

## **Exhibit "1"**

### **USE AGREEMENT**

This Use Agreement ("Agreement"), is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2023 by and between SEMINOLE TRIBE OF FLORIDA d/b/a Seminole Indian Casino-Coconut Creek, an organized Indian Tribe as defined in Section 16 of the Indian Reorganization Act of 1934, 25 U.S.C. 476 transferred to 25 U.S.C. § 5123 hereinafter called "Seminole", whose address is 5550 NW 40<sup>th</sup> Street, Coconut Creek, Florida 33073 and THE CITY OF COCONUT CREEK, a Florida municipality hereinafter called the "City", whose address is 4800 W. Copans Road, Coconut Creek, Florida 33063.

WHEREAS, the City is the owner of certain real property located in Broward County, Florida, commonly known as Tract E of the Commerce Center of Coconut Creek ("Tract E"), and as more particularly described on the attached Exhibit "A" which is made a part hereof; and

WHEREAS, Seminole desires to use Tract E as more particularly described in Exhibit "A" attached hereto and made a part hereof (the "Property") from time to time for the purpose of overflow parking and/or special events sponsored by Seminole; and

WHEREAS, the City has agreed to permit Seminole to use the Property from time to time upon the conditions contained herein.

NOW THEREFORE, in consideration of the covenants and agreements hereinafter contained and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties agree to the use of the Property by Seminole subject to the terms and conditions contained herein as follows:

1. Property: Tract E of the Commerce Center of Coconut Creek owned by the City of Coconut Creek ("Tract E") and as more particularly described on the attached Exhibit A ("Property").

2. Term: The term of this Agreement shall be for five years commencing on the date this Agreement is approved by the City Commission ("Effective Date") and ending five (5) years thereafter ("Termination Date"). Either party may terminate this Agreement by providing the other party thirty (30) calendar days' advance written notice in writing of such intent to terminate the Agreement.

3. Use and Purposes:

A. The City agrees to allow Seminole to use the Property for temporary overflow parking ("Spring Parking") without notice to the City during weekends from December 31 through April 30, except for the last Saturday in February wherein the City shall utilize the Property for temporary overflow parking for its Annual Butterfly Festival Event each year and one additional time with the City giving no less than thirty (30) calendar days' advance written notice to Seminole of its intent to utilize Property for special events. The term

weekends as used herein shall mean from 12:00 pm noon on Fridays until 5:00 am on Mondays; provided however that if Monday is a Federal holiday, then the weekend shall continue until 11:00 pm on any such holiday Monday.

B. The City further agrees to allow Seminole to use the Property a maximum of four (4) additional times ("Use Periods"), in addition to the permitted Spring Parking, during the term of this Agreement for either temporary overflow parking or special events sponsored by Seminole.

C. Utilization of the Property by Seminole for overflow parking during a Use Period shall be limited to maximum periods of five (5) consecutive days. Seminole shall give the City no less than five (5) calendar days advance written notice of its intent to exercise its right to use the Property for temporary overflow parking by utilizing one of the four (4) Use Periods. Notice of intent to utilize one of the Use Periods shall constitute use whether or not Seminole actually uses the Property for the stated purpose.

D. Special events sponsored by Seminole on the Property shall be for a maximum duration of five (5) consecutive days and use for any such special event shall constitute one of the four (4) Use Periods. Seminole shall give the City no less than thirty (30) calendar days advance written notice of its intent to exercise its right to use the Property for special events by utilizing one of the additional Use Periods. Notwithstanding City's permission for Seminole to utilize the Property for special events as set forth herein, no special event may occur on the Property without prior issuance of any necessary permits, licenses and the like required by City for any special event occurring within the City in accordance with City Code. Permission to utilize the Property does not constitute a waiver of any other special event requirement of the City. Notice of intent to utilize one of the Use Periods shall constitute use whether or not Seminole actually uses the Property for the stated purpose.

E. The City agrees that it shall not utilize the Property for any purpose during the Spring Parking period which would restrict, impede or conflict with Seminole's use of the Property except for an emergency restriction or termination pursuant to the terms of paragraph 6 hereof.

F. The City retains the right to general use of the Property at any time subject to the restrictions in this paragraph 3 E above, provided, however, that the City shall have the right of exclusive use of the Property for periods not in excess of fifteen (15) calendar days during the months of April through January, inclusive ("City's Exclusive Use"), during the term of this Agreement and any renewal thereof. The City shall give Seminole no less than thirty (30) calendar days advance written notice of its intention to utilize the Property for City's Exclusive Use. In the event of a conflict between City's intended exclusive use of the Property and a properly noticed Seminole Use Period, the party giving notice first shall have priority and their use of the Property shall be exclusive, subject to the provisions of paragraph 6 hereof.

4. Payment: In consideration of the City's agreement to permit Seminole to use the Property as set forth herein, Seminole agrees that it shall maintain, at its sole cost and expense, all improvements located on Tract E including but not limited to lighting, landscaping and irrigation, shall pay for all utility service on Tract E, and shall maintain the Property free and clear of any trash or debris, subject only to the following:

A. In the event the City has leased or subsequent to the date of this Agreement leases, the approximately one (1) acre area of Tract E shown on the sketch attached as Exhibit "B" ("Lease Area") to a third party, the parties acknowledge that the obligation to keep the Lease Area free from trash and debris shall be the responsibility of the City, and not Seminole during the period of any such lease.

