

## PREMISES USE AGREEMENT

THIS AGREEMENT is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2012 between The Florida International University Board of Trustees, on behalf of Florida International University ("FIU"), a public body corporate, whose business address is 3000 N.E. 151<sup>st</sup> Street, North Miami, Florida 33181 and City of North Miami, a Florida Municipal Corporation ("USER") whose principal business address is 776 N.E. 125 Street, North Miami, FL 33161.

### **RECITALS**

**WHEREAS**, FIU has control of the following described premises ("Premises"):

**Location:**

The area to be used for the July 4<sup>th</sup> Celebration open to the general public event includes the lawn located to the east of the Kovens Conference Center to the water and South of the Marine Biology Building to the Ropes Course. The area South beyond the Ropes Course will be roped off and not accessible to the general public. The fireworks display will be launched from "the Point," the eastern most part of FIU property at Florida International University, Biscayne Bay Campus North Miami, Florida 33181.

**WHEREAS**, USER wishes to use the Premises for the purpose of conducting the **CITY OF NORTH MIAMI JULY 4<sup>TH</sup> 2012 CELEBRATION**; and

**WHEREAS**, FIU is willing to permit USER to use the Premises upon the following terms and conditions.

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

1. Recitals: The above recitations are true and correct and incorporated herein by this reference.
2. Use of Premises. USER may use the Premises only for the purpose(s) of setting up and conducting the July 4<sup>th</sup> Celebration event (the "Program") on the following date(s) during the following time(s):

Date: July 4, 2012 – July 5, 2012

Time: 7:00 a.m. and ending at 2:00 a.m., for the sole purposes of setting up and conducting a fireworks event which shall be open to the General Public from 7:00 p.m. until 11:30 p.m. only.

FIU reserves the right to reassign this reservation to similar facilities if the needs of FIU require such a reassignment.

3. Compensation. USER agrees to pay FIU the sum of two thousand, eight hundred and twenty-four dollars (\$2,824.00) ("Use Fee") for the rights granted under this Agreement, whether the Premises are actually used by USER for the full time granted or not. The USER shall be required to pay the Use Fee on or before July 4, 2012 in the form of a check payable to "Florida International University" which should be sent to the attention of: Julissa Castellanos at Office of the Vice Provost Biscayne Bay Campus, LIB 311, 3000 N.E. 151 St. North Miami, FL 33181. FIU will calculate final charges upon completion of USER'S

firework's event. FIU will then bill the USER for any additional charges if any, for services rendered, if any, during the event. Any additional payment, if any, shall be submitted to FIU within forty-five (45) days after USER'S receipt of written notification from FIU.

4. General Conditions of Use. USER agrees that USER, its employees, contractors, agents, representatives, invitees and each of its participants (to the extent applicable) shall comply with each of the following terms and conditions during use of Premises:

a. USER, its employees, contractors, agents, representatives, invitees and/or each of its participants are responsible for the proper use and care of any FIU property. The USER will be liable for the replacement cost of any FIU property which is damaged, destroyed or lost, resulting from Program related activities.

b. USER shall clean up and restore the Premises immediately after usage to the same condition provided to USER prior to its use of the Premises. Costs will be assessed to USER for clean up and restoration by FIU if USER's clean up/restoration is not satisfactory.

c. USER acknowledges that it has inspected the Premises and that it is satisfied that the Premises have the capacity and capability to accommodate the use contemplated under this Agreement. USER accepts the Premises in "AS IS" condition. USER shall abide by all applicable federal, state, and local laws, rules and regulations, including but not limited to environmental laws, and FIU Policies and procedures ("Laws") in its use of the Premises.

d. USER agrees to perform its promotional and other activities related to its use of the Premises in the least intrusive manner so as not to disturb the atmosphere of the campus and the educational activities therein.

e. To the extent applicable, USER must procure, at its own expense, all permits required in connection with its proposed use (fireworks and related uses), including but not limited to permit(s) required by the FIU Building Officials. USER shall ensure that all of its contractors, agents or other representatives performing work on FIU's Premises are qualified, licensed, and insured in accordance with applicable Laws and FIU requirements. USER shall ensure that its employees, contractors, agents, representatives, invitees, and each of its participants comply with the terms of this Premises Use Agreement.

f. USER acknowledges and agrees that FIU shall not be responsible for providing any services, utilities, equipment or any other items to USER for its use of the Premises, unless otherwise agreed to by the parties in writing.

g. USER shall not make any alterations, additions and/or improvements to FIU's Premises.

h. USER agrees that there will be no stunt shots, or other dangerous or hazardous activities undertaken in or about the Premises.

i. USER agrees to comply with all FIU rules and regulations, including those related to parking.

