



EXHIBIT "E"

Youth Sports Organization Park Use Agreement

Cutler Ridge Riptides Parent Booster Club, Inc.

AGREEMENT

This Agreement (the "Agreement") is made and entered into this ____ day of _____ 2020, by and between the Town of Cutler Bay, a Florida Municipal Corporation (the "Town") whose address is 10720 Caribbean Boulevard, Suite 105, Cutler Bay, Florida 33189 and Cutler Ridge Riptides Parent Booster Club, Inc. a Florida Non-Profit Corporation (the "Club") whose address is. 10421 SW 199th St Cutler Bay, FL 33157.

RECITALS

WHEREAS, the Town is the owner of that certain property located in Miami-Dade County, Florida, described on **Exhibit "A"** attached hereto and made a part hereof; (the "Property");

WHEREAS, the Club desires to use a certain portion of the Property for the recreational programs, activities and events described on **Exhibit "A"** ("Recreational Uses") for the benefit of the Town's residents;

WHEREAS, the Town 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. **Recitals.** The above recitals are true and correct.
2. **Licensed Area.** The Town agrees to grant the Club a non-exclusive license to use the portion of the Property shown on Exhibit "A" ("Licensed Area") during Scheduled Use Periods (defined below).
3. **Term.** The term of this Agreement shall be for a period of three (3) years commencing on _____ ("Commencement Date") and ending on _____ ("Term"). Subject to the Club's compliance with the Agreement terms, this Agreement may be renewed for another three (3) year term, subject to (a) the Club's submitting a request for renewal no later than (180) 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 shown on 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 Town and other persons or entities designated by the Town 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 thirty (30) days prior to: (a) the commencement date of this Agreement and (b) the beginning of each one-year anniversary thereafter, the Club shall submit a proposed schedule setting forth the dates and times it would like to reserve the Licensed Area for the Recreational Uses ("Scheduled Use Periods") for the Town's review and approval. The

Club shall provide the Town with at least thirty (30) 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 annually.

Notwithstanding the provisions herein, the parties acknowledge and agree that the Town 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 Town 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 Town shall use every effort to provide the Club with alternative locations and/or dates and times for use by the Club. The Town and the Club shall cooperate to insure that appropriate recovery time is included in the proposed schedule. The Town reserves the right, in its sole discretion, to cancel or postpone Club Recreational Uses when such cancellation or postponement would be in the best interest of the Town, its Property, or its residents.

6. **License Fee.** The Club shall pay the Town an annual license fee of Three Thousand Five Hundred Dollars (\$3,500) which shall be due and payable in advance on the first day of each year ("Annual License Fee") and the remaining portion of the total fee when the season has reached its half-way point . The Annual License Fee shall offset a portion of the Town'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 Annual License Fee shall be reviewed annually by the Parties each year to determine whether the Annual License fee is commensurate with the additional services being provided.
7. **Participant Fees.** Within ten (10) days after the Commencement Date of this Agreement and 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 Town 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.
8. **Concession Operations.** The Club is authorized to operate temporary concessions in conjunction with its Recreational Uses on a non-exclusive basis ("Concessions"), subject to the following conditions:
 - (a) All Concession Operations shall be temporary only and may only be operated simultaneously with a Recreational Use, if so desired;
 - (b) No Alcoholic Beverages may be sold or consumed on the Town Property and/or the Licensed Area unless prior written approval is granted by the Town;
 - (c) All Food and Beverages to be sold by the Club shall be at prices comparable with other similar concessions in the area;
 - (d) All Food and Beverages shall be sold and/or distributed in safe containers. No items may be sold or consumed in glass containers;
 - (e) The Club must furnish all equipment, materials and/or supplies required to operate its concessions at its sole expense;
 - (f) The Club shall remove all Concession equipment, materials and supplies at the conclusion of each applicable Recreational Use and shall return the Licensed Area to its original condition, including but not limited to removing any litter and debris.

The sale of the Concessions operated by the Club shall not compete with any sales or concessions of other users of the Property. The granting of these concession rights to the Club is to help the Club raise funds for the payment to the Town for use of the Licensed Area. Due to such reasons, all proceeds generated from the Concessions shall be retained by the Club. The failure of the Club to retain all proceeds generated from Concessions shall constitute a material breach of this Agreement. The Club shall be responsible for any and all costs associated with the maintenance and operation of the Concessions. The Club must comply with all applicable Laws (defined below) governing operations of the Concessions, and shall provide the Town with any certifications of compliance. The cost of any inspections, repairs and/or modifications necessary for the Club's use of the Concessions shall be solely borne by the Club. In the event the Club chooses not to operate the Concessions, the Town shall be allowed to contract with other organizations to provide the Concessions. Additionally, the Club shall police the use areas (concessions, walkways, bleachers, dugouts, etc) during and/or at the end of daily play, and properly bag and dispose of waste accordingly.

