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3 **RESOLUTION NO. 09-16**

4 A RESOLUTION OF THE MAYOR AND VILLAGE COUNCIL OF THE
5 VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO
6 CONTRACTS; APPROVING AND AUTHORIZING A REVISED
7 UNIFORM PARK USE AGREEMENT FOR USE BY ALL INTERESTED
8 CLUB OR LEAGUES AT ALL VILLAGE PARKS; TO BE EXECUTED BY
9 THE VILLAGE MANAGER WITH EACH INDIVIDUAL CLUB OR
10 LEAGUE; AND PROVIDING AN EFFECTIVE DATE. [Sponsored by Mayor
11 Eugene P. Flinn, Jr.].

12 WHEREAS, the Village of Palmetto Bay is known as the Village of Parks; and,

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14 WHEREAS, the Mayor and Village Council of Palmetto Bay have a desire to create a
15 uniform use agreement for all park users (hereinafter referred to as "Club or League") for all
16 organized recreational use of Village parks; and,

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18 WHEREAS, the Mayor and Council approved a uniform use agreement in May 2008;
19 and,

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21 WHEREAS, after discussions with several Clubs or Leagues and receiving input from the
22 community, the Village has modified the existing park use agreement; and,

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24 WHEREAS, the Village is seeking ratification of the agreement so that it reflects the
25 intent, the will of the Council, and so that the Village may implement same for all parks and all
26 Club or League users; and,

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28 WHEREAS, this revised use agreement will substitute the prior approved uniform park
29 use agreement; and

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31 NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND VILLAGE
32 COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, AS FOLLOWS:

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34 Section 1. The Village Council approves and authorizes the underlying modified
35 uniform park use agreement for all organized recreational use of Village parks attached and
36 incorporated as Exhibit 1.

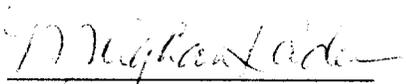
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38 Section 2. The Whereas clauses are incorporated and made a part of this resolution.

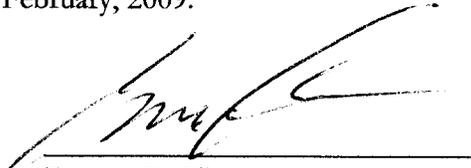
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40 Section 3. All resolutions or parts of resolutions in conflict with the provisions of
41 this resolution are repealed.

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43 Section 4. This resolution shall take effect immediately upon approval.
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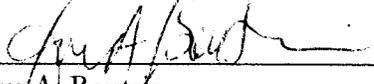
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PASSED and ADOPTED this 2nd day of February, 2009.

Attest: 
Meighan Rader
Village Clerk


Eugene P. Flinn, Jr.
Mayor

APPROVED AS TO FORM:


Eve A. Boutsis,
Village Attorney

FINAL VOTE AT ADOPTION:

- Council Member Ed Feller YES
- Council Member Howard Tendrich YES
- Council Member Shelley Stanczyk YES
- Vice-Mayor Brian W. Pariser YES
- Mayor Eugene P. Flinn, Jr. YES

AGREEMENT

This Agreement (the "Agreement") is made and entered into this ____ day of _____, 2008, by and between the Village of Palmetto Bay, a Florida Municipal Corporation (the "Village") whose address is 8950 SW 152 Street, Palmetto Bay, Florida 33157 and _____ (the "Club") whose address is _____. A "league" or "club" shall be defined as an organized group, whether for profit or a non-for-profit organization, that performs or conducts specific programming from a Palmetto Bay Park. This agreement must be executed prior to any utilization of the parks.

RECITALS

WHEREAS, the Village is the owner of that certain property located in Miami-Dade County, Florida, known as _____ (name of park: Coral Reef or Palmetto Bay Park with address), (the "Property");

WHEREAS, the Club desires to use a certain portion of the Property for the recreational programs, activities and events described at section 2 of this agreement ("Recreational Uses") for the benefit of the Village's residents and community at large;

WHEREAS, the Village has agreed to authorize the Club to use a certain portion of the Property for Recreational Uses during specified periods and times, subject to the terms outlined below; and,

