

RESOLUTION NO. 2020-235

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF COCONUT CREEK, FLORIDA, AUTHORIZING THE CITY MANAGER, OR DESIGNEE, TO EXECUTE A USE AGREEMENT BETWEEN THE CITY AND SEMINOLE PROPERTIES II, INC. TO PROVIDE FOR TEMPORARY AND NON-EXCLUSIVE OVERFLOW PARKING USE OF CITY PROPERTY; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Coconut Creek ("City") is the owner of the property legally described as all of Tract E, Commerce Center of Coconut Creek, according to the Plat thereof, as recorded in Plat Book 131, Page 30, of the Public Records of Broward County, Florida. Said lands in the City of Coconut Creek, Broward County, Florida containing 10.028 acres, more or less; and

WHEREAS, Seminole Properties II, Inc. ("Seminole") desires to use a portion of Tract E more particularly described in Exhibit "A," attached to the Use Agreement (the "Property") from time to time for the purpose of overflow parking and/or special events sponsored by Seminole and/or the Seminole Tribe of Florida, except for the last Saturday in February each year wherein the City shall utilize the property for temporary overflow parking for its Annual Butterfly Festival Event and one additional time so long as the City gives Seminole thirty (30) days' advanced notice; and

WHEREAS, Seminole has an existing Use Agreement with the City dated December 14, 2017 ("Original Agreement"), and has extended said Use Agreement by Amendment No. 1 to dated December 13, 2018 ("Amendment No. 1"), and Amendment No. 2 dated December 12, 2019 ("Amendment No. 2"), that will terminate on December 12, 2020; and

WHEREAS, Seminole has requested permission from City for Seminole to continue to use the City Property for temporary and non-exclusive overflow parking purposes as needed; and

WHEREAS, 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 each year wherein the City shall utilize the property for temporary overflow parking for its Annual Butterfly Festival Event and one additional time with the City giving no less than thirty (30) days' advance 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; and

WHEREAS, 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 and/or the Seminole Tribe of Florida; and

WHEREAS, the City Commission authorizes the City Manager, or designee, to execute the Use Agreement, which grants to Seminole Properties II, Inc. a temporary and non-exclusive overflow parking use of the City Property for three (3) years from the date it is approved by the City Commission in exchange for Seminole maintaining all improvements located on Tract E, paying for all utility service on Tract E, and maintaining the property free of any trash or debris, upon and subject to the terms and conditions set forth therein.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF COCONUT CREEK, FLORIDA:

Section 1: That the foregoing "WHEREAS" clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this resolution.

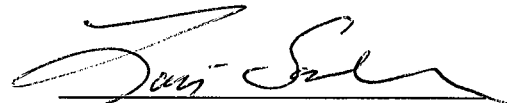
Section 2: That the City Commission has reviewed and hereby approves the agreement between the City of Coconut Creek and Seminole Properties II, Inc.

Section 3: That the City Manager, or designee, is hereby authorized to execute the agreement between the City of Coconut Creek and Seminole Properties II, Inc., attached hereto as Exhibit "1."

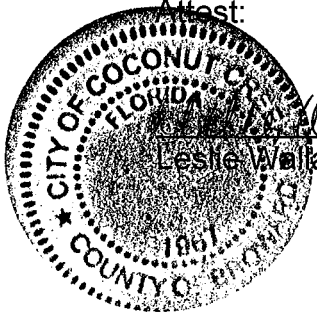
Section 4: That if any clause, section, other part, or application of this resolution is held by any court of competent jurisdiction to be unconstitutional or invalid, in part or in application, it shall not affect the validity of the remaining portion or applications of this resolution.


Section 5: That this resolution shall become effective immediately upon its adoption.

Adopted this 12 day of November, 2020.


Louis Sarbone, Mayor

Attest:




Leslie Wallace May, City Clerk

Sarbone	<u>Aye</u>
Rydell	<u>Aye</u>
Tooley	<u>Aye</u>
Belvedere	<u>Aye</u>
Welch	<u>Aye</u>

USE AGREEMENT

This Use Agreement ("Agreement"), is made and entered into this 15th day of December 2020 by and between SEMINOLE PROPERTIES II, INC., a Florida Corporation (together hereinafter called "Seminole"), whose address is 6300 Stirling Road, Hollywood, Florida 33314 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 the portion of Tract E as more particularly described in Exhibit "B" 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/or the Seminole Tribe of Florida; 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: A portion of 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 B ("Property").

