

MEMORANDUM

TO: MAYOR AND CITY COMMISSION
FROM: CITY ATTORNEY'S OFFICE
DATE: April 17, 2017
RE: **Use Agreement with the Polk Museum of Art for the Annual Mayfaire by-the-Lake Event**

Attached hereto for your consideration is a proposed Use Agreement with the Polk Museum of Art for the Mayfaire by the Lake annual event scheduled for May 12, 2017 through May 14, 2017.

The Agreement allows for the Polk Museum to have exclusive use and control of the property located generally around Lake Morton, including all rights of ways, the lakeshore, sidewalks and other public property, for the term of 9:00 a.m. on Friday, May 12, 2017 through 6:00 p.m on Sunday, May 14, 2017. The Museum shall pay the City a fee for the use of the premises intended as reimbursement for the support services provided.

Polk Museum of Art is required to maintain general liability insurance and indemnify, hold harmless and defend the City from any and all claims that may arise. A Parks and Recreation Director has also been appointed as authorized representative to enter the premises during the event to perform inspections deemed necessary. Other provisions require the Museum to maintain the premises during the term of the Agreement and repair any damage to the premises that occurs.

It is recommended that the appropriate City Officials be authorized to execute this Agreement.

PCD/cs

attachment

USE AGREEMENT

THIS USE AGREEMENT, made and entered into this _____ day of _____, 2017, by and between the CITY OF LAKELAND, FLORIDA, a Florida municipal corporation (hereinafter the “City”), and POLK MUSEUM OF ART, a Florida not-for-profit corporation (hereinafter “Museum”), whose address is 800 E Palmetto Street, Lakeland, Florida 33801-5529.

WITNESSETH

WHEREAS, the Museum is actively engaged in the promotion of the cultural arts in Lakeland and Polk County, and

WHEREAS, the Museum sponsors and conducts an annual art festival known as MIDFLORIDA Mayfaire by the Lake (“Mayfaire”) which is conducted on the shores of Lake Morton, and

WHEREAS, the Museum, in its conduct of the Mayfaire event, requires the use of public streets and other public property for display sites for artists as well as concessions and other event related activities, and

WHEREAS, to facilitate and conduct the Mayfaire event, the Museum requires the ability to control through security measures to be determined by them, certain access and use of public property, and

WHEREAS, the City recognizes the public benefit of the Mayfaire event in promoting the cultural arts and recreational activities for the Lakeland community.

NOW THEREFORE, the City and Museum, for and in consideration of the mutual promises, agreements, and covenants hereinafter contained, do hereby mutually covenant, agree, and promise as follows:

SECTION 1. The City does hereby grant to Museum the exclusive use and control of property (hereinafter the "Premises") located generally at Lake Morton, Lakeland, Florida, including all rights of ways, sidewalks, or other public property, as more particularly depicted on **Exhibit "A"**, attached hereto and made a part hereof, except as provided herein. The Museum shall employ such security measures as are reasonably required for a safe and orderly event for its invitees and the public at large.

SECTION 2. The premises shall be used for those activities associated with Mayfaire and generally in accordance with the Terms and Conditions attached as **Exhibit "B"** or such other activities as may be authorized by the City. All such activities are for the sole use and benefit of the Museum, its employees, volunteers, agents, and invitees.

SECTION 3. The term of this Agreement commences at 9:00 a.m. on Friday, May 12, 2017, and expires at 6:00 p.m. on Sunday, May 14, 2017.

SECTION 4. It is mutually understood and agreed between the parties hereto that the Premises is comprised of and is contiguous to public property consisting of streets and sidewalks, lakefront property or other publicly owned lands and that the premises will be maintained, prepared, and utilized for Mayfaire and is under the exclusive control of the Museum for the term of this Agreement.

SECTION 5. Museum shall pay to the City as the fee for the use of the Premises pursuant to this Agreement an amount to be agreed upon by the Parties.

SECTION 6.

