

## PREMISES USE AGREEMENT

THIS PREMISES USE AGREEMENT (the "Agreement") is made and entered into on the date fully executed below by and between The Florida International University Board of Trustees (together with its affiliates, "FIU"), whose business address is 3000 NE 151 St., North Miami, FL 33181, (Attn. Andrea A. Ramos; facsimile 305-919-5391) phone: 305-919-5703; email address: aaramos@fiu.edu and the CITY OF NORTH MIAMI, ("USER"), whose principal business address is 776 NE 125 STREET, NORTH MIAMI, FL 33161 (Attn:CHRISTINE CARNEY, 305-895-9840, CCARNEY@NORTHMIAMI.FL.GOV), for the use by USER of certain premises under the control of FIU for the purposes described herein.

**NOTE:** For Premises under the control of FIU's Housing and Residential Life Department ("FIU Housing"), refer to the FIU Housing and Residential Life Addendum for reference to the Use Period and the Use Fee (the "Housing Addendum"), which Housing Addendum, if applicable, is attached hereto and made a part hereof as an Addendum to this Agreement.

1. **Premises.** Subject to the terms of this Agreement, FIU agrees that USER may use the following space or space and equipment (the "Premises"): see addendum with layout/information.

2. **Use of Premises.** USER may use the Premises only for the purpose(s) of vehicle parking for members of the public attending the CITY OF NORTH MIAMI'S INDEPENDENCE DAY BY THE BAY CELEBRATION (the "Program") on the following date(s) during the following time(s) (the "Use Period"):

Date: TUESDAY, JULY 3- THURSDAY, JULY 5, 2018

Time: 7 am, JULY 3<sup>RD</sup> - 4 pm, JULY 5<sup>TH</sup>

If the Program involves minors, please go to

<https://fiuapps.fiu.edu/youthevents/SitePages/RegistrationInfo.aspx?et=fo> to register this Program.

If rehearsal time for the Program is required, it must be scheduled at the time of reservation, and is subject to availability. FIU reserves the right to reassign this reservation to similar facilities if the needs of FIU require such a reassignment. FIU reserves the right to terminate this Agreement and cancel the reservation where inaccurate representation of the Program or incomplete details have been provided. Reservations are not transferable, nor may USER turn over the Premises for use by another customer without the express prior written approval of FIU. USER further understands that it shall have the right of ingress and egress through the halls and corridors of the building(s) wherein the Premises is located (to the extent applicable), but acquires hereby no other right in any part of the building(s) than the part specified. No USER PARTIES may prohibit FIU staff from accessing the Premises, cover the windows or lock the doors of the Premises prior to, during or after the Program.

3. **Compensation.** USER agrees to pay FIU the sum of Three thousand and twenty four dollars & 0/100 Dollars (\$3024) ("Use Fee") on or prior to July 3, 2018, as follows:

| DATE   | SUBTOTAL |
|--|----------|
| POLICE - FIU ON DUTY (3 Officers-18 HRS@\$53/HR) | \$954.00 |
| FIRE & SAFETY (20 HOURS @ \$26/HR)               | \$520.00 |
| PARKING  | \$800    |

|  |         |
|--|---------|
| FACILITIES: ground crews for initial clean up and maintenance staff for day of event | \$750   |
| Total  | \$ 3024 |

for the rights granted under this Agreement, whether the Premises are actually used by USER for the full time granted or not. The USER agrees to pay the Use Fee in the form of credit card, electronic funds transfer or by check payable to "Florida International University," which check should be sent to the attention of: Andrea A. Ramos, Manager, the Office of the Vice Provost, Biscayne Bay Campus, HL 317 B, 3000 NE 151 Street, North Miami, FL 33181.

USER acknowledges and agrees that USER'S failure to make any payments due under this Agreement on the respective due dates shall entitle FIU to cancel the reservation, to permit other customers to use the Premises and to immediately terminate this Agreement, as applicable FIU will calculate final charges upon completion of USER's Program and, to the extent applicable, will bill the USER for any additional charges not previously paid. Any additional payment shall be submitted to FIU within five (5) business days after USER's receipt of written notification from FIU. Misrepresentations regarding Program details may result in adjustment of the User Fee. The User Fee is nonrefundable except as otherwise expressly set forth in this Agreement. Rescheduling of the Use Period is only permitted one time, is subject to availability, and a rescheduling fee may apply. If a paper check or E-check is returned by a bank for any reason (i) a returned check fine based on the total amount of the check will be added to the reservation and, (ii) subsequent payments on reservations at FIU must be made by credit card, debit card, money order or cashier's check. USER will not be able to continue with existing reservations or make new reservations until all amounts owed on returned checks and fines are paid in full.

