Date”).

2.2. The Town Manager may extend the Term for a period not to exceed one (1) additional five (5) year term upon the conclusion of the Term, provided that the Licensee is in good standing with 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 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 its expense, shall be responsible for obtaining all required food licenses and permits relevant to the operation of the Concession. If a citation for a violation is issued, Licensee shall be responsible for all costs related to mitigating the citation/violation. 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 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 Generally Accepted Accounting Principles (GAAP), 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.

(3) Such other compatible uses as permitted under applicable law for which the Town has given its prior written consent in each instance.

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", as they may be modified by the Council or Town Manager, as applicable, from time to time, 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. 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.

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.

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.

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 shall include, but not be limited to, 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. Effective June 1, 2013, 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 coaches' certifications. Fee shall be paid to Town no later than fourteen (14) days from the end of each sports activity season.

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.

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.

Section 7. Organizational Status and Governing Regulations of Licensee.

7.1. Licensee shall be maintained as a not-for profit organization with the State of Florida and comply with any regulations as may be required to maintain said status.

7.2. The Licensee shall advise the Town Manager in writing of the names and contact information of the Board of Directors and the dates of all board and general membership meetings. All board and general membership meeting dates shall be listed on the home page of the Miami Lakes Optimist Club website by the Town.

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 and Federal Tax Returns. 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's Community and Leisure Services Department. 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's Community and Leisure Services Department while on the Properties. Failure to wear the identification card while in direct contact with program participants may result in a coach, manager, official, umpire and/or volunteer being denied access to participate with Program participants while on the Properties.

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 supervisor 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's agents, representatives and contractors shall wear a clean uniform shirt approved by the Town Manager and Licensee for operation of the concession area.

7.13. Licensee shall, upon receipt of a written request from the Town, immediately exclude any contractor of Licensee from providing services under this Agreement.

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 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. Alex Rey, Town Manager
Town of Miami Lakes
15150 NW 79th Court
Miami Lakes, FL 33016
Telephone: (305) 364-6100
reya@miamilakes-fl.gov

With a copy to:

Gary Fabrikant
Procurement Manager
15150 NW 79th Court
Miami Lakes, FL 33016
Telephone: (305) 364-6100
fabrikantg@miamilakes-fl.gov

If to Licensee:

OPTIMIST Club OF
MIAMI LAKES
PO Box 4034
Hialeah FL 33014

Telephone: 305 216 9615
Email: MIAMILAKES@bellSouth.net

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: 
Alex Rey, Town Manager

Attest: 
Marjorie Tejada, Town Clerk

LICENSEE:

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


By: 
Name: MIKE SANLHEZ
Title: PRESIDENT

EXHIBIT "A"