9. **Utilities: Office Services.** All existing water and electrical services within the Licensed Area shall be made available for the Club's use. The Club shall be responsible for payment of all costs and fees for telephone lines, if any, installed by the Club in the Clubhouse. Also, upon termination or expiration of this Agreement, the Club shall be responsible for timely terminating the telephone service and removing the telephone lines.
10. **Governmental Approvals: Permits and Licenses.** Prior to commencing any Recreational Uses and/or related activities, including but not limited to temporary Concessions, 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 Town permits or licenses are required, the Town 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 Town's Property, including the Licensed Area, during its use of the Licensed Area. If any such liens or encumbrances are filed against the Town 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 Town. 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 Town of Cutler Bay off-duty police officers.
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. The Club shall be maintained 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 Town on the anniversary date of the Agreement.
 - b. The Club shall not use the Licensed Area to conduct any profit making activities. Notwithstanding this provision, the Club is authorized to operate Concessions on the terms

provided in this Agreement.

- 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 Town 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 Town, prior to the beginning of the league season, a schedule of registration dates, try-out dates, games and subsequent make-up games for the entire season.
- e. At least fifteen (15) days prior to the Commencement Date, the Club shall provide the Town 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 Town continuously apprised of any changes to this list.
- f. The Club shall comply with the Town Volunteer Program Policy, Ordinance No. 06-33, the "Shannon Melendi Act of Miami-Dade County" 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 thirty days of the completion of each one-year anniversary of the Agreement, the Club shall submit to the Town an annual financial statement accounting for all revenues and expenses associated with the Club's authorized recreational uses as listed in Exhibit "A".

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 Town, which consent may be withheld within the Town's sole discretion. Any alteration, improvement or addition to the Licensed Area approved by Town 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 Town with any and all documentation requested, including but not limited to plans and specifications, for the approval process. Unless otherwise agreed in writing by Town, 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 Town desires to retain any alteration, Town shall notify Club in writing of its intent within thirty (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 Town as an additional insured and loss payee, and must provide that the policy cannot be materially altered or canceled without thirty (30) days written notice to Town. Evidence of the Club's liability insurance reasonably satisfactory to Town must be provided to Town 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 Town no later than sixty (60) days prior to the date of their expiration.

16. **Maintenance.**

a. **Routine Maintenance** - Except as otherwise provided in this Agreement, Town 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** – 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 Town, 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, the Town 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. The Town may also exercise its rights to terminate this Agreement.

17. **Taxes.**

a. **Ad Valorem Taxes.** Town 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 Town of Cutler Bay, which amounts shall be the responsibility of the Town. 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 Town prior to delinquency.

18. **Rules And Regulations.** The Town 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 Town will entertain timely objections to such rules and regulations, however, upon consideration and/or evaluation of such objections, the Town'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. The Club agrees that it shall cooperate with the Town 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 Town.

20. **Town's Right To Inspect/Supervise.** Town 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 Town's expense, provided that Town's representatives shall not interfere with Club's activities at the Licensed Area. The purpose of such supervision 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 Town 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, subject to Club's obligation to perform all maintenance, repairs and replacements prior to the Expiration Date.

22. **Loss and Damage.** The Town 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 Town's gross negligence or willful acts or omissions.

23. **Club's Representations.** The Club represents and warrants to Town 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 Town, 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 Town 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 Town of Cutler 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 Town's facilities and/or equipment.
- c. **Town Negligence.** The Club will not indemnify Town against the gross negligence or willful misconduct of Town, 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, Town shall have no liability to Club, or its employees, contractors, agents, and invitees in connection with this Agreement and Club hereby releases the Town with respect to the foregoing. Nothing in this Agreement will be construed to affect in any way the Town's rights, privileges, and immunities, including the monetary limitations of liability set forth therein, under the doctrine of "sovereign immunity" and as set forth in Section 768.28 of the Florida Statutes.
- 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 Town, 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, Town 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.** Either party may, at its sole discretion terminate this Agreement for any reason whatsoever, or no reason at all, upon thirty (30) days prior written notice to the other party (the "Termination Date"). In the event of such termination, all fees and/or costs due and owing to the Town shall be prorated up to the date of termination.