5. Security. USER is solely responsible for the security of all property, equipment, materials and any other items that it or its contractors, agents, or other representatives bring onto FIU's Premises. USER shall also be solely responsible for the security of its employees, contractors, agents,

representatives, invitees and other guests on FIU Premises. In the event that the USER desires special security services or measures, the provisions of services or measures shall be determined between the USER and the FIU Public Safety Department. The USER is responsible for costs of such special security. FIU reserves the right, due to the nature or extent of USER's activities, to require the USER to hire off-duty FIU Public Safety Officers to ensure the orderly flow of pedestrians and traffic around the site.

6. Insurance. USER is a self-insured entity with a general and automobile liability risk management program including the administration of general and automobile liability claims, settlement of claims, a loss control program and trust fund pursuant to Florida law. USER agrees to maintain in full force and effect and throughout the term of this Premises Use Agreement at USER's sole cost and expense the insurance program pursuant to Florida law. Upon the request of FIU, USER will provide FIU with proof of self-insurance as provided by USER's Risk Manager.

USER agrees to be fully responsible for its acts of negligence, and its employees, contractors, agents and other representatives' acts of negligence, and agrees to be liable for any damages resulting from said negligence to the extent and limits permitted by Section 768.28, Florida Statutes. Nothing herein is intended to serve as a waiver of sovereign immunity by any entity to which sovereign immunity may be applicable. Nothing herein shall be construed as consent by a state agency or political subdivision of the State of Florida to be sued by third parties in any matter arising out of any agreement.

To the extent applicable, USER shall ensure that its contractors/subcontractors/agents/representatives maintain, at the contractors/subcontractors/agents/representatives sole expense, the following minimum insurance coverage: (i) commercial general liability insurance with minimum limits of \$1,000,000 per occurrence (including damage to premises rented to you limit) and (ii) auto liability insurance covering their owned, non-owned and leased vehicles with a minimum combined single limit of \$1,000,000 (Each Accident) and (iii) workers compensation insurance statutory limits & employers liability \$1,000,000, for its protection and the protection of the University. The general and automobile liability insurance certificate shall indicate that the policy carries an endorsement (no more restrictive than CG 20 10) which names the Florida International University, The State of Florida, The City of North Miami, The Florida International University Board of Trustees, The Florida Board of Governors, and their respective trustees, directors, officers, agents and employees as additional insureds. The contractors/subcontractors/agents/representatives policy shall be primary and shall be issued in a form acceptable to FIU. Any insurance carried by FIU shall be noncontributing. The certificate shall contain a statement that the policy shall not be allowed to lapse or be canceled without notification of FIU at least thirty (30) days prior to the effective date of cancellation. USER shall assume all risk and responsibility for the actions of its contractors/subcontractors/agents/representatives on the Premises.

7. Indemnification. To the extent provided by law, USER shall indemnify and save harmless The Florida International University Board of Trustees, the Florida Board of Education and the State of Florida, their respective officers, trustees, employees and agents from and against all claims, suits, actions, damages, or causes of action arising during the terms of the agreement for any personal injury, loss of life or damage to the property sustained by reason or as a result of the use of the premises for which the agreement is entered into and from and against any orders, judgments, or decrees which may be entered thereto. Nothing in this agreement shall be deemed to affect the rights, privileges, and immunities of The Florida International University Board of Trustees, The Florida Board of Education and the State of Florida as are provided for by law. Nothing contained in this section or elsewhere in this Agreement is in any way intended to be a waiver of the limitation placed upon the USER's liability as set forth in Section 768.28, Florida Statutes. Additionally, the USER does not waive sovereign immunity. This provision shall survive the termination of this agreement.