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

a. **Proper Use and Care of the Premises.** USER PARTIES are responsible for the proper use and care of any FIU property, including, but not limited to, the Premises. USER agrees that it will not use tape to affix items to the walls, or drive or permit to be driven, nails, hooks, tacks or screws into any part of said Premises, building or equipment contained therein and will not make nor allow to be made any alterations of any kind to said Premises, building or equipment contained therein. No animals are allowed at any FIU lands occupied or controlled by FIU, including but not limited to any campus (an "FIU Location"), provided however, that (i) service animals, defined as a dog or miniature horse used as an accommodation who is individually trained to do work or perform tasks for the benefit of an individual with a qualifying disability, are permitted, and (ii) emotional support animals, defined as a domesticated animal that may provide physical assistance, emotional support, calming, stability, and other kinds of assistance, but which is not a service animal, are not allowed into public areas of any FIU Location and are only allowed in residence halls with immediate access to outdoor areas. Skateboards, skates, rollerblades, bicycles, hover-boards, and other recreational equipment must be carried while in the Premises. USER will be liable for the repair and/or replacement cost of any FIU property, including, but not limited to, the Premises, which is damaged, destroyed or lost, resulting from Program related activities.

b. **Smoking.** All FIU Locations are smoke-free, and smoking and/or use of any tobacco product is prohibited in all areas of all FIU Locations. USER may not smoke traditional or electronic cigarettes, cigars, or pipes (including hookah or vaping) on any FIU Location, including inside the Premises. USER will be charged for the cost of cleaning or eliminating smoke odors or stains in the Premises.

c. Restoration of Premises Following the Program. USER at its expense 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 in FIU's sole and absolute discretion. Any property that is left in, on, or around the Premises following the conclusion of the Program shall be deemed abandoned, FIU may elect not to store same, and any abandoned property may be disposed of at the discretion of FIU

d. "AS IS" Status of the Premises. USER accepts the Premises in "AS IS" condition.

e. Compliance with Laws. USER PARTIES shall abide by all applicable federal, state, and local laws, rules and regulations, including, but not limited to, environmental laws, federal and state rules and regulations regarding political campaigns and elections (to the extent applicable), and FIU policies, procedures, rules and regulations, including those related to parking and signage, (collectively, the "Laws") in performing the Agreement terms, including, but not limited to, in its use of the Premises. USER understands that FIU regulations, policies and/or procedures can be viewed on FIU's website at <https://reservespace.fiu.edu/policies-procedures/>. Without limiting any other provision herein, FIU may cancel this Agreement at any time if FIU determines, in its sole discretion, that any actions by any of the USER PARTIES constitutes a violation of any Laws and FIU shall not be subject to any liability for said cancellation.

f. Promotional Activities. USER agrees to perform its promotional activities related to its use of the Premises in accordance with all applicable Laws and FIU requirements, and in the least intrusive manner so as not to disturb the atmosphere of the campus and the educational activities therein. Marketing of the Program may not begin until the reservation is confirmed and USER has obtained all required permits and approvals.

g. Permits. To the extent applicable, USER must procure, at its own expense, all permits required in connection with the Program, including, but not limited to, permit(s) required by FIU. 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. Upon FIU's request, CUSTOMER will provide copies of any such permits, licenses and/or insurance.

h. FIU Services. FIU shall not be responsible for providing any services, equipment, or any other items to USER for its use of the Premises, unless otherwise agreed to by the parties in this Agreement. If a Program requires, or results in, excessive consumption of utilities, the provision of excess utilities shall be determined between USER and FIU as deemed necessary by FIU in its sole and absolute discretion. USER is responsible for the cost of excessive consumption of utilities.

i. Copyrighted Materials. To the extent applicable, USER, for itself and on behalf of the artist or promoter of the Program, represents and warrants to FIU that all copyrighted or trademarked programming to be presented has been duly licensed or authorized by the owners of all respective intellectual property or their representatives. USER shall obtain, at its own expense, any licenses, and pay any royalties which USER may owe for the sale or distribution of copyrighted or trademarked material at any activities contemplated under this Agreement. USER hereby indemnifies and holds FIU harmless from and against any and all claims, losses or expenses that may arise in connection with this provision. The FIU Libraries offer general guidance on copyright laws, user responsibility and copyright infringement online at <http://library.fiu.edu/copyright>, without any representation or warranty on the part of FIU.