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

1. The Village covenants and agrees that so long as no default exists in the performance of Club's covenants and provisions contained herein, the Club may peaceably and quietly enjoy the use agreement and all parts thereof for that portion of the use agreement term, free from eviction or disturbance by the Village or any person claiming under, by, or through the Village.
2. **Licensed Area and Recreational Uses.** See attached Exhibit A.
3. **Term.** The term of this Agreement shall be for a calendar year starting January 1, 2009 and ending December 31, 2009 ("Term"). Subject to the Club's compliance with the Agreement terms, this Agreement may be renewed for another season, subject to (a) the Club's submitting a request for renewal no later than 45 days prior to the Agreement expiration date and (b) subject to mutual written agreement of the parties ("Renewal Term").
4. **Uses Authorized and Related Costs.** The Club is authorized to use the Licensed Area for the recreational uses identified above at section 2, within the area identified in Exhibit A, only ("Recreational Uses") and for no other purposes, unless mutually agreed to in writing by the parties. The Club's use of the Licensed Area shall be non-exclusive or shared. The Village and other persons or entities designated by the Village may be authorized to use the Licensed Area on the terms outlined in this Agreement. The Club shall be solely responsible for any and all costs incurred in providing the Recreational Uses on the Licensed Area. This shall include, but not be limited to, any and all costs for creating and providing programs and staging events.
5. **Scheduled Use Periods.** At least fifteen (15) days prior to: (a) the commencement date of this Agreement and of any extension of this agreement, the Club shall submit a proposed general date schedule setting forth the dates and times it would like to reserve the Licensed Area for the Recreational Uses ("Scheduled Use Periods") for the Village's review and approval. General months of use shall be provided at commencement date, specific game dates shall be provided as soon as scheduling is completed. The Club shall provide the Village with at least fifteen (15) days prior written notice of any proposed changes to the schedule. The Scheduled Use Periods shall be attached to this Agreement as Exhibit A and shall be updated as soon as practicable upon any notice of change. The parties understand that due to possible weather events or other extraordinary circumstances that the 15 day prior

written notice may not be possible and the parties, under those extraordinary circumstances will attempt to work together on future scheduling.

At least 15 days prior to using the area authorized the Club and its members shall meet with the Village Parks staff to discuss the rules of the park, maintenance, clean-up, responsibilities of the parties and participants, security, and parking relating items. This meeting will be set up at the direction of the Village Parks staff.

6. **Reservation of Rights.** Notwithstanding the provisions herein, the parties acknowledge and agree that the Village has reserved the right for itself and third-parties, in its sole discretion, to schedule activities, events and/or programs on the Licensed Area during the Agreement Term or any renewal thereof. The Village shall have first priority with respect to such uses even if it conflicts with the Club's Scheduled Use Periods. However, in the event any conflicts arise, the Village will provide the Club with at least 15 days prior written notice of any proposed changes to the schedule the Village shall use every effort to provide the Club with alternative locations and/or dates and times for use by the Club. The Village and the Club shall cooperate to insure that appropriate recovery time is included in the proposed schedule. The Village reserves the right, in its reasonable discretion, to cancel or postpone Club Recreational Uses when such cancellation or postponement would be in the best interest of the Village, its Property, or its residents.

7. **License Fee.** The Club shall pay the Village a Season License Fee per participating member which shall be due and payable upon certification of it's (1) Club rosters ("Season License Fee") according to the Village's enacted fee schedule. The Season License Fee shall offset a portion of the Village's cost for providing services to the Club above and beyond the normal and customary use of the Licensed Area, including but not limited to, field preparation and additional utilities consumed by the Club. The Season License Fee shall be reviewed annually by the Parties each year to determine whether the Season License Fee is commensurate with the additional services being provided. The Club fee shall be paid by all Club participants, and all affiliates of the Club.

8. **Participant Fees.** As soon as it has been determined, but, no later than prior to commencing any Recreational Uses on the Licensed Area, the Club shall submit a proposed fee schedule setting forth amounts required to be paid by participants for the Club's Recreational Uses which must be reviewed and approved by the Village in writing. The Club shall use its best efforts to maintain fees in line with fees associated with other similar programs in Miami-Dade County. The Club shall, upon request, submit to the Village at its own expense, within sixty (60) days following each twelve (12) month period of operation under this Use Agreement the Club shall produce financial information compiled in the Clubs normal course of business, including tax returns, upon completion. Within 30 days of the start of a season, the Club, if consented to by the participants, will provide an accurate roster of players and coaches by age and division, which includes name, address, city, zip code, email address, and phone number. The Club's Certification of Activities: The Club shall upon request of the Village submit to Village on or before the 10th day following the end of each month during the term of this Use Agreement and on or before the 10th day of the month following the expiration or earlier termination of the term, a written statement, signed by the Club and certified to be true and correct, showing the nature of activities and agreed upon performance measures (number of participants, number of games and continued use or type of activity at the park) during the preceding month. The Club shall submit to Village on or before the 60th day following the end of each use agreement year an annual written statement, signed by officer of the Club and certified to be true and correct, setting forth the summary of activities and performance measures during the preceding year. The statement referred to herein shall be in such form and style and contain such details and breakdowns as the Village may reasonably determine or require.

