

**TEACHING GYMNASIUM
FLORIDA ATLANTIC UNIVERSITY
Boca Raton, Florida
FACILITIES USE AGREEMENT**

THIS IS AN AGREEMENT, dated **February 18, 2005** between Florida Atlantic University, acting for and on behalf of the Florida Atlantic University Board of Trustees, (the "UNIVERSITY") and **The School Board of Palm Beach County** (the "USER"). Subject to certain terms and conditions, the UNIVERSITY is willing to make certain facilities and services available to the User, as described in the attached Facilities Application-Reservation form, which will be executed by the User at the same time as the agreement, and which is incorporated and made part of this agreement.

In consideration of the mutual promises and covenants of this Agreement, and other valuable consideration, the adequacy and receipt of which are acknowledged, the Parties agree as follows:

1. In order to ensure that the specified facilities and services are reserved for the USER's use, the USER acknowledges and agrees that this Agreement must be signed in triplicate and that all copies must then be returned to the UNIVERSITY for official signatures. Payment of all charges estimated by the UNIVERSITY must be returned thirty (30) days prior to the event date. The USER is required to submit a **non-refundable** deposit equal to ten percent (10%) of the base rental fee at the time of submission of this agreement to the UNIVERSITY. This deposit can be waived by the UNIVERSITY under certain circumstances with the approval of the Facility Manager. The USER agrees to pay all sums due to the UNIVERSITY check or money order payable to "Florida Atlantic University." Payment shall be made to the Athletic Office of the corresponding facility. Instructions provided by the UNIVERSITY and included with an advance billing invoice must be strictly followed by the USER. The UNIVERSITY will calculate final charges upon completion of the USER's event and will bill USER for additional charges or reimburse the USER for any excess payment. The USER agrees to pay to the UNIVERSITY within 30 days any sum which may be due to the UNIVERSITY for additional personnel, services, accommodations, materials, equipment or any item furnished or loaned by the UNIVERSITY to the USER. The USER agrees to pay all fees and charges incurred by the UNIVERSITY as they relate to the event including, if applicable, the cancellation fee, as defined in the Fee Schedule, if USER cancels the event authorized by this Agreement. The USER agrees to pay a reasonable attorney's fee and court costs for any amounts which may require collection by the UNIVERSITY after such amounts become past due.
2. The USER shall inform the UNIVERSITY Facility Manager at least ten (10) business days in advance of the event, in writing, of the USER's final requirements for all services, and/or equipment. If USER fails to do so, the Facility Manager shall determine the extent of services and/or equipment necessary. The USER shall promptly pay all charges for such services and equipment so furnished.
3. All ticketed events will be administered through the University Center Box Office. All Box Office fees will be assigned in accordance with the **Facility Fee Schedule and Facilities Use Agreement**. The full price of all tickets will include a fifty cent (\$.50) UNIVERSITY fee. Non-ticketed events will be charged a fifty cent (\$.50) per person per event UNIVERSITY Fee based on the estimated attendance. This fee will be part of the estimated cost of usage of the facilities and will be billed with the advance billing. For the purpose of calculating the total UNIVERSITY Fee, one calendar day or any portion of a day in which UNIVERSITY facilities are used or held for use is considered an "event."