5. Parking at the Premises. FIU reserves the right to provide and control all parking at FIU Locations required in connection with the Event. FIU may charge a parking fee to Event participants. All parking revenues and all parking rights shall belong to FIU. All USER PARTIES must abide by FIU parking rules and regulations, including those prohibiting parking on the grass or in handicapped spaces without proper

authorization. USER recognizes that any special arrangements made for parking for the Program do not constitute a license or grant any permission to violate parking rules and regulations of FIU.

6. Food Service. FIU does not provide catering services or personnel to serve food, but has approved caterers for catering services on FIU Locations. USER is required to adhere to FIU's guidance on the use of approved vendors as posted at <https://shop.fiu.edu/dining/catering/preferred>). USER must notify FIU if it intends to use a caterer, and set-up and break-down times must be scheduled at the time of reservation. The service of food by USER or USER'S food service provider, including use of deep fryers and open flame cooking, if applicable, shall be subject to FIU's prior written approval and any requirements/conditions that may be required by FIU. Self-catering may not be allowed on all premises. For information on food safety, please visit <http://ehs.fiu.edu/SiteCollectionDocuments/Food-Safety.pdf>.

Neither USER nor USER'S food service provider may advertise or directly market catering services or serve food or beverage for resale to the FIU community.

If applicable, USER shall comply, and shall cause its food service provider to comply, with all health and safety Laws pertaining to the service of food. USER shall also be responsible for obtaining, or causing its food service provider to obtain, any and all required governmental documentation for same, including, but not limited to, licensing and permitting requirements, to the extent applicable.

7. Alcohol. The possession, service, sale, consumption and distribution of alcohol in any FIU Location, including the Premises, is strictly governed by all appropriate state and federal laws, local county ordinances, and FIU's regulation regarding alcoholic beverages. Alcohol in any FIU Location is subject to FIU's prior approval in its sole and absolute discretion. USER must disclose the desire to bring alcohol to the Premises at the time of reservation (and USER acknowledges that any Program booked less than two weeks prior to the scheduled date might not receive timely approval to bring alcohol to the Premises) and must file a valid copy of the occupational license and liability insurance with FIU. Any USER that has received approval to serve alcoholic beverages is recommended to use FIU's food service contractor. Food items and non-alcoholic beverages must be made available at the time of alcohol service. Alcohol service must end one hour prior to the scheduled end of the Program. Alcoholic beverages may not be used in Program marketing, as prizes or awards. Responsible consumption of alcohol shall be encouraged, and publicity of a Program may not make reference to the availability of alcoholic beverages. Social events that encourage drinking, drinking contests, or alcoholic intoxication, and the advertisement of any such events are strictly prohibited. No individual under the legal drinking age (minimum of 21 years of age) may possess, serve, sell, consume or distribute alcohol on any FIU Location, and no individual on any FIU Location may serve or otherwise provide alcohol, for consumption, to individuals under the legal drinking age of 21 years. The foregoing is not an exhaustive list of requirements; please refer to FIU Regulation 2505 regarding alcoholic beverages at <http://regulations.fiu.edu> for additional terms and conditions, which are incorporated as if fully set forth herein.

8. Safety and Security.

a. Risk Review. FIU reserves the right to require safety and security measures for the Program at the sole cost and expense of USER.

b. Security. USER is solely responsible for the security of all property, equipment, materials, and any other items that it or any USER PARTIES bring onto the Premises. USER shall also be solely responsible for the security of all USER PARTIES on the Premises. FIU reserves the right, due to the nature or extent of USER's activities, to require USER to hire off-duty FIU police officers, at USER's sole cost and expense, to ensure the orderly flow of pedestrians and traffic around the Premises and for public safety. In the event that USER desires special security services or measures, the provisions of such services or measures shall be determined between USER and the FIU Police Department and other FIU officials as deemed necessary by FIU in its sole and absolute discretion. USER is responsible for the costs of such

special security. USER further agrees to evacuate the Premises promptly upon hearing a fire alarm and/or upon notice given by FIU in the event FIU deems it necessary for the protection and safety of the public. Without limiting any other obligation of USER under this Agreement, USER shall, and shall cause the USER PARTIES to, strictly abide with FIU's policy regarding firearms and dangerous weapons, available at <https://policies.fiu.edu/files/32.pdf>.

c. Hazardous Materials/Activities. In no event shall USER use or bring any hazardous materials, as defined by applicable Laws, on the Premises. Any Program contemplating the use of fireworks, blank-shots and similar types of pyrotechnic materials, capable of ignition on an FIU Location must be coordinated with the Department of Environmental Health & Safety, FIU's Police Department, and a valid permit issued by the local fire department is required. For more guidance on fireworks, see FIU's policy at <http://chs.fiu.edu/Programs/General%20Safety/Pages/Policies.aspx>. USER agrees that there will be no dangerous or hazardous activities undertaken in or about the Premises, unless otherwise expressly permitted in writing by FIU.