In the event that the Club delivers a dishonored check or draft to the Village in payment of any obligation arising under this use agreement, the Club shall incur and pay a service charge of \$30.00 or five percent (5%) of the face amount of the check, whichever is greater. For each such dishonored check, such payment to be made within not more than five (5) days from written notice of such default. Further, in such event, the Village may require that future payments pursuant to this use agreement be made by cashier's check or other means acceptable to the Village. A second such occurrence of a dishonored check during the use agreement term will be a breach of contract and, at the Village's option, will constitute a default allowing termination.

9. **Utilities: Office Services.** All existing water and electrical services within the Licensed Area shall be made available for the Club's use.

10. **Governmental Approvals: Permits and Licenses.** Prior to commencing any Recreational Uses and/or related activities the Club, at its own costs and expense, must obtain all required governmental approvals, including but not limited to permits and licenses. To the extent any Village permits or licenses are required, the Village shall use best efforts to expedite the issuance on any such permits.

11. **No Liens or Encumbrances.** The Club shall not allow any liens or any other encumbrances of any type to be filed against the Village's Property, including the Licensed Area, during its use of the Licensed Area. If any such liens or encumbrances are filed against the Village Property or the Licensed Area as a result of the Club's or its officers, employees, agents, representatives, invitees or other affiliated persons or entities use or activities on the Licensed Area, the Club shall, with seven (7) days after notice of the filing thereof, cause the same to be discharged of record by payment, deposit, bond or other order of a court of competent jurisdiction.

12. **Security.** The Club shall be responsible for providing for all security during the Term necessary to protect the Licensed Area and persons therein. At no time will any private security officer be permitted to carry or possess a firearm in conjunction with their assigned duties while at the Licensed Area or on other Property owned by Village. The Club shall pay all fees associated with the provision of all security officers during the Term, including all fees associated with the use of the Village of Palmetto Bay off-duty police officers, if applicable. The Club acknowledges and accepts full responsibility for the security and protection of its equipment, other personal property and money used in connection therewith. The Village makes no warranties as to any obligation to provide security for the Permitted Premises or Facility, outside of standard security measures supplied by the Village in general. Club may provide its own specialized security for the Permitted Premises, subject to the Village's written approval. Absence of said Club security measures shall not increase the Village's security obligation. The Club shall secure the use areas (walkways, bleachers, etc.) during and/or at the end of daily play, and properly bag and dispose of waste accordingly.

13. **Organizational Status and Regulations Governing the Club.** During the Agreement Term, the Club agrees to the following mandates within their respective organizational structure:

a. If organized as a nonprofit, the Club shall maintained- its status as a non-profit organization with the State of Florida and comply with any regulations as may be required. Proof of non-profit status must be provided to the Village upon request, due to any extension of this Agreement.

b. The Club shall not use the Licensed Area to conduct any unauthorized profit making activities. The Club shall request authorization from the Village as to any profit making activities on park property.

c. The Club agrees to monitor and control all program participants, including, but not limited to players, coaches, umpires, volunteers, spectators, guests and invitees while at the Licensed Area. Further, the Club 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 patrons. Such safety standards shall, pursuant to the agreement of both parties, be incorporated as a part of this Agreement, and the Club's overall program shall also include guidelines for the conduct of league officials in interfacing with the general public and Village officials. Specifically, abusive language and/or profanity is unacceptable and will not be tolerated, and nothing less than a professional demeanor will be expected.

d. The Club shall submit to the Village, at least 15 days prior to using the area, a schedule of registration dates, try-out dates, games and subsequent make-up games for the entire season.

e. Upon certification of the respective rosters, upon request, the Club shall provide the Village with a list of all Club Participants, Members and/or Club Volunteers or other representatives that shall be participating in the Recreational Uses on the Licensed Area during the Agreement Term. The Club shall keep the Village continuously apprised of any changes to this list.

f. The Club shall comply with the Village Volunteer Program Policy, Ordinance No. 08-07, the newly revised "Shannon Melendi Act of Miami-Dade County", which is attached hereto as Exhibit B and made a part hereof, ("Volunteer Program Policy") for the purpose of conducting background investigations for all coaches, managers, officials, umpires, members, employees, and/or volunteers or participants ("Volunteers") associated with the operation of programs and/or activities for the Club. Required background investigations shall be completed in accordance with the Volunteer Program Policy.

g. Within sixty (60) days of the completion of term of this Agreement, upon request, the Club shall submit to the Village a seasonal financial statement accounting for all revenues and expenses associated with the Club's authorized recreational uses as provided under section 2 of this agreement.

h. Club shall use the facilities only for the use permitted. The Club shall not provide any services or sell any item or product without the prior written approval of the Village. Failure to do so, after written notice, is potential grounds for default action to be taken by the Village. The Club, upon written notice from the Village, shall immediately discontinue the unapproved services or items. Club shall conduct its activities at all times in accordance with this use agreement. Club further agrees that all activity and use shall be in accordance with Article 6 of the Home Rule Charter of Miami-Dade County.