2. Term: The term of this Agreement shall be for three years commencing on the date this Agreement is approved by the City Commission ("Effective Date") and ending three (3) years thereafter ("Termination Date"). Either party may terminate this Agreement by providing the other party 30-days' 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) days' advance 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 and/or the Seminole Tribe of Florida.

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) days advance 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 and/or the Seminole Tribe of Florida 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) days advance 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) 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) days advance 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 three (3) acre fenced - in area of Tract E shown on the sketch attached as Exhibit "C" ("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 in that event 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.

D. The parties agree that Seminole shall re-stripe the parking lot by no later than December 31, 2021.

5. **Termination by City:** The City shall have the right upon thirty (30) days advance 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) 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) 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 municipal 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 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) per occurrence. Such policy will: (i) include the City as named or additional insured; (ii) cover the Property as described in Exhibit B; (iii) be considered primary insurance; (iv) provide that it may not be cancelled or modified without at least thirty (30) days prior 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:

Marcellus W. Osceola, Jr., President
Seminole Properties II, Inc.
6300 Stirling Road
Hollywood, Florida 33314

With a copy to:

Jim Shore, Esquire
General Counsel
Seminole Properties II, Inc.
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 PROPERTIES II, INC

By: 

Marcellus W. Osceola, Jr., President

Date: 12-15-20

ATTEST: 

CITY OF COCONUT CREEK, FLORIDA

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

ATTEST:

Approved as to Legal Sufficiency
and Form:

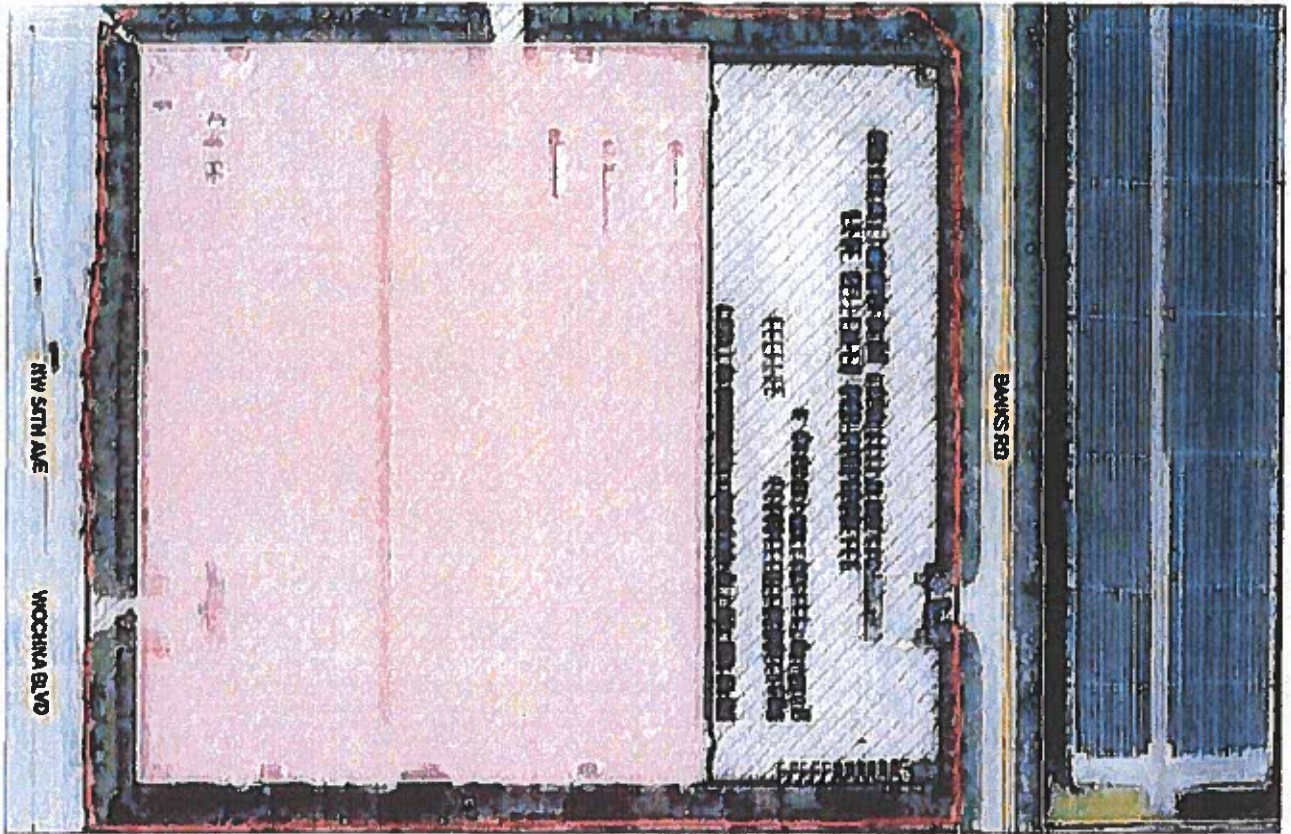
By: Leslie Wallace May
Leslie Wallace May, City Clerk