9. Insurance. Check, as applicable:

Private Entity(s): USER shall provide FIU with proof of insurance sufficient to cover the operations and activities to be carried out on the Premises. Throughout the Use Period, USER shall maintain, at its sole expense, the following minimum insurance coverage: (i) commercial general liability insurance with minimum limits of \$1,000,000.00 per occurrence (including "damage to rented premises" with a minimum limit of \$500,000.00 each occurrence), (ii) workers compensation insurance as required by all applicable workers compensation laws and employer's liability insurance with minimum limits of \$1,000,000.00 each accident/disease-each employee & policy limit, for its protection and the protection of FIU, and, only if applicable, (iii) liquor liability insurance with minimum limits of \$1,000,000.00 per occurrence in the event the USER intends to serve and/or sell alcohol on the Premises. USER may purchase the required insurance from FIU at the terms and rates then in effect from time to time. The certificate shall indicate that the policy carries an endorsement (no more restrictive than ISO Form CG 20 10) which names Florida International University, The State of Florida, 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 USER's policy shall be primary and shall be issued in a form acceptable to FIU. Any insurance carried by FIU shall be non-contributing. The certificate shall contain a statement that the policy shall not be allowed to lapse or be canceled without notification to FIU at least thirty (30) days prior to the effective date of cancellation. USER shall furnish to FIU proof of coverage no less than seven (7) days prior to the commencement of the Use Period.

USER's commercial general liability insurance shall be no more restrictive than that provided by the latest occurrence form edition of the standard commercial general liability coverage form (ISO form CG 00 01). The absence of a demand for any type of insurance certificates or policy shall not be construed as a waiver of the USER's obligations to carry and maintain the appropriate insurances at limits that are appropriate to the liability exposure associated with this Agreement, and to ensure that its agents/subcontractors maintain appropriate insurance at all times. USER shall assume all risk and responsibility for the actions of its contractors/subcontractors/agents/representatives on the Premises. FIU does not represent that coverage and the limits specified herein will necessarily be adequate to cover USER liability.

Unless previously authorized by FIU, the policies required above shall be issued on a "first dollar" basis with no deductible or self-insured retention. In the event any of the policies are subject to a deductible or self-insured retention, it is the sole responsibility of the USER to pay such deductible or self-insured retention. FIU, upon request, reserves the right to obtain a copy of the policies required above at any time prior to, during and after the Use Period.

X **Public Entity(s):** 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 the Use Period, at USER's sole cost and expense, the insurance program pursuant to Florida law. USER shall provide FIU with proof of self-insurance no less than five (5) days prior to the commencement of the Use Period.

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 (on an occurrence form no more restrictive than ISO CG 00 01) with minimum limits of \$1,000,000.00 per occurrence; and (ii) workers compensation insurance at the statutory limits and employer's liability of \$1,000,000.00 each accident/disease-each employee & policy limit, for its protection and the protection of FIU. The general 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 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 to 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. FIU, upon request, reserves the right to obtain a copy of the policies required above at any time prior to, during and after the Use Period.

10. **Indemnification.** USER shall indemnify, defend and hold harmless the State of Florida, the State of Florida Board of Trustees of the Internal Improvement Trust Fund, The Florida International University Board of Trustees, The Florida Board of Governors, and their respective trustees, directors, officers, agents, employees, contractors, and other representatives (collectively "Indemnitees") from and against any and all demands, claims, causes of action, fines, penalties, damages (including consequential damages), losses (including death), liabilities, judgments, and expenses (including, without limitation, attorneys' fees and court costs at all tribunal levels) arising directly or indirectly from: (a) the use or occupancy of the Premises by USER or any person claiming under USER; (b) any activity, work, or thing done or permitted by USER in the Premises; (c) any acts, omissions, or negligence of USER or any person claiming under USER or and/or any of the other USER PARTIES or any such person; (d) any breach, violation, or nonperformance by USER or any person claiming under USER or the USER PARTIES or any such person of any term, covenant, or provision of this Agreement or any law, ordinance, or governmental requirement of any kind; (e) any injury or damage to the person, property, or business of USER, the USER PARTIES, and/or any other person entering upon the Premises under the express or implied invitation of USER; and/or (f) any, claims losses, or expenses that arise in connection with the cancellation of the Program due to force majeure events or otherwise.