30. **Default.** Except as otherwise provided herein, Town shall provide the Club with written notice of any failure to perform or comply with the terms and conditions contained herein to be performed by the Club (the "Default Notice"). If the Club 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 Town shall have the right to terminate this Agreement, without penalty, cost or obligation, upon five (5) days additional written notice to the Club. Upon the occurrence of a default by the Club which remains uncured after the applicable cure period, the Town 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 Town may remove the Club and anyone claiming by, through or under the Club, from the Licensed Area. In the event of default by Club, Town 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, Town 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 Town located at the Licensed Area in connection with the Recreational Uses hereunder: goals, benches, and designated fields (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 Town. 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 upon expiration or earlier termination of this Agreement

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 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 Town:

Rafael G. Casals
Town Manager
Town of Cutler Bay
10720 Caribbean Boulevard
Suite 105

Cutler Bay, Florida 33189
Telephone: (305) 234-4262
Facsimile: (305) 234-4251

With a copy to: Mitchell A. Bierman, Esq.
Town Attorney
Weiss Serota Helfman Cole &
Bierman, P.L.
2525 Ponce De Leon Boulevard, Suite 700
Coral Gables, Florida 33134
Telephone: (305) 854-0800
Facsimile: (305) 854-2323

If to Club: Cutler Ridge Riptides Parent Booster Club, Inc.
ATTN: President Caroll Vaughan
10421 SW 199th Street
Cutler Bay, FL 33157
Telephone: (305) 496-6016

33. **Attorney's Fees.** In the event of any litigation arising out of this Agreement, the Town 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 Town 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 Town 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 Town 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 Town 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 Club shall be responsible for accommodating all ADA-related requests arising out of Club's use of the Licensed Area.
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 Town up to the date of the casualty, and thereafter this Agreement shall automatically terminate, and neither the Town 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 Town's emergency operation procedures if a declaration of a "State of Emergency" by the Governor of the State of Florida or by the Town. At a minimum, these procedures shall require preparations and notifications as outlined in the Town's Hurricane Preparedness Manual.
- The Club shall be required to contact the proper authorities (Cutler 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 Town 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 Town cannot, and hereby specifically does not, waive or relinquish any of its regulatory approval or enforcement rights and obligations as it may relate to regulations of general applicability which may govern the Licensed Area or any operations at the Licensed Area. Nothing herein shall be deemed to create an affirmative duty of Town to abrogate its sovereign right to exercise its police

powers and governmental powers by approving or disapproving or taking any other action in accordance with its ordinances, rules and regulations, federal laws and regulations and state laws and regulations.

48. **Authority to Execute.** The Town and the Club each warrant and represent to the other that the individuals signing this Agreement on behalf of the Town 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 Law.** This Contract shall be construed in accordance with and governed by the laws of the State of Florida. Venue for any litigation arising out of this Contract shall be proper and exclusively in Miami-Dade County, Florida.

51. **Public Records Law.**

51.1 Contractor agrees to keep and maintain public records in Contractor's possession or control in connection with Contractor's performance under this Agreement. Contractor additionally agrees to comply specifically with the provisions of Section 119.0701, Florida Statutes. Contractor shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law, for the duration of the Agreement, and following completion of the Agreement until the records are transferred to the Town.

51.2 Upon request from the Town's custodian of public records, Contractor shall provide the Town with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided by Chapter 119, Florida Statutes, or as otherwise provided by law.

51.3 Unless otherwise provided by law, any and all records, including but not limited to reports, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of the Town.

51.4 Upon completion of this Agreement or in the event of termination by either party, any and all public records relating to the Agreement in the possession of the Contractor shall be delivered by the Contractor to the Town Manager, at no cost to the Town, within seven (7) days. All such records stored electronically by Contractor shall be delivered to the Town in a format that is compatible with the Town's information technology systems. Once the public records have been delivered upon completion or termination of this Agreement, the Contractor shall destroy any and all duplicate public records that are exempt or confidential and exempt from public records disclosure requirements.

51.5 Any compensation due to Contractor shall be withheld until all records are received as provided herein.

51.6 Contractor's failure or refusal to comply with the provisions of this section shall result in the immediate termination of this Agreement by the Town.

SIGNATURE PAGE TO FOLLOW

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

TOWN OF CUTLER BAY

BY: _____
RAFAEL G. CASALS
Town Manager

ATTEST:

DEBRA E. EASTMAN, MMC
Town Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY FOR THE
SOLE USE OF THE TOWN OF CUTLER BAY:

WEISS SEROTA HELFMAN COLE &
BIERMAN, P.L.
Town Attorney

CUTLER RIDGE RIPTIDES PARENT BOOSTER CLUB, INC.

BY: _____
CARROLL VAUGHAN
President

State of Florida Notary Public

The foregoing signature was acknowledged before me this _____ day of _____,
20____ by _____, who is personally known to me ____ or has produced
_____ as identification.

Seal:

Notary Public
Signature

My Commission Expires

EXHIBIT "A" TO LICENSE AGREEMENT

I. TOWN PARK PROPERTY:

a. Name: Cutler Ridge Pool

b. Address: 10100 SW 200 ST Cutler Bay FL, 33189

II. LICENSED AREA TO BE USED BY THE CLUB:

Description: _____

Pool Area – the pool, pool deck and pool restrooms.