4. The USER shall not, at any time, admit to the facilities a greater number of persons than the seating capacity of the facilities. The determination of the UNIVERSITY regarding seating capacity shall be final.
5. The USER agrees that the facilities and the keys for them shall be at all times under the charge and control of the University's Facilities Manager.
6. The USER expressly waives any and all claims for compensation or damage for any and all loss or damage sustained by any person by reason of any defect, deficiency, interruption or impairment of the air conditioning, electrical or plumbing systems or their installations or by reason of any loss, interruption or impairment of air conditioning, electric current or water supply which may occur from any cause, or for any loss or damage, including the prohibition of use of the facilities sustained by the USER or any person claiming under the USER, resulting from fire, water, wind, storm, hurricane (including any hurricane advisory or warning) or other acts of God, civil commotion, riots or labor strikes.
7. The USER agrees to comply with all laws of the United States and of the State of Florida, the rules of the UNIVERSITY, the rules and regulations of the Facility, and the ordinances of Palm Beach County and the City of Boca Raton. The USER further acknowledges receipt of and agrees to abide by all of the **FACILITY RULES AND REGULATIONS**, which are incorporated into and made a part of this Agreement by this reference. Failure to comply with any one or more of the Facility Rules may, at the discretion of the UNIVERSITY, result in the termination of this Agreement by the UNIVERSITY. If, in the opinion of the UNIVERSITY, violation of one or more of the Facility Rules may cause a public hazard or nuisance, the UNIVERSITY may demand the immediate correction of such violation or may terminate the event authorized to be conducted by this Agreement.
8. The USER agrees to take reasonable precautions to protect from damage UNIVERSITY property and all portions of the UNIVERSITY facilities permitted to be used under this Agreement. Upon conclusion of the event, USER is responsible for all necessary cleanup, repair and restoration of such property and facilities, which must be returned to the UNIVERSITY in the condition in which they existed before the event, so that they are suitable for immediate subsequent use by others. Cleanup, repair and restoration must be accomplished within twenty-four (24) hours after the date the event is concluded or a charge, not to exceed \$500.00 per day, may be imposed upon the USER by the UNIVERSITY to begin on the day after the cleanup period has expired. The imposition of the charge does not relieve USER from its obligation to promptly pay all cleanup and restoration costs resulting from the event. The parties agree that such charges shall be accepted by the UNIVERSITY as its liquidated damages, attributable to the delay in UNIVERSITY's ability to permit others to use the property and the facilities, which delay is caused by the failure of the USER to promptly clean, repair and restore the facilities. The parties agree that such charges for such delay are not otherwise ascertainable or susceptible to calculation. If the UNIVERSITY is compelled to clean the property and the facilities after the USER's event, an added charge will be included and the USER will remain liable for the costs of any cleaning, repairs or restoration required. If cleaning, repairs or restoration is not completed within the required time period, the UNIVERSITY may make or have others perform the work that is necessary. The charges for such services and materials shall be billed to the USER, which charges the USER expressly agrees to promptly pay.
9. In case the facilities or any part of them shall be destroyed or damaged by fire or any other cause, or if any other casualty or unforeseen occurrence shall render the fulfillment of this Agreement by the UNIVERSITY impossible, including, without limitation, the requisitioning of the facilities by the state of Florida or the United States Government, then this Agreement shall be terminated and the USER shall pay usage fees only up to the time of such termination at the rate specified in this Agreement and the USER waives any claim for damages or compensation if this Agreement is so terminated.

10. USER is solely responsible for insuring and protecting from theft, loss, injury or damage of any kind whatsoever, any exhibits, equipment, materials or items brought into and kept in the facilities. The UNIVERSITY assumes security responsibility only for the acts or omissions of its own agents and employees when such persons exercise exclusive control over access to and use of the facilities. The USER may, with the approval of the UNIVERSITY, temporarily leave exhibits, equipment, materials or items in the facilities, but the USER assumes full responsibility for them.

11. The UNIVERSITY reserves the right to evacuate the facilities during any event or activity in progress when it is deemed necessary for the safety of the general public. The UNIVERSITY also reserves the right to refuse admission to any person or eject from the facilities any person found to be, or reasonably suspected of, criminal wrongdoing, or any person who violates or is reasonably believed by the UNIVERSITY to have violated the general standards of behavior required by the UNIVERSITY to be observed for persons who attend events in the facilities.

12. The parties recognize their respective liability for certain tortious acts of their agents, officers, employees and invitees, and agree to be responsible respectively for all claims, liability, losses and/or causes of action that may arise from any negligent act or omission due to the acts of its agents, savants, or employees, to the extent and limits provided by law, subject to the limits provided in Section 768.28, Florida Statutes, the State of Florida's partial waiver of Sovereign Immunity; provided, however, that this provision shall not be constructed as a waiver of any right or defense that the governmental entities ban under this statute. Each party covenants to maintain sufficient professional, general liability and worker's compensation coverage, unless self-insured, regarding its respective liability, throughout the term of this Agreement.

13. The UNIVERSITY reserves the right to substitute similar facilities, services or both if the needs of the UNIVERSITY require such substitution.

14. If, in the opinion of the UNIVERSITY, the USER fails to fulfill any obligation specified in this Agreement, or the USER or the event to be conducted is not expected to meet the description provided to the UNIVERSITY by the USER, the UNIVERSITY may terminate this Agreement by giving notice to the USER.

15. User shall not assign or sublease all or any part of its obligations under this Agreement or its permission to use any portion of the facilities without the advance written consent of the UNIVERSITY, nor shall the USER permit any use of the facilities other than as specified in this Agreement.