14. **Alterations and Improvements.** The Club shall not make any permanent or temporary alterations, improvements or additions to the Licensed Area without the prior written consent of Village, which consent may be withheld within the Village's sole discretion. Any alteration, improvement or addition to the Licensed Area approved by Village shall be designed, constructed, installed, and maintained in a good, safe and workmanlike manner, and shall be paid for in full by Club. The Club must provide the Village with any and all documentation requested, including but not limited to plans and specifications, for the approval process. Unless otherwise agreed in writing by Village, any alteration, improvement or addition to the Licensed Area made by Club shall be removed by Club at the expiration or earlier termination of the Agreement without damage to the Licensed Area. If the Village desires to retain any alteration, Village shall notify Club in writing of its intent within 30 days of the expiration or earlier termination of this Agreement.

15. **Insurance.**

a. **Liability Insurance.** Commencing upon its execution of this Agreement and all times during the Term, the Club shall carry commercial general liability insurance against bodily injury and property damage arising from occurrences in and about the Licensed Area (including parking lots). The insurance to be provided must be broad form coverage in the amount of One Million and No/100 Dollars (\$1,000,000.00) per occurrence combined, single limit for bodily injury and property damage. The liability policy to be provided by Club must be written by a carrier rated A+ or better by A.M. Best Insurance Reports. The required insurance policies must name the Village 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 Village. Evidence of the Club's liability insurance reasonably satisfactory to Village must be provided to Village prior to execution of the Agreement.

b. **Participant Insurance.** The Club shall require that all program participants provide proof of medical insurance to cover injuries that may occur as a result of participation in Club Recreational Uses on the Licensed Area. Proof may be by either group coverage (provided by the organization for all program participants) or individual coverage (in the form of a list of all participants with their insurance information).

c. **Insurance Expiration.** In the event that any of the insurance coverage's required herein expire prior to the expiration of this Agreement, copies of renewal policies shall be furnished to the Village no later than thirty (30) days prior to the date of their expiration.

Proof of insurance shall be attached hereto as Exhibit C.

16. **Maintenance.**

a. **Routine Maintenance** - Except as otherwise provided in this Agreement, Village shall be responsible for reasonable routine maintenance of the Licensed Area during the Term; provided, however, the Club shall be responsible for any maintenance or repairs resulting from damages caused by Club or its employees, agents, guests, invitees, participants and spectators.

b. **Clean-Up After Recreational Uses** – The Village shall have the authority to make periodic reasonable inspections of all the Club’s equipment, and operations during the normal operating hours thereof to determine if such are being maintained in a neat and orderly condition. Immediately following each Recreational Use, the Club shall be responsible for returning the Licensed Area to its original condition. This shall include the requirement that the Club remove all trash, litter, and debris from the Licensed Area after each activity and dispose of same in the on-site receptacles provided. If the Village, in its sole discretion deems that the Club has not returned the Licensed Area to its original condition after each Recreational Use in accordance with the requirements of this provision, provided prior notice is provided to the Club’s contact person, and a reasonable amount of time is provided to the Club to undertake the clean-up, the Village may provide the required services and shall bill the Club at a rate of \$25.00 per staff person hours (minimum of one-staff person for 2 hours) for the clean-up.

17. **Taxes.**

a. **Ad Valorem Taxes.** Village and Club acknowledge that the Licensed Area is currently exempt from ad valorem taxes. If ad valorem taxes are assessed against the Licensed Area or Club’s interest in this Agreement or any part thereof, the Club is responsible for such taxes and any interest or penalties with respect to such taxes relative to the portions of the Licensed Area utilized by Club hereunder less any amounts shown on the tax bill as allocated to the Village of Palmetto Bay, which amounts shall be the responsibility of the Village. If requested by either party, the parties shall reasonably cooperate with one another to challenge the imposition of any ad valorem taxes against the Licensed Area in connection with this Agreement.

b. **Non-Ad Valorem Taxes and Assessments.** The Club is solely responsible for the payment of all taxes (other than ad valorem taxes which may be mandated above) and assessments on the Licensed Area and this Agreement, arising from or related to, the Club’s operation, maintenance, and repair of the Licensed Area, including, without limitation, tangible personal property taxes on property owned by Club, intangible personal property taxes, sales taxes, use taxes, assessments, and documentary stamp taxes.