Nothing in this Agreement shall be deemed to affect the rights, privileges, and immunities of Indemnitees as are provided for by law. Nothing in this Agreement shall be construed as a waiver of sovereign immunity beyond that provided in Florida Statutes §768.28.

USER expressly waives any and all claims of whatever nature, for any and all loss or damage sustained for any cause whatever, prior, during or subsequent to the Use Period, by reason of any defect, deficiency, failure or impairment of the Premises, including, but not limited to, the water supply system, air conditioning system, heating system, wires leading to or inside the Premises, gas, electric or telephone systems, or from any source whatsoever. FIU is not liable or responsible for any financial loss incurred by the USER due to unforeseen,

extenuating or reasonably uncontrollable events, which cause failure of any or all of the facilities to operate or function prior, during or subsequent to the Use Period. This Section shall survive the termination of this Agreement.

11. **Default.** If either party fails to comply with any material term or condition of this Agreement and/or fails to perform any of its obligations hereunder, then that party shall be in default. Upon the occurrence of a default hereunder which is not cured within seven (7) days after receipt of notice of default either in writing or via e-mail, the non-defaulting party, in addition to all remedies available to it by law, may immediately, upon notice to the defaulting party in writing or via e-mail, terminate this Agreement. If USER is the defaulting party, all deposits, payments, advances, or other compensation paid by the USER to FIU shall be forfeited and become the property of FIU. Notwithstanding any provision herein to the contrary, USER's failure to make any payments due under this Agreement by the respective due dates shall be considered a material breach entitling FIU to immediately terminate this Agreement in its discretion, without any notice or opportunity to cure said default. In no event shall FIU be liable to USER for any consequential, incidental, special and/or indirect damages or losses (in contract or tort), including, but not limited to, any lost revenues or savings in connection with this Agreement and/or any breach and/or default by FIU hereunder.

12. **Termination.** FIU shall have the right to terminate this Agreement for any reason whatsoever, in FIU's sole and absolute discretion, upon providing USER with prior written notice (and FIU will endeavor to provide thirty (30) days prior written notice of termination). In the event of such termination, provided that USER is not in default hereunder as set forth in Section 11 above, FIU shall reimburse USER for any payments previously paid by USER to FIU. Additionally, this Agreement may be unilaterally canceled by FIU for refusal by USER to allow public access to all documents, papers, letters or other materials subject to the provisions of Chapter 119, Florida Statutes, and made or received by USER in conjunction with this Agreement. Without limiting the foregoing, if USER willfully and/or repeatedly breaches the terms and conditions of this Agreement, in addition to FIU's rights under Sections 11 and 12 of this Agreement, FIU reserves the right in its sole and absolute discretion to cancel any other existing reservations and to deny subsequent reservation requests. FIU shall have no liability to USER for any such cancellation or termination of the Agreement or otherwise. USER shall have the right to terminate this Agreement upon (i) providing FIU with prior written notice at least twenty-four (24) hours prior to the first day of the Use Period, and (ii) payment to FIU of a cancellation fee in the amount of \$1,000 (which cancellation fee shall be tendered with the cancellation notice).

13. **ADA/Non-Discrimination.** USER understands that FIU, in providing the Premises, does not act as the presenter or promoter of the Program. USER shall be solely responsible for ensuring that any special assistive or other accommodations are provided for its disabled guests, invitees and employees of the Program, such as the provision of interpreters, attendants, and the like. In no event shall FIU be required to incur any costs or expenses needed to adapt the Premises for the intended use of the Program. USER agrees to indemnify and hold FIU harmless from and against any and all liability, fines, suits, claims, demands and actions, costs, attorneys' fees and expenses of any kind or nature whatsoever for any damages incurred, whether economic, punitive, compensatory or otherwise which may arise in connection with (i) USER's failure to reasonably accommodate any disabled individual who is a guest, invitee, or employee at its Program on the Premises and from and against any orders, judgments or decrees which may be entered pursuant thereto and/or (ii) USER changing the layout of the Premises, which layout as provided by FIU is in compliance with federal, state and local laws regarding the needs of people with disabilities, and not restoring said compliant layout to the same condition after termination of the Event. Further, USER represents and warrants to FIU that USER does not and will not engage in discriminatory practices and that there shall be no discrimination in connection with USER's use of the Premises or presentation of the Program on account of race, color, sex, religion, age, handicap or marital status. USER further covenants that no individual shall, solely by reason of his/her race, color, sex, religion, age, handicap, sexual

orientation, marital status or national origin, be excluded from participation in, be denied services, or be subject to discrimination in connection with the use of the Premises under this Agreement.