(a) Museum shall indemnify, save harmless and defend the City, its officers, employees, or agents from all claims, suits, and actions of any kind brought against it for, or on account of, any injuries or damages received or sustained by any person or property by, from, or on account of any acts or omissions of Museum, its officers, employees, agents, servants, or invitees occurring on the Premises.

(b) Museum shall indemnify, save harmless, and defend the City, its officers, employees, or agents against any claim or liability arising from, or based upon, the violation of any federal, state, county or city law, ordinance, or regulation by Museum, its officers, employees, agents, servants or invitees.

(c) During the term of this Agreement, Museum shall obtain and keep in effect comprehensive general liability insurance and property damage insurance with public liability coverage of not less than \$1,000,000 per occurrence, combined single-limit for bodily injury liability, and property damage liability, premises and/or operations coverage, and broad form contractual coverage. The City shall be named as an additional insured on such insurance policy. Such insurance coverage shall be obtained from an insurer authorized to do such business in the State of Florida. Such coverage may not be canceled, terminated, or changed without thirty (30) days written notice thereof from the insurer to the City. An appropriate certificate of insurance evidencing such coverage issued by insurer shall be provided to the City and kept current during the term of this Agreement.

(d) Insurance requirements will be mutually reviewed and modified as history, experience, industry practice and prudent risk management indicate to be necessary to protect the City, Museum and the public interest.

(e) Failure of Museum to maintain the insurance coverage required by this section may result in immediate termination of this agreement upon written notification to that effect from the City.

SECTION 7. The City has appointed a Parks and Recreation Director and hereby reserves the right for that Director, or his duly authorized representative, to enter the Premises at any time during the term of this Agreement to perform inspections deemed necessary. Museum shall promptly correct any condition constituting a hazard to life or property as determined by the Director.

SECTION 8. The Museum shall surrender the Premises in the same condition it was upon the commencement of this Agreement, reasonable wear and tear excepted. Museum, at its expense, will repair any damage to the Premises that occurs as a result of its activities on the Premises.

SECTION 9. Museum shall, at its expense, during its actual use of the Premises or any portion thereof, maintain the Premises in a neat and orderly condition at all times and shall be responsible for the neatness and orderliness of the grounds, including the removal of trash and garbage following the Mayfaire event.

SECTION 10. Museum, for itself, its successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that: (1) no person on the grounds of race, color, sex or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the Premises; (2) in the construction of any improvements on, over, or under the Premises

and the furnishing of services thereon, no person shall be excluded from participation in, denied the benefits of, or otherwise be subjected to any discrimination on the grounds of race, color, sex or national origin; and (3) Museum shall otherwise comply with all applicable federal, state and local laws and regulations.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year first above written.

POLK MUSEUM OF ART

ATTEST: _____

By: _____

CITY OF LAKELAND, FLORIDA

ATTEST: _____
Kelly S. Koos, City Clerk

By: _____
R. Howard Wiggs, Mayor

APPROVED AS TO FORM AND CORRECTNESS:

Timothy J. McCausland, City Attorney

EXHIBIT "A"