The Club must pay any and all required taxes and assessments prior to delinquency and must present proof of payment to Village prior to delinquency.

18. **Rules And Regulations.** The Village reserves the right to promulgate rules and regulations from time to time throughout the Agreement Term and shall give notice to the Club of such rules and regulations. The Club shall abide by such rules and regulations, provided that no such rules and regulations shall frustrate the intent of this Agreement. In the event that no timeframes are indicated as a part of said rules and regulations, the effective date of implementation shall be immediate. The Village will entertain timely objections to such rules and regulations, however, upon consideration and/or evaluation of such objections, the Village’s sole judgment shall be final.

19. **Third Party Users.** The Club acknowledges that this Agreement does not give Club an exclusive right to use the Licensed Area, except at designated times as provided under the schedule found at Exhibit A. The Club agrees that it shall cooperate with the Village and any third party users of the Licensed Area. Additionally, the Club shall not at any time for any reason assign its authorized Licensed Area usage to a third-party without express written consent of the Village.

20. **Village’s Right To Inspect.** Village shall have the right, but not the obligation, at all times to have one or more of its representatives present at the Licensed Area to inspect and/or supervise Club’s use of the Licensed Area, at the Village’s expense, provided that Village’s representatives shall not interfere with Club’s activities at the

Licensed Area. The purpose of such inspection is to ensure the compliance with use restrictions and for the purpose of ensuring compatibility for all users of the Licensed Area.

21. **Condition of Licensed Area.** The Village makes no representation, warranty, or guaranty of any nature whatsoever concerning the physical condition of the Licensed Area and the Club hereby accepts the Licensed Area in its "as-is" condition. The Club acknowledges and agrees that the Licensed Area shall be in the same condition on the Expiration Date as it is on the Effective Date normal wear and tear excepted.

22. **Loss and Damage.** The Village shall not be liable for any loss, damage, or injury of any kind to any person or property (a) caused by any defect in any building, structure, or other improvements on the Property, the Licensed Area, or in any equipment or facility located thereon; (b) caused by or arising from any act or omission of the Club, or any of its employees, agents, representatives, guests, or invitees; (c) arising from any accident on the property, or any fire or other casualty thereon; or (d) arising from any other cause; unless caused solely by the Village's gross negligence or willful acts or omissions.

23. **Club's Representations.** The Club represents and warrants to Village that as of the date of this Agreement and at all times during the Term:

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

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

24. **Indemnification; Liability.**

a. **General Indemnification.** The Club will indemnify the Village, its representatives, employees, and agents, against all loss, expense and liability of any kind, including attorney's fees arising out of this Agreement or out of any event or action occurring in or about the Licensed Area when the Club or the Club's agents, representatives, employees, independent contractors, patrons, or invitees are using the Licensed Area. Without limiting the foregoing, the Club will indemnify Village against liability resulting from any physical injury, including death, any discriminatory acts, or any property damage which occurs inside the Licensed Area, in the Licensed Area parking areas, or in the Licensed Area entryways.

b. **Participant Indemnification.** The Club shall require all program participants to sign an indemnification form indemnifying and holding harmless the Village of Palmetto Bay and its Council members, employees, agents or other representatives from any and all liability arising out of the participant's participation in Club activities and or use of any of the Village's facilities and/or equipment. See Exhibit D.

c. **Village Negligence.** The Club will not indemnify Village against the gross negligence or willful misconduct of Village, its employees or agents.

d. **Liability.** The Club hereby assumes all financial, administrative, and legal responsibility in connection with, related to, or arising out of its use of the Licensed Area under this Agreement. Except as otherwise set forth in this Agreement, Village shall have no liability to Club, or its employees, contractors, agents, and invitees in connection with this Agreement and Club hereby releases the Village with respect to the foregoing. Nothing in this Agreement will be construed to affect in any way the Village'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.

e. **Survival.** The provisions of this Section shall survive the termination or expiration of this Agreement.

25. **Compliance with Law.** The Club 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 Village, Club, the Licensed Area or the operations conducted at the Licensed Area ("Laws"). The Club 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 use of the Licensed Area. A violation of any such laws, ordinances, resolutions, rules, regulations or orders, as amended, or failure to obtain the necessary licenses and permits shall constitute a material breach of this Agreement, and in such event, Village shall be entitled to exercise any and all rights and remedies hereunder and at law and in equity.

26. **Non-Discrimination.** The Club, and its employees, agents, representatives, volunteers, and any other parties under the direction or control of the Club 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, facility, services, or privilege offered to or enjoyed by the general public. The Club and its employees, agents, representatives, volunteers, and any other parties under the direction or control of the Club, shall not, during the performance of this Agreement, 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. The Club, its employees, agents, volunteers, and all parties under the direction or control of the Club must take affirmative action to assure that applicants are employed, and that employees are treated during employment, without regard to their sex, age, race, color, religion, ancestry, national origin, physical handicap or sexual orientation.