#### 14. 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 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 or 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. Entire Agreement/Amendments. This Agreement constitutes the entire agreement between the parties related to the subject matter hereof and supersedes any prior understandings. This Agreement may be amended only by written amendments duly executed by the parties.

h. Counterparts/Facsimile & Electronic Signature. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute but one and the same instrument. To the extent permissible under Florida law, a facsimile/electronic (e.g. sent as a PDF attached to an email) signature shall be deemed to constitute an original signature for the purposes of this Agreement.

i. Force Majeure. FIU does not guarantee the uninterrupted use of facilities (including the Premises) 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, interruption of utilities, fuel supply, acts of God or of the public enemy, hurricane or natural disaster, hurricane warning or hurricane watch issued by the US National Weather Service, tropical storm watch or tropical storm warning issued by the US National Service, 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.

j. Taxes. USER acknowledges sole responsibility for the payment of all applicable federal, state, and local taxes and fees of whatever nature that are associated with the use of the Premises.

k. Third Party Beneficiaries. Except as specifically set forth herein, this Agreement does not and is not intended to confer any rights or remedies upon any person other than FIU and USER.

l. Employment or Use of FIU Students in connection with Proposed Use of Premises. USER must obtain FIU's written approval prior to using or employing any FIU student in connection with USER's use of the Premises, if applicable.

m. FIU Logo/Marks. This Agreement does not confer upon USER any rights to use the name, logos, marks and/or likeness of FIU. USER must obtain FIU's written permission prior to using the name, logos, marks and/or likeness of FIU from the Division of External Relations. For more information on the use of FIU's logo/marks, refer to <http://www.fiu.edu/brand>.

n. 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 the USER PARTIES.

o. 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.

p. Authorization. Each of the parties represents and warrants that (1) the persons executing this Agreement are duly authorized by their respective entities to execute a binding agreement; and (2) this Agreement is the valid and binding agreement of such party, enforceable in accordance with its terms.

q. Conflict of Interest. USER represents that it has no employee who has, or whose relative has, a relationship with FIU, in a manner that will violate the Code of Ethics for Public Officers and Employees, including, but not limited to, Florida Statute, Sections 112.313(3) and (7), and Florida Statute, Section 112.3185(6), thereof, by reason of USER entering into this Agreement.

r. Radon Gas Disclosure Per Florida Statute 404.056(5). RADON Gas: Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county health department.

s. Availability of Funds. FIU's performance and obligation to pay under this Agreement, to the extent applicable, is contingent upon an annual appropriation by the Florida Legislature.

t. Notice. Whenever this Agreement requires or permits any notice by one party to the other, such notice shall be written and sent to the addresses set forth in the opening paragraph by any of the following means: (a) commercial overnight or next business day guaranteed courier service, (b) certified United States Mail, return receipt requested, (c) hand delivery, or (d) via email transmission with confirmed receipt. Notice shall be deemed given upon receipt or refusal of delivery of said notice. A notice given by an attorney representing the party to this Agreement shall be deemed to be given by such party. Notices (and reservation estimates and receipts) shall be deemed received upon delivery by commercial overnight or courier service or hand delivery, refusal of delivery, 5 business days after being deposited in the United States mail, return receipt requested, or confirmation of receipt of an email transmission, as applicable. All notices to USER shall be addressed to the attention of the City Manager and the City Attorney.