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

Exhibit "A" Tract E

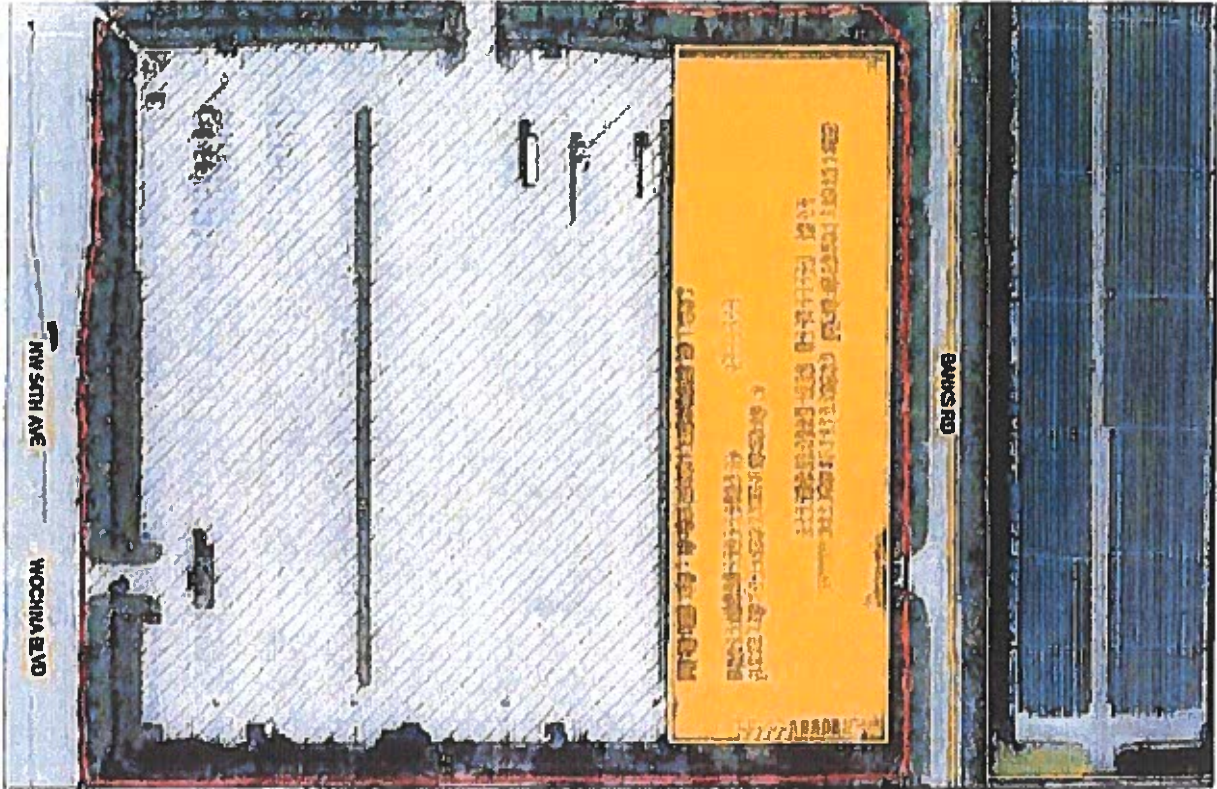
All of Tract E, Commerce Center of Coconut Creek, according to the Plat thereof as recorded in Plat Book 131, Page 30, of the Public Records of Broward County, Florida. Said lands lying in the City of Coconut Creek, Broward County Florida, containing 10.028 acres, more or less.

EXHIBIT "B"
Property (Seminole Use Area)



All of Tract E, Commerce Center of Coconut Creek, according to the Plat thereof, as recorded in Plat Book 131, Page 30, of the Public Records of Broward County, Florida, as highlighted in the sketch above, not including the approximately three acre fenced in area depicted above.

EXHIBIT "C"
Lease Area



That portion of Tract "E" Commerce Center of Coconut Creek, according to the Plat thereof, as recorded in Plat Book 131, Page 30, of the Public Records of Broward County, Florida, highlighted on the sketch depicted above, comprising approximately three acres.