27. **Drug Free Workplace Certification.** The Club hereby covenants and agrees to implement a policy consistent with applicable Laws with respect to maintaining a drug-free workplace and otherwise to provide and maintain a drug-free workplace at the Licensed Area during the Agreement Term.

28. **Non-Assignment.** The Club shall not assign this Agreement or its right to use any part of the Licensed Area or enter into any sublease or subuse agreements.

29. **Termination of Agreement.**

(a) **Termination by Village:** The occurrence of any of the following shall give the Village for cause to terminate this use agreement upon the terms and conditions also set forth below:

A. Automatic Termination:

- i. Institution of proceedings in voluntary bankruptcy or reorganization by the Club.
- ii. Institution of proceedings in involuntary bankruptcy against the Club if such proceedings continue for a period of ninety 90 days.
- iii. Failure to maintain Federal tax-exempt, not-for-profit status, if applicable.
- iv. Assignment by the Club for the benefit of creditors.
- v. Abandonment or discontinuation of operations for more than a seven (7) day period without prior written approval from the Village.
- vi. The discovery of any misstatement in the Club's documentation leading to award of this use agreement, which in the determination of the Village significantly affects the Club's qualifications to perform under the Programming Partnership use agreement.
- vii. Failure to cease any activity that may cause limitation of Village's use of the Permitted Premises or Facility.

B. Termination after seven (7) calendar days written notice by the Village either by posting on or at the Permitted Premises or by certified or registered mail to any known address of the Club set forth hereof for

doing any of the following:

i. Non-payment of any sum or sums due hereunder after the due date for such payments; provided, however, that such termination shall not be effective if the Club makes the required payment(s) during the seven (7) calendar day cure period following receipt of the written notice. Additionally, the Village may sue for payment for the unexpired term of this Programming Partnership use agreement.

ii. Notice of any condition posing a threat to health or safety of the public or patrons and not remedied within the seven (7) calendar day cure period from receipt of written notice, including but not limited to: the drinking of alcohol or consumption of narcotics in the park; and/or conduct of gambling in the park.

C. Termination after 14 days from receipt by the Club of written notice having either been posted on or at the Permitted Premises or by certified or registered mail to the address of the Club set forth herein:

i. Non-performance of any covenant of this Programming Partnership use agreement other than non-payment and others listed in A and B above, and failure of the Club to remedy such breach within the fourteen (14) calendar day period from receipt of the written notice.

ii. A final determination in a court of law in favor of the Village in litigation instituted by the Club against the Village or brought by the Village against the Club. In the event that the Village terminates this use agreement by operation of any of the provisions as provided above, then in addition to other rights and remedies available to the Village under the law, the Village may accelerate the payments under this License, whereupon the entire balance owed by the Club under this use agreement shall become immediately due and payable without further notice or demand.

D. Revenue Control and Audit Defaults: The inability or failure of the Club to provide the Village, upon its request, with financial reports, performance reports or reports of activities pursuant to the requirements of this use agreement. Failure to comply with a request, upon seven (7) calendar days' written notice to the Club shall be considered a material default.

E. Habitual Default: Notwithstanding the foregoing, in the event that the Club has repetitively defaulted, four (4) times within a twelve (12) month period, in the performance of or breached any of the terms, covenants and conditions required herein to be kept and performed by the Club, regardless of whether the Club has cured each individual condition of breach or default as provided above, the Club may be determined by the Director of the Department to be an "habitual violator". At the time that such determination is made, the Department shall issue to the Club a written notice advising of such determination and citing the circumstances therefore. Such notice shall also advise the Club that there shall be no further notice or grace periods to correct any subsequent breaches or defaults and that any subsequent breach (es) or default(s), of whatever nature, taken with all previous breaches and defaults, shall be considered cumulative and, collectively, shall constitute a condition of non-curable default and grounds for immediate termination of this use agreement. In the event of any such subsequent breach or default, Village may terminate this Programming Partnership use agreement upon the giving of written Notice of Termination to the Club, such termination to be effective upon the tenth (10) day following the date of receipt thereof or sooner if so required by the Village and all payments due hereunder shall be payable to said date, and the Club shall have no further rights hereunder. Immediately upon receipt of said notice of termination, the Club shall discontinue its operations at the Facility and Premises, and proceed to remove all its personal property in accordance with the provisions of this agreement.

