

## **Park Agreement**

This Park Agreement (this “Agreement”) is made as of this \_\_\_ day of October, 2017, between the City of Coral Gables (the “City”) and Gables Estates Club, Inc. (“Gables Estates”).

### **Recitals**

WHEREAS, within the subdivision of Gables Estates there is a City-owned vacant parcel, approximately 11,000 square feet in size, on Leucadendra Drive designated as a park by the City, and

WHEREAS, Gables Estates has maintained this vacant parcel for well over 30 years, and

WHEREAS, Gables Estates has requested that the City design a park to meet the needs of its residents, cyclists, joggers, and walkers, and

WHEREAS, the City of Coral Gables has agreed to allocate up to \$175,000 towards park design and improvements, an amount consistent with other new neighborhood parks throughout the City, and

WHEREAS, Gables Estates desires additional amenities and finishes to be included in the park design and agrees to pay for these additional expenses after presentation and approval by its Board of Governors, and

WHEREAS, the construction of a park will contribute to safety and the public welfare because there are no sidewalks or open space for play with Gables Estates, and

WHEREAS, the City will propose a park design that will incorporate different areas and different types of uses.

NOW THEREFORE, in consideration of the sum of Ten Dollars and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the City and Gables Estates agree to the following:

1. The park shall be named Leucadendra Park and shall remain under the ownership of the City.
2. The City’s Public Works and Parks and Recreation Department will create a design for Leucadendra Park and present a proposal to Gables Estates.
3. Gables Estates will review the park design and advise the City after consultation with its Architectural Review Board, Beautification Committee and its Board of Governors. The City and Gables Estates will work in good faith to achieve a mutually agreeable design, but the City retains the ultimate authority to approve the park design.
4. The City will absorb the cost of the park design and will agree to a specific disbursement schedule of the City’s \$175,000 consistent with an agreed-upon funding and construction schedule

5. Gables Estates will coordinate, oversee, and pay for the implementation of the design, including the negotiation and contracting for the construction of improvements and park components. For City-funded improvements, Gables Estates will use City-approved contractors. Gables Estates reserves the right to seek bids and use other contractors for other improvements and amenities that will be funded solely by Gables Estates.
6. Gables Estates will pay for all of the park's continued maintenance, including repair and/or replacement of damaged or worn components, as well as daily and continued maintenance of the irrigation system and landscaping.
7. The City reserves the right to maintain, remove, add, or require that Gables Estates remove or maintain any improvements and park components after providing adequate notice to Gables Estates. This right shall be exercised for just cause and/or upon a determination by the City Manager that it is in the best interests of the City and its residents. In the event that removal of all or some of the Gables Estates-funded improvements take place within the first ten (10) years from installation, the Gables Estates Club reserves the right to request financial reimbursement for the then-value of the improvements removed.
8. Gables Estates agrees to pass and publish to its residents, rules that prohibit the park from being used as a site for construction staging or overflow parking for contractors and landscapers working in Gables Estates.
9. No organized or special events shall be allowed in the park except those agreed to jointly by the City of Coral Gables and the Gables Estates Board of Governors.
10. If Gables Estates violates any term of this Agreement, the City shall provide a written notice to Gables Estates stating the deficiencies that require immediate action and providing a thirty (30) day opportunity to cure, after which the City will proceed to issue a notice of termination if the deficiency has not been cured. If the deficiency is one that cannot be cured within thirty (30) days, Gables Estates must take steps to begin to cure the deficiency within the thirty (30) day period, failing which the City will proceed to issue a notice of termination. The City may terminate this Agreement for convenience by providing one hundred eighty (180) days' written notice, subject to the provisions outlined in Section 7.
11. The park shall be open to the public and its hours will be from dawn to dusk. No food or drinks shall be allowed in the park without prior approval by the City and Gables Estates. There shall be no parking provided for visitors to the park and the "No Parking" designation shall continue in full force and effect.
12. At all times, the rules and regulations governing parks, as set forth in Ordinance No. 3570, and as may be amended by the City Commission from time to time, shall apply to Leucadendra Park. Additionally, all other applicable provisions of the City Code of Coral Gables shall be in effect and enforceable.