15. [CHECK IF APPLICABLE OR IF NOT, ENTER N/A  N/A  ] Additional Requirements for Minor Participants. As a condition of having the Program at FIU and using the Premises, USER agrees

to comply with the following additional requirements as it relates to the minor participants (i.e., those who are under the age of 18 years) under its supervision while on the Premises:

a. **Criminal Background Checks Requirement.** USER agrees that it will ensure that a Level II criminal background check pursuant to Florida Statutes, Section 435.04, has been conducted for all of its employees, agents, representatives, and/or volunteers who will be interacting or may interact with the minor children. USER further agrees that it will not allow anyone convicted of a sexual offense to be employed or volunteer in any capacity for this Program. USER represents and warrants that all the USER's employees, agents, representatives, and/or volunteers involved in the Program have undergone the requisite screenings described in this paragraph or will be screened prior to the start of the Program and USER indemnifies and holds FIU harmless from and against any and all claims, losses or expenses that may arise in connection with the foregoing.

b. **Medical Insurance.** USER agrees to obtain proof of valid and current medical insurance coverage on behalf of every minor participant prior to the start of the Program. USER represents and warrants that it will obtain such insurance required coverage prior to the start of the Program.

c. **Medical Authorization.** USER agrees to obtain a signed Medical Authorization in a form the same or substantially the same as the Addendum attached hereto and made a part hereof, on behalf of every minor participant. USER represents and warrants that it has or will obtain a signed Medical Authorization on behalf of each minor participant before the start of the Program. USER agrees to provide FIU with fully executed Medical Authorization forms within a reasonable time when requested by FIU. USER indemnifies FIU and agrees to be responsible for any costs that FIU may incur for medical treatment sustained during the Program if USER fails to obtain a valid Medical Authorization form.

d. **Release, Waiver of Liability and Assumption of Risk Forms for Minor Participants.** USER agrees to obtain fully executed Release, Waiver of Liability and Assumption of Risk forms releasing FIU from all liability related to minors participating in the Program. The Release, Waiver of Liability and Assumption of Risk form for parents to sign on behalf of minors participating in the Program is attached hereto and made a part hereof as an Addendum to this Agreement. The Release, Waiver of Liability and Assumption of Risk form for minors must be fully executed by their lawful parent(s)/guardian(s). USER represents and warrants that it has or will obtain all required Release, Waiver of Liability and Assumption of Risk forms for minor participants prior to the start of the Program. USER indemnifies FIU for its failure to obtain the required forms against any resulting claims, damages, and attorney's fees.

e. **Safety & Security Procedures.** USER warrants and represents that it has an emergency/crisis response plan appropriate for the Program's operations; that the USER has procedures in place for addressing the safety and security of the Program participants (in general and as required of the specifics of its Program), and that the USER will ensure that the Program staff/volunteers adhere to the foregoing procedures, including, but not limited to, the following (which does not constitute an exhaustive list):

- i. Having activities planned for Program participants be age and developmentally appropriate;
- ii. If the Program is a sport camp of any type, clinic, and/or tournament, obtaining the prior written approval from the FIU Director of the Athletics Compliance Office (ACO). In order to obtain approval from the ACO, the USER agrees to meet the following conditions:
  - a. An ACO Program Brochure Form must be submitted to and approved by the ACO prior to any Program brochure being printed and/or distributed;
  - b. An ACO Program Advertisement Approval Form must be submitted to and approved by the ACO prior to any advertisement of the Program; and

- c. An ACO Athletics Compliance Audit must be completed for each Program and must be submitted to the ACO no later than ten (10) business days after completion of the Program.
- iii. Ensuring that the Program participants will not be exposed to any hazardous materials or conditions;
- iv. Having protocols to avoid or to address any potential food allergy issues;
- v. Providing reasonable medical care and attention appropriate to the ages of the Program participants, the physical activity in which the Program participants are engaged, and the physical environment in which the activity occurs (e.g., addressing heat strokes, concussions);
- vi. Having a plan for transporting injured Program participants to the nearest hospital or other appropriate medical facility in the event of a medical emergency;
- vii. Having the appropriate number of staff/volunteers to Program participant ratio to ensure the safety of the Program participants based on the Program requirements (see the American Camp Association for suggested staff-to-minor participant ratios: <http://www.acacamps.org/resource-library/accreditation-standards/aca-standards-relate-staff-screening-supervision-training>);
- viii. Ensuring that, at no time during the Program, will the USER permit the staff/volunteers to be alone with a single Program participant where the staff/volunteers cannot be observed by others;
- ix. Ensuring that Program participants will not be left unsupervised, including during the time of drop off or pick up for the Program;
- x. Ensuring that, under no circumstances, will the staff/volunteers release Program participants to anyone other than the authorized parent, guardian or other adult authorized by the parent or guardian;
- xi. Ensuring that the staff/volunteers shall not abuse or mistreat Program participants in any way, including, but not limited to, physical abuse (e.g., striking, spanking, shaking, slapping); verbal abuse (e.g., humiliating, degrading, threatening); sexual abuse (e.g., touching or speaking inappropriately or showing Program participants inappropriate materials); mental abuse (e.g., shaming, withholding kindness, being cruel, belittling); and/or neglect (e.g., withholding food, water, or basic care);
- xii. Having a process and procedure to deal with potential bullying and hazing issues;
- xiii. Ensuring that the staff/volunteers engage only in appropriate touching necessary for the Program activities and relative to the Program participants' ages;
- xiv. Ensuring that the staff/volunteers have appropriate protocols in place for bathroom usage (e.g., making sure that a restroom is not occupied by suspicious or unknown individuals before allowing Program participants to use the facilities; with respect to younger Program participants, sending Program participants in threes and, whenever possible, with at least two staff/volunteers of the same gender);
- xv. Having an evacuation plan in the event of an emergency, such as inclement weather, fire, etc.;
- xvi. Ensuring that all dive, boat and/or other water sport-related activities that take place in the ocean and/or other large bodies of water are reviewed, approved and supervised by the FIU Dive and Boat Safety Team;
- xvii. Refraining from taking photographs and/or videos of the Program participants (including through the use of cell phones) and/or from posting any photographs and/or videos on social media without prior written approval from the Program participant's lawful parent/guardian; and
- xviii. Ensuring that the staff/volunteers adhere to the Florida mandatory child abuse reporting requirements as set forth in Florida Statutes Section 39.201 and are familiar with the definitions of abuse as set forth in Florida Statutes.