(b) **Termination by the Club:** the Club shall have the right upon thirty (30) calendar days from receipt of written notice to the Village by certified or registered mail to the address set forth in Paragraph 61 hereof to terminate this use agreement at any time after the occurrence of one or more of the following events:

A. A breach by the Village of any of the terms, covenants or conditions contained in this use agreement and the failure of the Village to remedy such breach for a period of 30 calendar days after receipt of written

notice sent by registered or certified mail, return receipt requested, from the Club, of the existence of such breach.

B. The assumption by the United States Government or any authorized agency thereof, or any other governmental agency, of the operation, control, or use of the Facility, or any substantial part, or parts, thereof in such a manner as to substantially restrict the Club's operations for a period of ninety (90) calendar days or more.

(c) **Termination of use agreement:**

In the event that any municipal, county, state, or federal body of competent jurisdiction passes any law, ordinance, or regulation in any way restricting or prohibiting the use of the Facility or Permitted Premises for the purposes of this use agreement, this use agreement will be null and void and unenforceable by any party to this use agreement. In the event that a referendum vote of the electorate of Village in any way restricts or prohibits the use of the Facility or Permitted Premises for the purposes of this use agreement, this use agreement will be null and void and unenforceable by any party to this use agreement. If this use agreement is deemed null and void by the Village, by function of this Paragraph, the Village will not be liable to the Club for damages arising there from.

30. **Default.** Except as otherwise provided herein, either party shall provide written notice of any failure to perform or comply with the terms and conditions contained herein to be performed (the "Default Notice"). If the other party fails to cure said default within ten (10) days with respect to monetary obligations, twenty (20) days with respect to non-monetary obligations, of receipt of the Default Notice, the defaulted party shall have the right to terminate this Agreement, without penalty, cost or obligation, upon five (5) days additional written notice. Upon the occurrence of a default by the Club which remains uncured after the applicable cure period, the Village may immediately or at any time thereafter refuse the Club and anyone claiming by, through or under the Club, access to the Licensed Area, and Village may remove the Club and anyone claiming by, through or under the Club, from the Licensed Area. In the event of default by Club, Village shall be entitled to retain all payments paid it by the Club. In addition to the foregoing, upon the event of a default which remains uncured after the applicable cure period, the Village shall, in addition to its rights and remedies hereunder, be entitled to avail itself of all other rights and remedies available at law or in equity.

31. **Inventory.** The Club may use the following equipment belonging to the Village located at the Licensed Area in connection with the Recreational Uses hereunder: _____ (collectively, the "Inventory"). The Club shall not remove the Inventory or any portion thereof from the Licensed Area, without receiving prior written permission from the Village. The Club shall be responsible for the maintenance and upkeep of any and all Inventory, and shall be responsible for repair or replacement of the Inventory, if damaged by Club's use, upon expiration or earlier termination of this Agreement,

The nature, size, shape and installation of Club's signs within the use area or in, on or adjacent to the use area must be approved in writing by the Village. Said signage must also be approved by all governmental authorities having jurisdiction and must conform to Article 6 of the Miami-Dade Home Rule Charter. Any requests for changes must be made in writing to the Village Manager and approved prior to installation. All signs shall be removed by the Club at termination of this use agreement and any damage or unsightly condition caused to the premises because of or due to said signs shall be satisfactorily corrected or repaired by the Club.

No voice or sound amplification or Public Address equipment will be used unless approved in writing by the Village. No motorized or mechanical equipment may be used in connection with this permit unless approved in writing by the Village.

32. **Notices.** All notices, demands, requests and other communications required under this Agreement shall be given in writing and may be delivered by hand, or certified mail, return receipt requested, or by a nationally recognized overnight delivery service such as Federal Express, shall be deemed to have been given upon receipt or also be sent by facsimile provided that such is followed up by notice pursuant to one (1) of the three (3) methods in

____ Village
____ Club

the preceding sentence. 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 Village: Ron E. Williams
Village Manager
Village of Palmetto Bay
8950 SW 152 Street
Palmetto Bay, Florida 33157
Telephone: (305) 259-1234
Facsimile: (305) 259-1290

With a copy to: Eve A. Boutsis, Office of
Village Attorney,
Nagin, Gallop & Figueredo, P.A.
18001 Old Cutler Road, Suite 556
Palmetto Bay, Florida 33157
Telephone: (305) 854-5353
Facsimile: (305) 854-5351

If to Club:

With copy to:

33. **Attorney's 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.

34. **Headings.** The headings of the sections of this Agreement are for convenience only and shall not affect or be deemed to affect the meaning of any provisions hereof.

35. **Entire Agreement.** This Agreement, including the attached exhibits, contains all of the terms, covenants, conditions and agreements between the Village and the Club relating in any manner to the use and occupancy of the Licensed Area by Club. 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 Village and Club.