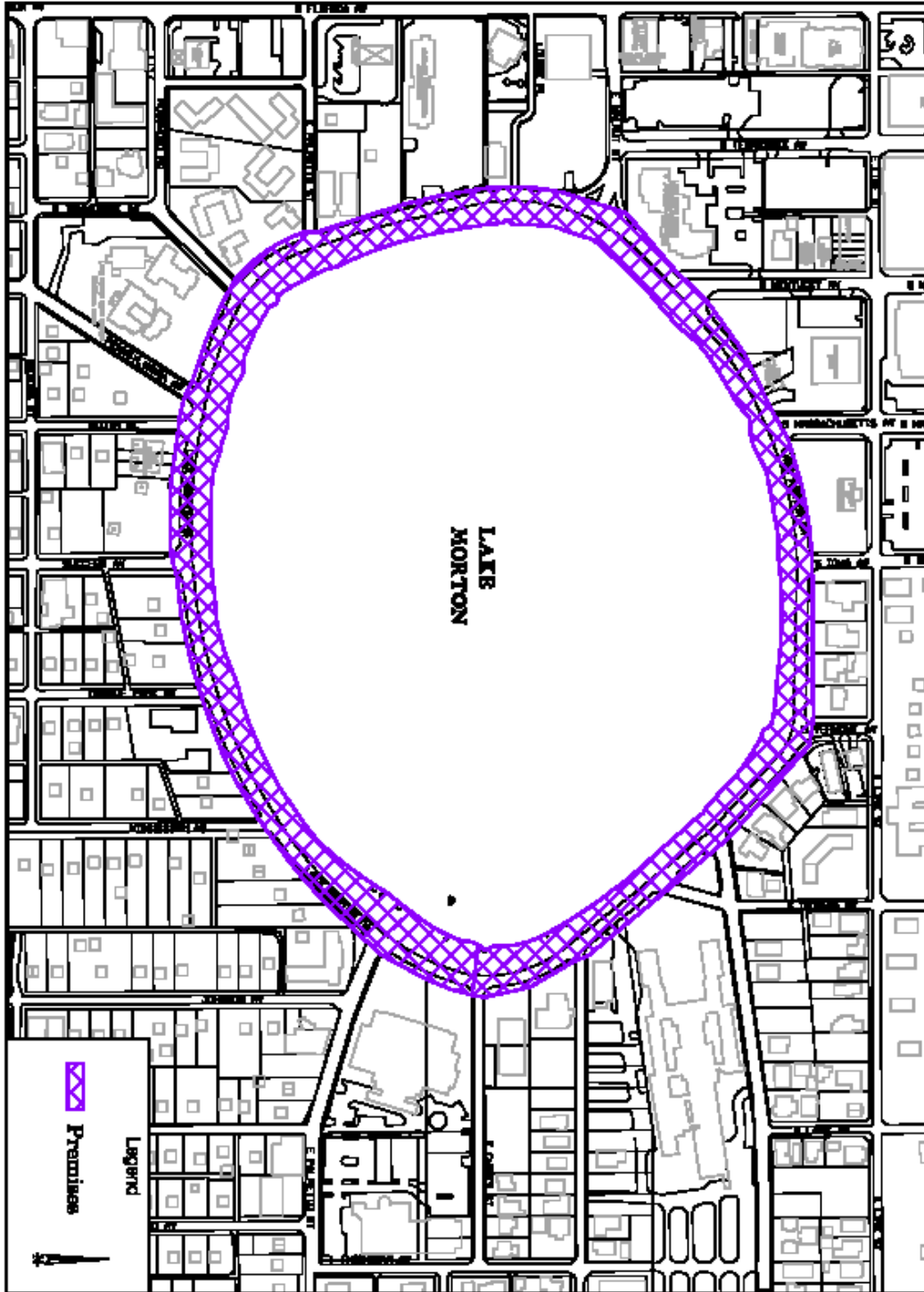


EXHIBIT "B"