16. [CHECK IF APPLICABLE OR IF NOT, ENTER N/A] N/A Additional Rules and Regulations. In addition to USER's obligations and covenants set forth herein, in the use of the Premises,

USER, its employees, contractors, agents, representatives, invitees and each of its participants shall abide by the rules and regulations attached hereto and made a hereof as an Addendum to this Agreement (the "Additional Rules & Regulations"). USER acknowledges that FIU shall have the right to modify, add to, and amend the Additional Rules & Regulations and USER its employees, contractors, agents, representatives, invitees, and each of its participants agree to comply and abide by any and all such modifications, additions, and amendments. USER understand and acknowledges that this Agreement conveys the right to use the Premises solely on the terms outlined in this Agreement and in the Additional Rules & Regulations, to the extent applicable. In the event of a conflict between the terms of this Agreement and the Additional Rules & Regulations, this Agreement shall govern. **NOTE: For Premises under the control of FIU Housing, the Housing Addendums hall be considered, for purposes herein, the Additional Rules & Regulations as it relates to FIU Housing.**

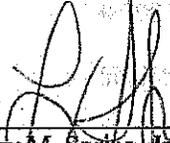
***[SIGNATURE PAGE FOLLOWS]***

***[SIGNATURE PAGE TO PREMISES USE AGREEMENT BETWEEN CITY OF NORTH MIAMI  
AND THE FLORIDA INTERNATIONAL UNIVERSITY BOARD OF TRUSTEES]***

The parties execute this Agreement as of the date written below each signature block and each party executing this Agreement warrants and represents that it is authorized by its respective entity to execute a binding Agreement.

**USER:**

**CITY OF NORTH MIAMI**

By:   
Larry M. Spring, Jr., CPA  
City Manager

Date: \_\_\_\_\_

**ATTEST:**

  
Michael A. Etienne, Esq.  
City Clerk

**APPROVED AS TO FORM:**

  
Jeff E.H. Cazeau, Esq.  
City Attorney

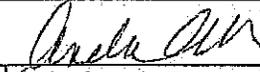
**FIU:**

**THE FLORIDA INTERNATIONAL  
UNIVERSITY BOARD OF TRUSTEES**

By: \_\_\_\_\_  
Kenneth A. Jessell  
CFO & Senior Vice President

Date: \_\_\_\_\_

**Approved by (Unit/Department):**

By:   
Andrea A. Ramos  
Manager  
Office of the Vice Provost

Date: 8/20/18

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

By: \_\_\_\_\_  
Wendy Vargas  
Associate General Counsel

Date: \_\_\_\_\_

**EXHIBIT "A" TO PREMISES USE AGREEMENT**

**COST SUMMARY**

|  |          |
|--|----------|
| POLICE – FIU ON DUTY (3 Officers-18 HRS@\$53/HR)                         | \$954.00 |
| FIRE & SAFETY (20 HOURS @ \$26/HR)                                       | \$520.00 |
| PARKING  | \$800.00 |
| FACILITIES   |          |
| Ground crews for initial clean up and maintenance staff for day of event | \$750.00 |
| <hr/>  |          |
| Total  | \$ 3024  |