B. In the event the City has leased or subsequent to the date of this Agreement leases, the Lease Area to a third party, then the City shall be responsible for paying to Seminole the Leased Area's pro-rata share of the normal operating expenses incurred by Seminole for lighting, irrigation, landscape maintenance, and utilities ("Utility Fees") during any such lease term. Seminole shall submit quarterly invoices to the City for its pro-rata share of the Utility Fees which invoice shall include supporting documentation evidencing the entire cost and the City's share of same.

C. If the Lease Area is not leased to a third party by the City, then Seminole shall be responsible for maintaining all of Tract E free and clear of any trash or debris and for paying all of the Utility Fees for all of Tract E.

5. Termination by City: The City shall have the right upon thirty (30) calendar days advance written notice to Seminole, to terminate this Agreement at any time during the term of this Agreement or any renewal thereof; provided however, that if Seminole has, prior to receipt of such notice of termination, notified the City that it is utilizing one of its Use Periods for a special event and the date selected for such special event is in excess of ninety (90) calendar days from the date the City gives notice of termination, then in that event the date of termination shall be extended for up to an additional sixty (60) calendar days in order to permit Seminole to utilize the Property for such special event.

6. Emergency Termination or restriction on use. Notwithstanding anything to the contrary contained in this Agreement, the City retains the right to terminate this Agreement or restrict Seminole's rights hereunder on Twenty-Four (24) hour notice in the event Tract E or any part thereof is necessary for a bona fide City purpose relating to emergency management. In the event of a conflict between the notice requirements contained elsewhere in this Agreement and the provisions of this paragraph, the terms of this paragraph shall control.

7. Permits/Licenses: Seminole shall secure and maintain in force such applicable permits and licenses as are required by applicable law and the City in connection with the intended use of the Property.

8. Insurance: Seminole during the term of this Agreement and any renewals, shall keep in force, with an insurance company licensed to do business in the State of Florida and acceptable to the City, comprehensive general liability and property damage insurance with coverage in the amount of no less than One Million Dollars (\$1,000,000.00) per occurrence. Such policy will: - (i) include the City as named or additional insured; (ii) cover the Property as described in Exhibit A; (iii) be considered primary insurance; (iv) provide that it may not be cancelled or modified without at least thirty (30) calendar days advance written notice from the insurer to each party insured thereunder, including additional insured.

9. Notice: All notices or other communications to be given under this Agreement by either party to the other shall be in writing and deemed properly delivered by mailing via certified mail, return receipt requested, with postage prepaid to the parties at the following addresses. The address to which notices may be given by either party may be changed by written notice given in accordance with the notice provisions of this section. At the date of this Agreement, the addresses of the parties are as set forth below:

For the City:

City Manager  
City of Coconut Creek  
4800 West Copans Road  
Coconut Creek, Florida 33063

With a copy to:

City Attorney  
City of Coconut Creek  
4800 West Copans Road  
Coconut Creek, Florida 33063

For Seminole:

James F. Allen, CEO  
Seminole Tribe of Florida  
Seminole Gaming  
5701 Stirling Rd.  
Davie, FL 33314

With a copy to:

Jim Shore, Esquire  
General Counsel  
Seminole Tribe of Florida  
6300 Stirling Road  
Hollywood, Florida 33314

10. Assignment: No portion of this Agreement may be assigned.

11. Severability: If any term, condition, or provision of this Agreement is held by a court of competent jurisdiction to be unenforceable, invalid, or void, the remaining provisions will nevertheless continue in full force and effect and shall not be affected, impaired or invalidated in any way.

12. Governing Law/Venue: The terms and conditions of this Agreement shall be governed by the applicable laws of the State of Florida with venue lying exclusively in Broward County.

13. Attorney's Fees: If either party commences any legal action or proceeding to enforce, interpret or construe this Agreement, the prevailing party shall be entitled to recover from the other party reasonable attorneys' fees and court costs, as determined by the court. "Legal action or proceeding" includes a declaratory relief action and any bankruptcy or insolvency proceedings.

14. Alterations or Variance: No alterations to this Agreement or variance from the provisions hereof shall be valid unless made in writing and executed by the parties hereto.

15. Entire Agreement/Amendment: This Agreement and any exhibits attached hereto constitute the entire agreement between the parties and supersede any prior or contemporaneous understanding or agreement with respect to the services contemplated, and may be amended only by a written amendment executed by both parties to the Agreement.

SEMINOLE TRIBE OF FLORIDA  
d/b/a Seminole Indian Casino-Coconut  
Creek

By: \_\_\_\_\_  
James F. Allen, CEO

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

ATTEST: \_\_\_\_\_

CITY OF COCONUT CREEK, FLORIDA

By: \_\_\_\_\_  
Karen M. Brooks, City Manager

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

ATTEST:

Approved as to Legal Sufficiency  
and Form:

By: \_\_\_\_\_  
Joseph J. Kavanagh, City Clerk

By: \_\_\_\_\_  
Terrill C. Pyburn, City Attorney