TERMS & CONDITIONS

1. Full authority during this weekend period to control and determine use of these public areas for Mayfaire by-the-Lake Art Festival and Mayfaire Saturday Night.
2. Authority to require any individual, organization, private business or non-profit corporation to obtain the Polk Museum of Art's permission in advance for set-up, soliciting, marketing or other non-museum related activity in the parks or on the streets, public areas and sidewalks noted previously.
3. Closure of Lake Morton Drive from Massachusetts Avenue to Pennsylvania Avenue from 9:00 am, Friday, May 12, 2017 until 6:00 pm, Sunday, May 14, 2017. Access for residents to be provided.
4. Closure of East Palmetto Street from Lake Morton Drive to the entrance to the Library/Museum parking lot from 9:00 am, Friday, May 12, 2017 until 6:00 pm, Sunday, May 14, 2017. Access for residents to be provided.
5. Closure of Chiles Street from Lake Morton Drive to the entrance to the Library/Museum parking lot from 9:00 am, Friday, May 12, 2017 until 6:00 pm, Sunday, May 14, 2017. Access for residents to be provided to and from Michigan Avenue.
6. One-way traffic on College Avenue traveling southbound toward FSC from 9:00 am, Saturday, May 13, 2017 until 6:00 pm, Sunday, May 14, 2017.
7. Permission to sell alcoholic beverages in Lake Morton Park on Saturday, May 13, 2017, from 9:00 am until 4:00 pm and on Sunday, May 14, 2017, from 12:00 pm until 4:00 pm and in Lake Mirror Park and adjacent buildings as provided for in the rental agreements, attached hereto as Attachment "A".
8. Traffic control along the race course during the 5-K Mayfaire Classic road race on Saturday evening, May 13, 2017, beginning at approximately 6:30 pm.
9. Permission to set off fireworks at Lake Mirror Park for Mayfaire Saturday Night at approximately 9:00 pm, subject to the direction of the Parks and Recreation Department. The barge will be rented in advance.
10. The City of Lakeland's Police Department, Parks and Recreation, Traffic Control and Lakeland Electric to provide support services for MIDFLORIDA Mayfaire by-the-Lake, Mayfaire Saturday Night and the 5-K Mayfaire Classic.



PUBLIC FACILITIES RENTAL AGREEMENT

Agreement No: 16928

THIS AGREEMENT made on 10/28/2015 12:55:13PM between the City of Lakeland, Florida, doing business as and hereinafter referred to as the CITY OF LAKE LAND on behalf of its PARKS AND RECREATION DEPARTMENT, and POLK MUSEUM OF ART hereafter referred to as User and represented by LESLIE NORMAN , whose address is 800 E PALMETTO ST, LAKE LAND, FL, 33801, whose telephone number is (863) 688-7743 ext 237. The term "Agreement" shall be deemed to include any Special Terms and Conditions attached to this agreement; provided they have been initialed by both the PARKS AND RECREATION DEPARTMENT and the user.

WITNESSETH:

The parties hereby agree as follows:

1. For and in consideration of the sum hereinafter specified in paragraph 2, the PARKS AND RECREATION DEPARTMENT grants to the User the use of the following facilities:

Type of Event: Mayfaire Saturday Night 2017

Location	# of Guests	Date and Time				Fee Amount
SHOWMOBILE	2	5/13/17	8:00 am	to	5/14/17 12:00 am	\$1,399.00
MAGNOLIA BUILDING	230	5/13/17	12:00 pm	to	5/14/17 12:00 am	\$1,136.00
Fee Type	Quantity	Rate	Hours	Tax Rate	Sales Tax	Total
BASE RATE	1	\$800.00	12	0.00	\$0.00	\$800.00
HOURLY RATE	1	\$28.00	12	0.00	\$0.00	\$336.00
REFUNDABLE FEE	1	\$500.00	12	0.00	\$0.00	\$0.00
BARGE	2	5/13/17	12:00 pm	to	5/13/17 10:00 pm	\$550.00
LAKE MIRROR AMPHITHEATRE/PROM	6,000	5/13/17	4:00 pm	to	5/14/17 1:00 am	\$4,024.00
Fee Type	Quantity	Rate	Hours	Tax Rate	Sales Tax	Total
BASE RATE	1	\$909.00	9	0.00	\$0.00	\$909.00
HOURLY RATE	12	\$28.00	9	0.00	\$0.00	\$3,024.00
REFUNDABLE FEE	1	\$500.00	9	0.00	\$0.00	\$0.00
BASE SURCHARGE	1	\$91.00	9	0.00	\$0.00	\$91.00
TOTAL DUE						\$7,109.00

Only if MAILING a payment, MAIL to:

City of Lakeland / Parks & Rec Admin
228 S Massachusetts Avenue, Lakeland FL, 33801-5086

User:

City of Lakeland, Parks and Recreation Department:

By: _____

By: _____

User is entitled to enter the Facilities only during the reserved times listed above. User designates LESLIE NORMAN as the person to contact at (863) 688-7743 ext 237. User will contact the Parks and Recreation Department at (863) 834-2280 at least one week in advance of your event with details for set-up. User is State Tax Exempt.