13. The City retains all of its regulatory authority and will enforce its City Code and Zoning Code and take all action necessary to protect the public safety. The City also retains all of its proprietary authority over Leucadendra Park.
14. Gables Estates does not assume any liability whatsoever. Nothing in this Agreement is a waiver or intended to be a waiver by the City of its sovereign immunity, any other immunity, or any limits of liability established by Florida Statutes § 768.28, any other sections of the Florida Statutes, case law, or any other source of law as to Gables Estates or any third parties.
15. Gables Estates acknowledges that the Florida Doctrine on Sovereign Immunity bars all claims by Gables Estates against the City other than claims arising out of this Agreement. Specifically, Gables Estates acknowledges that it cannot and will not assert any claims against the City, unless the claim is based upon a breach by the City of this Agreement. Further, Gables Estates recognizes the City is a sovereign with regulatory authority that it exercises for the health, safety, and welfare of the public. This Agreement in no way estops or affects the City's exercise of that regulatory authority. In addition, the City retains the full extent of its sovereign immunity in relation to the exercise of its regulatory authority. Gables Estates acknowledges that it has no right and will not make claim based upon any of the following:
  - a. Claims based upon any alleged breach by the City of implied warranties or representations not specifically set forth in this Agreement, as the parties stipulate that there are no such implied warranties or representations of the City. All obligations of the City are only as set forth in this Agreement;
  - b. Claims based upon negligence or any tort arising out of this Agreement;
  - c. Claims upon alleged acts or inaction by the City, its commissioners, attorneys, administrators, consultants, agents, or any City employee;
  - d. Claims based upon an alleged waiver of any of the terms of this Agreement unless such waiver is in writing and signed by an authorized representative for the City and Gables Estates.
16. **Public Records Law, Florida Statutes Chapter 119.** Records subject to the provisions of Public Record Law, Florida Statutes Chapter 119, shall be kept and maintained in accordance with such statutes. Gables Estates acknowledges that records and books, not subject to exemption under Chapter 119, may be disclosed and/or produced to third parties by the City in accordance with requests submitted under Chapter 119 or court orders without penalty or reprisal to the City for such disclosure and/or production. Gables Estates also agrees to assert, in good faith, any relevant exemptions provided for under Chapter 119 for records in its possession on behalf of the City. Furthermore, Gables Estates agrees to comply with the provisions outlined in Section 119.0701 of the Florida Statutes, the requirements of which are incorporated by reference herein.

**IF GABLES ESTATES HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO GABLES ESTATES' DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 305-460-5210, [cityclerk@coralgables.com](mailto:cityclerk@coralgables.com), 405 Biltmore Way, First Floor, Coral Gables, FL 33134.**

IN WITNESS WHEREOF, the parties have signed this \_\_\_\_\_ day of October, 2017.

WITNESSES:

\_\_\_\_\_  
Witness Signature

GABLES ESTATES CLUB, INC., a  
Florida not-for-profit corporation

\_\_\_\_\_  
Witness Printed Name

By: \_\_\_\_\_  
Rene Guerra, President

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Witness Printed Name

STATE OF FLORIDA

COUNTY OF MIAMI-DADE

I hereby certify that on this day, personally appeared before me Rene Guerra as President of Gables Estates Club, Inc., a Florida not-for-profit corporation, who is personally known to me or has produced \_\_\_\_\_ as identification and he acknowledges that he executed this agreement freely and voluntarily for the purposes herein expressed.

SWORN TO AND SUBSCRIBED before me this \_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
Notary Public State of Florida

My Commission Expires:

City of Coral Gables

\_\_\_\_\_  
Cathy Swanson-Rivenbark, City Manager

ATTEST:

\_\_\_\_\_  
Walter J. Foeman, City Clerk

Approved as to form and legal  
sufficiency:

\_\_\_\_\_  
Craig E. Leen, City Attorney

STATE OF FLORIDA

COUNTY OF MIAMI-DADE

BEFORE ME, the undersigned authority, personally appeared Cathy Swanson-Rivenbark and Walter J. Foeman, City Manager and City Clerk, respectively, of the City of Coral Gables, who after being duly sworn, under oath, depose and say that they have read the foregoing agreement and have executed the same for the purposes herein expressed with due authority from the Commission of the City of Coral Gables.

WITNESS my hand and official seal this \_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
Notary Public State of Florida