III. SCHEDULED USE PERIODS BY THE CLUB:

Park Facility

Dates and Times

Pool, pool deck, pool restrooms

Year Round Mon-Fri 5:00PM-6:30PM

:

All dates and times subject to scheduling requirements of section 5 & 13.

IV. AUTHORIZED RECREATIONAL USES:

Description: Recreational youth swimming and water polo activities including meetings, registration, try-outs/player evaluations, practices and swim meets



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

7/23/2020

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement.

Table with 2 main columns: PRODUCER (RPS Bollinger) and CONTACT NAME (Sports Service). Includes details for INSURED (USA Water Polo Inc) and a list of INSURER(S) AFFORDING COVERAGE (Scottsdale Indemnity Company, Scottsdale Insurance Company, Hartford Accident & Indemnity).

COVERAGES CERTIFICATE NUMBER: 406432598 REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES.

Main table with columns: INSR LTR, TYPE OF INSURANCE, ADDL INSD, SUBR WVD, POLICY NUMBER, POLICY EFF, POLICY EXP, LIMITS. Rows include Commercial General Liability, Automobile Liability, Umbrella Liab, Excess Liab, Workers Compensation and Employers' Liability, and Accident Medical.

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Proof of Insurance. This certificate is issued on behalf of club: Miami Riptides Water Polo

See Attached...

CERTIFICATE HOLDER

CANCELLATION

Miami Riptides Water Polo
10421 S W 199Th St
Miami FL 33157

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

[Signature]

AGENCY CUSTOMER ID: USAWA-1

LOC #: _____



ADDITIONAL REMARKS SCHEDULE

AGENCY RPS Bollinger		NAMED INSURED USA Water Polo Inc and its Member Clubs and Zones 6 Morgan, Suite 150 Irvine CA 92618	
POLICY NUMBER		EFFECTIVE DATE:	
CARRIER	NAIC CODE		

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,
FORM NUMBER: 25 FORM TITLE: CERTIFICATE OF LIABILITY INSURANCE

Primary Pool Info: Gulliver Preparatory
6575 North Kendal Drive Miami, FL 33156

Alt. Pool 1 Info: Cutler Ridge Park and Pool
10100 Sw 200Th St Miami, FL 33157

Alt. Pool 2 Info: University Of Miami
1306 Stanford Dr. Coral Gables, FL 33146

Alt. Pool 3 Info: Gulliver Preparatory
6575 North Kendal Drive Miami, FL 33156

Alt. Pool 4 Info: Miami Springs Aquatic Center
1401 Westword Dr Miami Springs, FL 33166

Group Code: WP1564

IMPORTANT NOTICE:

- 1. The insurance policy that you have purchased is being issued by an insurer that is not licensed by the State of California. These companies are called “nonadmitted” or “surplus line” insurers.**
- 2. The insurer is not subject to the financial solvency regulation and enforcement that apply to California licensed insurers.**
- 3. The insurer does not participate in any of the insurance guarantee funds created by California law. Therefore, these funds will not pay your claims or protect your assets if the insurer becomes insolvent and is unable to make payments as promised.**
- 4. The insurer should be licensed either as a foreign insurer in another state in the United States or as a non-United States (alien) insurer. You should ask questions of your insurance agent, broker, or “surplus line” broker or contact the California Department of Insurance at the toll-free number 1-800-927-4357 or internet website www.insurance.ca.gov. Ask whether or not the insurer is licensed as a foreign or non-United States (alien) insurer and for additional information about the insurer. You may also visit the NAIC’s internet website at www.naic.org. The NAIC—the National Association of Insurance Commissioners—is the regulatory support organization created and governed by the chief insurance regulators in the United States.**
- 5. Foreign insurers should be licensed by a state in the United States and you may contact that state’s department of insurance to obtain more information about that insurer. You can find a link to each state from this NAIC internet website: https://naic.org/state_web_map.htm.**
- 6. For non-United States (alien) insurers, the insurer should be licensed by a country outside of the United States and should be on**

the NAIC's International Insurers Department (IID) listing of approved nonadmitted non-United States insurers. Ask your agent, broker, or "surplus line" broker to obtain more information about that insurer.

7. California maintains a "List of Approved Surplus Line Insurers (LASLI)." Ask your agent or broker if the insurer is on that list, or view that list at the internet website of the California Department of Insurance: www.insurance.ca.gov/01-consumers/120-company/07-lasli/lasli.cfm.

8. If you, as the applicant, required that the insurance policy you have purchased be effective immediately, either because existing coverage was going to lapse within two business days or because you were required to have coverage within two business days, and you did not receive this disclosure form and a request for your signature until after coverage became effective, you have the right to cancel this policy within five days of receiving this disclosure. If you cancel coverage, the premium will be prorated and any broker's fee charged for this insurance will be returned to you.