16. This Agreement shall be considered to have been executed in the State of Florida and shall be interpreted and enforced in accordance with the laws of Florida. This Agreement shall not be effective until signed by the UNIVERSITY. In the event of litigation, venue shall be in Palm Beach County, Florida.

17. Notices. All notices required by law and by this Agreement to be given by one party to the other shall be in writing, and the same will be served as follows:

a. By certified mail, return receipt requested, to the following addresses:

UNIVERSITY Facility Manager / Gymnasium-Field House
Florida Atlantic University
777 Glades Road
Boca Raton, FL 33431-0991

USER **Thomas E. Lynch, Chairman of the Board**
The School Board of Palm Beach County, Florida
3300 Forest Hill Blvd. C-206
West Palm Beach, FL 33406

b. Notice may also be served by telegram or personal delivery to UNIVERSITY or USER at the above addresses.

18. The USER understands that the UNIVERSITY in providing the facilities does not act as the presenter or promoter of the event. The UNIVERSITY as the owner of the facility will, to the extent required by law, be responsible for insuring that the facility complies with the physical accessibility guidelines of the **Americans with Disabilities Act**. However, it shall be the USER'S sole responsibility to insure that any special assistance or other accommodations are provided for its disabled guests, invitees and employees of the event, such as the provision of interpreter, attendants and the like. Nothing in this AGREEMENT shall be deemed to affect the rights, privileges and immunities afforded the State of Florida, the Florida Atlantic University Board of Trustees, or the UNIVERSITY by law.

19. The USER agrees to have a representative present in the facility at all times governed by this instrument, and to make that representative known to the UNIVERSITY. The USER further agrees that the designated representative will be fully authorized to act on behalf of the USER in all matters related to the use of the UNIVERSITY facilities as referenced herein. The USER understands that the representative may not be an employee of the UNIVERSITY. If the USER fails to provide a representative, or to make that representative known to the UNIVERSITY, the UNIVERSITY will be fully authorized to act on behalf of the USER

ADDITIONAL TERMS AND CONDITIONS:

USER:

**The School Board of Palm Beach County
3300 Forest Hill Blvd. C-206
West Palm Beach, FL 33406**

***BY: Thomas E. Lynch**

SIGNATURE

TITLE: **Superintendent of Schools**

*The person whose signature appears above represents that he/she has full authority to bind the USER for the purpose of this Agreement

DATE: _____

BY: Arthur C. Johnson, PhD

SIGNATURE

UNIVERSITY:

Florida Atlantic University, acting for and on Behalf of the Board, a public corporation of the State of Florida

BY: Melissa Dawson

SIGNATURE

TITLE: Director of Campus Recreation

DATE: _____

BY: Azita Dashtaki

TITLE: Director, Space Utilization and Analysis

SIGNATURE

DATE: _____

"Reviewed & Approved As To
Legal Form and Sufficiency"

(Signature) 3/1/05

TEACHING GYMNASIUM RULES AND REGULATIONS

GENERAL RULES

The reservation times are clearly stated on the **Teaching Gymnasium Facilities Application/Reservation** form. If the event runs beyond the scheduled time, USER will be billed for all hours and personnel costs involved. Additional Gymnasium rental charges will apply if usage exceeds scheduled rental period.

It is the USER's responsibility to maintain order of and for all people attending the event. If, in the opinion of UNIVERSITY personnel, attendees of the event are behaving in a manner which could result in injury to themselves or others, they will be required to leave the facilities and the UNIVERSITY grounds. If the UNIVERSITY determines that an event may be reaching a point of disorder that could result in injury to the attendees or could damage the facilities, the event will be stopped. Any damage to the facility will be billed to the USER on the final bill. If the event is stopped due to disorderly conduct, the USER will be billed for the full event, since the facilities were reserved for use for the authorized USER and no other user could use them.

All pertinent information about the USER's event should be given to the Director, Teaching Gymnasium at the time the event is booked. If any late (less than 10 business days notice) changes are made to a reservation request, the Director will determine if the request can be accommodated. Any extra costs involved with meeting a USER's request will be billed to the USER and must be promptly paid.

ALCOHOLIC BEVERAGES

Beer, liquor and wine may not be consumed or sold on the premises without the written permission of the UNIVERSITY. If a USER plans to have such items, the USER must inform the Director, Teaching Gymnasium at the time of the request for the event, who will work with the USER to help secure the required permission.