Strictly Enforced (Refundable Fee)

User will forfeit refundable deposit if all guests and items are not removed from building by contracted time, damage to facility occurs, and any other term and/or conditions of the contract are violated. _____ initial

2. The User agrees to pay the CITY OF LAKELAND as rent for the facilities the amount of \$5,109.00 (Rent: \$5,109.00 + Sales Tax: \$0.00), plus a Refundable Fee (if applicable) in the amount of \$2,000.00. After execution of this agreement by User, all copies must be returned to LAKE MIRROR COMPLEX RESERVATION OFFICE with a **payment of \$5,109.00** to be paid on or before **05/01/2017**. In addition, a **Refundable Fee of \$2,000.00** is due on or before **05/01/2017**.

User's failure to pay any of the amounts set forth above in full by the date when due shall result in a cancellation of this agreement.

3. For this contract , Comprehensive General Liability coverage is required with the City of Lakeland in the amount of 1,000,000.00.

4. Alcoholic beverages may be sold: Yes Consumed: Yes

5. This contract was revised on 10/5/2016.

Only if MAILING a payment, MAIL to:

City of Lakeland / Parks & Rec Admin
228 S Massachusetts Avenue, Lakeland FL, 33801-5086

User:

City of Lakeland, Parks and Recreation Department:

By: _____

By: _____

ADDITIONAL TERMS AND CONDITIONS

CHRISTMAS DECORATIONS for Lake Mirror Park and Facilities may be put up no earlier than November 1st and could remain up until February 1st.

The number of parks employees and times needed for the event will be determined by the Parks staff member during walk thru, you may reach him at 834.2396. The contract may be adjusted at that time.

-If amplification equipment is used, sound should not travel past the sidewalk boundaries of the park.

-If you feel your turnout will require the use of a dumpster, please contact Solid Waste at 834-8773.

City must preapprove size and placement of tents, temporary fencing and inflatable rides which must be installed above ground anchoring devices (NO stakes/poles). Lessee must obtain necessary tent permits.

Lessee will provide a REFUNDABLE DAMAGE / Rule Enforcement Fee for each location rented.

LESSEE should contact STEVE PLATT OR MIKE FUTCH Parks Div., at (863) 834-2396 at least two weeks prior to the event, to make arrangements for set up, including the use of electricity, and clean up after the event.

The number of hours AND parks employees needed for event will be determined with LESSEE and PARKS SUPERVISOR during the "walk thru" of the park. The contract will be adjusted at that time and AND ADDITIONAL CHARGES WILL BE ADDED to contract. LIMITED PARKING - Since there are 4 city facilities for rent in Lake Mirror Complex and 3 sections of Lake Mirror Park, it isn't UNCOMMON that all of them are booked on weekends.

THERE WILL BE A \$25.00 CANCELLATION FEE PER VENUE UPON RECEIVING 60 DAYS NOTICE PRIOR TO EVENT. LESS THAN 60 DAYS NOTICE WE WILL RETAIN \$250.00. RENTALS NOT EXCEEDING \$250.00 WE WILL RETAIN 50%. RESCHEDULING OF AN EVENT WITHIN 30 DAYS PRIOR TO THE EVENT WILL CONSTITUTE A CANCELLATION AND A FEE OF \$250.

NO GREASE OR DEEP FRYING ALLOWED ON GRASS OR SIDEWALKS.

IT IS NOT UNCOMMON FOR SEASONAL ART DISPLAYS TO BE PRESENT IN ALL CITY PARKS. DISPLAYS WILL NOT BE REMOVED FOR PRIVATE EVENTS.