36. **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 the Village or the Club of any condition shall be deemed to have been made unless expressed in writing and signed by the waiving party.

37. **No Joint Ventures.** Nothing herein contained shall be deemed in any way to construe the Village or the Club 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, the Club shall be considered an independent contractor.

38. **No Recording of Agreement.** Neither this Agreement nor any memorandum of same shall be recorded in the Public Records of Miami-Dade County.

39. **Americans with Disability Act (The "ADA").** The Village's parks are ADA compliant. The Club shall be responsible for accommodating all ADA-related requests **arising out** of Club's use of the Licensed Area (special accommodations due to Club's use/activities at the park).

40. **Casualty.** In the event that any casualty causes damage to the Licensed Area rendering the Licensed Area unusable by the Club, the Club shall pay all Club Fees due to the Village up to the date of the casualty, and thereafter this Agreement shall automatically terminate, and neither the Village nor the Club shall have any further rights or obligations hereunder.

41. **Condemnation.** In the event there is a taking of all or any part of the Licensed Area resulting from an exercise of the power of eminent domain, whether by a condemnation proceeding, inverse condemnation or otherwise, or if a transfer, conveyance, or sale of all or any part of the Licensed Area is made in lieu of an exercise of the power of eminent domain (all of the foregoing being hereafter referred to as a "Condemnation") prior to or during the Agreement Term, either party may terminate this agreement by providing the other party with thirty (30) days prior written notice

42. **Force Majeure.** In the event that either party is prevented from fulfilling its material obligations hereunder or said obligations are materially interfered with by reason of events of war, fire, flood, earthquake, explosion, or other natural disaster, industrial action or any other reason beyond the reasonable control of that party, such obligation shall be delayed until it can be performed. The party claiming excusable delay must promptly notify the other party of such delay. If the delay continues for more than forty-five (45) days, the other party may terminate this Agreement by providing fifteen (15) days prior written notice of termination to the delaying party.

43. **Hurricane/Emergency Procedures.** The Club shall be required to adhere to the Village's emergency operation procedures if a declaration of a "State of Emergency" by the Governor of the State of Florida or by the Village. At a minimum, these procedures shall require preparations and notifications as outlined in the Village's Hurricane Preparedness Manual. The Club shall be required to contact the proper authorities (Palmetto Bay Police Department, Miami-Dade Fire Rescue, etc.) in the event of an emergency arising during the Club's use of the Licensed Area.

44. **No Third Party Beneficiaries.** Neither the Club nor the Village intends to directly or indirectly 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.

45. **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.

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

47. **Regulatory Approval.** The Village 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 Licensed Area or any operations at the Licensed Area. Nothing herein shall be deemed to create an affirmative duty of Village 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 ordinances, rules and regulations, federal laws and regulations and state laws and regulations.

48. **Authority to Execute.** The Village and the Club each warrant and represent to the other that the individuals signing this Agreement on behalf of the Village and the Club, respectively, have full power and authority to execute and deliver the Agreement and to bind the respective parties hereto.

49. **No Lease.** The Club acknowledges and agrees that its use of the Licensed Area does not in any way constitute or establish any form of tenancy under Florida law. The Club hereby waives any claims that its use of the Licensed Area constitutes a tenancy under Florida law.

50. **Governing Laws/Venue.** This Agreement shall be governed by the laws of the State of Florida and the venue of any action arising under this Agreement shall be in Miami-Dade County, Florida.

SIGNATURE PAGE TO FOLLOW

IN WITNESS THEREOF, the parties hereto have made and executed this Agreement on the date above:

VILLAGE OF PALMETTO BAY

BY: _____
Ron E. Williams,
Village Manager

ATTEST:

Meighan Rader,
Village Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY FOR THE
SOLE USE OF THE VILLAGE OF PALMETTO BAY:

Eve A. Boutsis, Office of Village Attorney
Nagin Gallop & Figueredo, P.A.

CLUB

BY: _____

ATTEST:

Witness for Club
Name of Witness: _____

EXHIBIT "A" TO LICENSE AGREEMENT

I. VILLAGE PARK PROPERTY:

a. Name of Park:

b. Address: _____

II. LICENSED AREA TO BE USED BY THE CLUB:

See below.

III. SCHEDULED USE PERIODS BY THE CLUB:

Game Dates and Times

IV. **AUTHORIZED RECREATIONAL USES:**

The Village agrees to grant the Club a non-exclusive license to use the portion of the specific area of the Property, which area is designated on Exhibit A, during the scheduled use periods (defined below). The Club's recreational use shall consist of _____.

The Village shall provide _____. The Village shall set up any needed barriers, but Club shall be responsible for crowd control and control of the barrier system.