8. **Independent Contractor.** USER is an independent contractor, and neither USER nor USER's employees, contractors, agents, or other representatives shall be considered FIU employees, contractors, agents or representatives.
9. **Food Concessions.** USER shall comply with all applicable laws, including but not limited to health and safety laws, pertaining to the service of food. USER shall also be responsible for obtaining any and all required governmental documentation for same, including but not limited to, licensing and permitting requirements, to the extent applicable.
10. **Termination.** If USER fails to fulfill any obligation specified in this Agreement, or the intended use or activity to be conducted is not as described in this Agreement, FIU may terminate this Agreement, upon written notice to USER. FIU shall have no liability for such a cancellation. Additionally, FIU may also terminate this Agreement at its sole discretion and for any reason whatsoever, upon providing USER with thirty (30) days prior written notice of termination.
11. **FIU Logo/Marks.** This Agreement does not confer upon USER any rights to use the name, logos, marks and likeness of FIU. USER must obtain FIU's written permission prior to using FIU's name, logos, marks and likeness of FIU.
12. **No Joint Venture.** USER acknowledges and agrees that FIU's sole role in this matter is to authorize USER to use FIU's Premises for the purposes provided herein. This is not a joint venture between FIU and USER. USER shall be solely responsible for conducting its Program provided for herein and for supervising its employees, contractors, agents, representatives, invitees and participants at all times while on FIU's Premises. USER shall be solely responsible for safety and security of its employees, contractors, agents, representatives, invitees and participants while conducting its Program on FIU's Premises.
13. **Miscellaneous.**
- a. **No Assignment.** Neither party may assign this Agreement without the prior written consent of the other party, which may be withheld by the other party in its sole discretion.
- b. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties hereto.
- c. **Severability.** If any Agreement provision or application thereto to any circumstance is held to be invalid or unenforceable, such provision shall be ineffective and the remainder of this Agreement shall remain valid and enforceable.
- d. **Governing Law/Venue.** This Agreement is governed by the laws of State of Florida. Exclusive jurisdiction and venue of any actions arising out of this Agreement shall be in Miami-Dade County, Florida.
- e. **Waiver.** The waiver by either party of a breach of a violation of any provision of this Agreement shall not operate as or be construed to be a waiver of any subsequent breach thereof.
- f. **Survival.** Any provision of this Agreement providing for performance by either party after termination of this Agreement shall survive such termination and continue to be effective and enforceable.

g. Compliance with Applicable Laws. The parties shall comply with all applicable federal, state and local laws in performing the Agreement terms. This Agreement is subject to the applicable laws, rules and regulations of the United States, the State of Florida, and any of its agencies, including the rules of Florida International University.

h. Entire Agreement/Amendments. The Agreement, as amended herein constitutes the entire agreement between the parties, and supersedes any prior understandings. This Agreement may be amended only by written amendments duly executed by the parties.

i. Force Majeure. FIU does not guarantee the uninterrupted use of the facilities as contemplated under this Agreement, in the event that the use of facilities is suspended or delayed by reason of fire, storm, explosion, strike, lockout, labor dispute, casualty, accident, lack or failure of sources of supply or labor, fuel supply, acts of God or of the public enemy, riots, interferences by civil or military authorities in compliance with the laws of the United States of America or the laws, orders, rules and regulations of any governmental authority, or by reason of any other cause beyond FIU's control, or for emergency inspection, cleaning, repairs, replacements, alterations or renewals which are in FIU's reasonable judgment, necessary to be made.

IN WITNESS WHEREOF, the parties have executed this Agreement on the \_\_\_\_\_ day of \_\_\_\_\_, 2012 and each party executing this Agreement warrants and represents that they are authorized by their respective entities to execute a binding Agreement.

Witnesses:

Manuel Muñoz  
[Signature]

**THE FLORIDA INTERNATIONAL  
UNIVERSITY BOARD OF TRUSTEES**

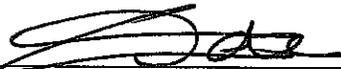
[Signature]  
By: Dr. Kenneth A. Jessell  
Title: CFO & Senior Vice President

Date: 6-1-12

Approved as to form and legal sufficiency:  
FIU Office of the General Counsel

[Signature]  
Fleta A. Stamen, Associate General Counsel

**CITY OF NORTH MIAMI, "USER",**  
a Florida Municipal Corporation,

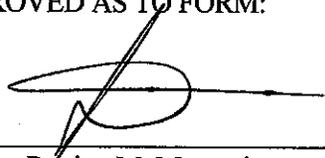
By:   
for Stephen E. Johnson  
City Manager

Date: 5/10/12

By:   
Michael A. Etienne  
City Clerk

Date: 5/12/12

APPROVED AS TO FORM:

  
Regine M. Monestime  
City Attorney