LESSEE MUST PROVIDE CARDBOARD TO PROTECT GROUNDS FROM OIL CONTAMINATION REGARDLESS OF CONDITION OF VEHICLE

MISREPRESENTATION OF EVENT IS GROUNDS FOR TERMINATING EVENT WITHOUT REFUND _____

STRICTLY ENFORCED: FAILURE TO COMPLY WITH RENTAL TIMES ON LEASE AGREEMENT WILL RESULT IN FORFEITURE OF REFUNDABLE RULE ENFORCEMENT FEE. NO EXCEPTIONS

Security, whether mandated or hired voluntarily, must be approved through the Parks & Recreation Rental office. Events required to have security by policy must hire City of Lakeland Police Officers.

NO KEGS are allowed in the MAGNOLIA. IF KEGS ARE USED, the damage deposit WILL BE FORFITED.

Cooking facilities are not available. Warming up items is allowed. Ice and freezers are not provided. Ice must be kept in own ice chest.

DO NOT sit on tables; CHAIRS are provided for sitting. If more chairs are needed, please notify custodian on duty.

LIMITED PARKING - Since there are 4 city facilities for rent in Lake Mirror Complex and 3 sections of Lake Mirror Park, it isn't UNCOMMON that all of them are booked on weekends.

NO FOG MACHINES PERMITTED.

SMOKING IS PROHIBITED in all city facilities by action of the Lakeland City Commission. SMOKING IN CITY FACILITIES VOIDS THE REFUND OF LESSEE'S DAMAGE / Rule Enforcement Fee. * * *

Sounds, amplified or not, must be kept within the confines of the facility or the park section.

ALL DECORATIONS MUST BE FREE STANDING.

LESSEE is required to cover all tables used for food either dining or serving, with paper or cloth by order of State of Florida Health Department. USE OF STAPLES as an anchor for your table cover is prohibited.

---LESSEE WILL CONTACT 834-2280 AT LEAST TWO WEEKS PRIOR TO EVENT WITH SETUP REQUIREMENTS.

THE AGREEMENT END TIME IS THE TIME EVERYONE SHOULD BE OUT OF THE BUILDING. ALL PERSONAL BELONGINGS SHOULD BE OUT AT SAID TIME.

Use of fireworks MUST be coordinated through the office and will constitute additional rental fees.

USER'S SIGNATURE ON THIS AGREEMENT AFFIRMS THAT HE/SHE HAS READ, UNDERSTANDS, AND WILL COMPLY WITH THE TERMS AND CONDITIONS SET FORTH ABOVE AS WELL AS ANY TERMS AND CONDITIONS ATTACHED HERETO. FAILURE TO COMPLY MAY RESULT IN IMMEDIATE TERMINATION OF YOUR EVENT WITH NO REFUND.

Only if MAILING a payment, MAIL to:

City of Lakeland / Parks & Rec Admin
228 S Massachusetts Avenue, Lakeland FL, 33801-5086

User:

City of Lakeland, Parks and Recreation Department:

By: _____

By: _____

TERMS AND CONDITIONS

The parties agree that the following terms and conditions shall apply:

1. In the event of a default by User in the performance of any of the terms and conditions of this Agreement (other than damage in or to the Facilities rented hereunder), the CITY OF LAKE LAND on behalf of its PARKS AND RECREATION DEPARTMENT may terminate this Agreement. Any deposit paid to CITY OF LAKE LAND on behalf of its PARKS AND RECREATION DEPARTMENT shall be retained by CITY OF LAKE LAND on behalf of its PARKS AND RECREATION DEPARTMENT and shall be considered as payment of mutually agreed to liquidated damages for the default, and not as a penalty. In the event the default by User consists of damage in or to the Facilities rented hereunder, the CITY OF LAKE LAND on behalf of its PARKS AND RECREATION DEPARTMENT may immediately terminate User's event (if ongoing), retain the damage deposit and if the amount of damages exceeds the deposit, User shall be fully liable for the excess amount which shall be payable upon demand by the CITY OF LAKE LAND on behalf of its PARKS AND RECREATION DEPARTMENT. All sums due and owing to CITY OF LAKE LAND on behalf of its PARKS AND RECREATION DEPARTMENT under this Agreement, will