THE PROPERTIES

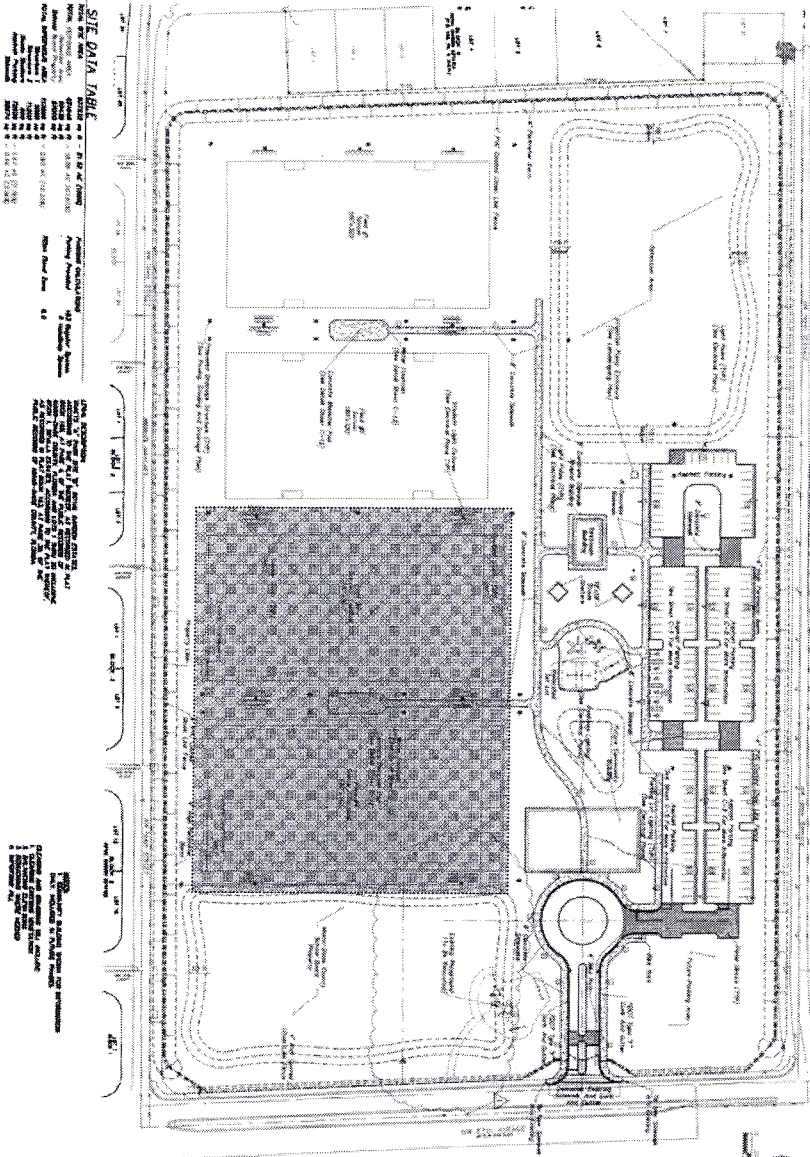
TRACT 25 of Florida Fruit Land Company's Subdivision of the NW 1/4 of Section 13, Township 52 South, Range 40 East, Miami-Dade County, Florida, according to the plat thereof recorded in Plat Book 2 at Page 17 of the Public Records of Miami-Dade County, Florida, LESS the North 65 Feet thereof and LESS 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	QUANTITY	REMARKS
1	Asphalt Paved Area	12,500 sq. ft.	12,500 sq. ft.
2	Grass Area	15,000 sq. ft.	15,000 sq. ft.
3	Concrete Paved Area	5,000 sq. ft.	5,000 sq. ft.
4	Landscaping	10,000 sq. ft.	10,000 sq. ft.
5	Site Preparation	10,000 sq. ft.	10,000 sq. ft.
6	Site Work	10,000 sq. ft.	10,000 sq. ft.
7	Site Work	10,000 sq. ft.	10,000 sq. ft.
8	Site Work	10,000 sq. ft.	10,000 sq. ft.
9	Site Work	10,000 sq. ft.	10,000 sq. ft.
10	Site Work	10,000 sq. ft.	10,000 sq. ft.
11	Site Work	10,000 sq. ft.	10,000 sq. ft.
12	Site Work	10,000 sq. ft.	10,000 sq. ft.
13	Site Work	10,000 sq. ft.	10,000 sq. ft.
14	Site Work	10,000 sq. ft.	10,000 sq. ft.
15	Site Work	10,000 sq. ft.	10,000 sq. ft.
16	Site Work	10,000 sq. ft.	10,000 sq. ft.
17	Site Work	10,000 sq. ft.	10,000 sq. ft.
18	Site Work	10,000 sq. ft.	10,000 sq. ft.
19	Site Work	10,000 sq. ft.	10,000 sq. ft.
20	Site Work	10,000 sq. ft.	10,000 sq. ft.

Prepared by: [Name]
 Date: [Date]
 Scale: [Scale]

ROYAL OAKS PARK - PHASE I
TOWN OF MARA LAKES, FLORIDA

ARCHIBUS ENGINEERS
PROFESSIONAL ENGINEERS
1000 W. UNIVERSITY AVENUE
SUITE 200
ORLANDO, FLORIDA 32801
PH: 407.251.1111
WWW.ARCHIBUS.COM



EXHIBIT "C"

JOINT USE AGREEMENT