2. To the fullest extent permitted by law, User shall defend, indemnify and hold harmless the City of Lakeland, its officers, directors, agents, representatives, employees, attorneys and independent contractors from and against (i) any and all claims (including negligence) of any persons (including, without limitation, User's employees, invitees, customers, attendees, suppliers and shippers) arising out of or resulting from User's Event, the use or occupancy of the Facilities by User, the conduct of User's business or any activity, work or thing done, permitted or suffered in or about the Facilities or elsewhere; (ii) any breach or default in the performance of any obligation on User's part to be performed under the terms of this Agreement; (iii) User's violation of any law, rule, regulation, statute or ordinance, including without limitation, any copyright trademark, intellectual property, health and safety violations; and (iv) any and all costs, attorney's fees, court costs, expenses and liabilities actually incurred by any such person in the defense of any such claim or any action or proceeding brought thereon, including costs of appeal, settlement or defense. If any action or proceeding is brought against the City of Lakeland or any such other person by reason of any such claim, User, upon notice from the City of Lakeland, shall defend the same at User's sole expense using counsel reasonably satisfactory to the City of Lakeland, and the City of Lakeland shall cooperate with User in such defense. User, as a material part of the consideration of the City of Lakeland, hereby assumes all risk of damage to property of User or injury to persons in or about the Facilities arising from any cause indemnifiable by User hereunder and User hereby waives all claims in respect thereof against the City of Lakeland.

3. Miscellaneous: A. User may not assign this Agreement, or any rights or any monies due or to become due hereunder without the prior, written consent of CITY OF LAKE LAND on behalf of its PARKS AND RECREATION DEPARTMENT. B. Any delay or failure of either party in the performance of its required obligations hereunder shall be excused if and to the extent caused by acts of God: Fire; Flood; windstorm; explosion; riot; war; sabotage; strikes; court injunction or order; federal and/or state law or regulation; order by any regulatory agency; or cause or causes beyond the reasonable control of the party affected; provided that prompt notice of such delay is given by such party to the other and each of the parties hereunto shall be diligent in attempting to remove such cause or causes. C. This Agreement is made and shall be interpreted, construed, governed, and enforced in accordance with the laws of the State of Florida. Venue shall be Polk County, Florida, or the United States District Court in and for the Middle District of Florida, Tampa, Division. E. In the event any portion or part of this Agreement is deemed invalid, against public policy, void, or otherwise unenforceable by a court of law, the validity and enforceability of the remaining parts thereof shall otherwise be fully enforceable. F. Waiver by either party of any terms, condition, provision, or breach of this Agreement shall not be considered a waiver of that term, condition, provision, or breach in the future. G. No waiver, consent, or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of each party hereto. H. Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the City of Lakeland and User. I. This Agreement, including the fully executed Addendums or other documents attached hereto, constitute the entire agreement between CITY OF LAKE LAND on behalf of its PARKS AND RECREATION DEPARTMENT and the User with respect to the matters set forth herein and all previous representations relative thereto, either written or oral, are hereby annulled and superseded. J. User shall be responsible for obtaining all licenses, permits, and authorizations necessary for User's Event, including, without limitation, such licensing agreements from performing rights licensing organizations for any music User anticipates using during its Event. K. The City of Lakeland's aggregate liability hereunder shall not exceed the amount of any rental fee due hereunder. The City of Lakeland shall not be responsible for any indirect, special, or consequential damages, whether arising, by tort, contract, or any other theory or liability. L. The User hereby acknowledges having read CITY OF LAKE LAND on behalf of its PARKS AND RECREATION DEPARTMENT's Guidelines, Rules and Regulations (the "Guidelines"), which have previously been provided to User and agrees to adhere thereto. User's failure to follow the Guidelines shall be a

Only if MAILING a payment, MAIL to:

City of Lakeland / Parks & Rec Admin
228 S Massachusetts Avenue, Lakeland FL, 33801-5086

User:

City of Lakeland, Parks and Recreation Department:

By: _____

By: _____