CATERING

The caterer for the UNIVERSITY has a contractual right of first refusal for all catering and food service needs on UNIVERSITY's campus. If a USER plans to serve food or beverages, the USER must notify the Director, Teaching Gymnasium at the time of the request. The Director will direct the USER to the caterer. The caterer will, under certain circumstances, allow a USER to use an outside caterer. However, that usually occurs only if the caterer is unable to meet the USER's needs.

SMOKING

In accordance with the Florida Clean Indoor Air Act revised effective October 1, 1992, smoking is **NOT ALLOWED anywhere in the Teaching Gymnasium.**

ADVERTISING

Events sponsored by off-campus groups are not to be considered UNIVERSITY events. Although advertising for events sponsored by off-campus users may state that the event is taking place at FAU, it should be made clear that the event **IS NOT** sponsored by Florida Atlantic University. Additionally, all advertising **must** state the name of the sponsoring organization.

POSTERS, FLYERS, SIGNS

Posters, flyers and signs may only be placed in designated areas of the facilities. If the USER wants posters, flyers and signs to be placed in the Teaching Gymnasium, they are to be approved by the Director, Teaching Gymnasium. **Absolutely nothing is to be taped, posted or attached to painted surfaces.** Additionally, to maintain the aesthetics of the facilities, nothing is to be nailed, stapled or hooked into any part of the facilities. **The USER will be billed for repairs of all damaged property.** The University will remove any poster, flier, libretto, etc. which it deems objectionable, in its sole discretion. The decision of the Director, Teaching Gymnasium/Facilities Manager will be final in this matter.

SEATING CAPACITIES

The Director, Teaching Gymnasium has information on the seating capacities for the Gymnasium. It is a violation of applicable fire codes to exceed those limits. Gymnasium personnel will notify the USER if attendance for the event is greater than allowed for the facility selected. If asked to do so, the USER must reduce the number in attendance. If the USER is unable to reduce the number, the Director/Facilities Manager (or designee) may require the USER to stop the event.

MERCHANDISE SALES

All merchandise sales related to an event must be pre-arranged with the Director, Teaching Gymnasium at the time the reservation is booked. The USER will be required to pay a daily merchandise selling fee. All applicable sales tax are the responsibility of the USER.

RADIO/TELEVISION/RECORDING

Any recording or broadcast made of or during an event must be arranged with the Director, Teaching Gymnasium at the time the reservation is booked. Gymnasium personnel will supervise such activities to help to insure safety. Obtaining permission to record or broadcast an event or activity is the responsibility of the USER (for example, to avoid copyright infringement claims).

ACCESS TO FACILITIES

The Gymnasium staff must have access to all areas used during a USER's reservation. Staff will not necessarily enter the USER's area during a performance or other activity, but they must have free access to do so in the event of an emergency. Gymnasium personnel will, at all times, maintain possession of the keys to areas authorized for the USER's use. At no time will any keys be given to non-Gymnasium employees.

LOST AND FOUND

Any items left behind after an event will be collected as LOST items and placed in a secured Lost & Found area. Unclaimed items will be held for at least one month.

FIRE REGULATIONS

The USER shall be required to monitor all guests and patrons to be certain there is no violation of fire code regulations. No performer or artist may ask the audience to leave their seats to come to the stage. The USER is required to maintain adequate aisle space to allow people to leave in the event of an emergency. If the Gymnasium staff notices that an event is or may become in violation of a fire code regulation, staff will ask the USER to discontinue that which is not allowed. The USER must comply immediately.

Proper paths of egress must be maintained per NFPA 101. Consideration must be made for APA compliance. The decision of the University Facility Planning department is final.

USE OF LIVE ANIMALS

At no time may the USER introduce or permit any live animal as part of any performance or event or allow any live animal access to any UNIVERSITY grounds or facilities without the express written consent of the UNIVERSITY. Animals are not allowed on UNIVERSITY property with the exception of those needed to assist persons who are physically disabled or impaired.

REQUIRED FLOOR COVERING

Non-athletic events will be required to have a floor covering placed over the gymnasium floor. ONLY the blue duct tape provided by the Director, Teaching Gymnasium/Facilities Manager will be allowed on the floor covering.

GYMNASIUM FLOORING

ONLY "floor tape" approved by the Director, Teaching Gymnasium/Facilities Manager IN ADVANCE may be utilized directly on the gymnasium floor.

The gymnasium floor is a "floating floor" which is limited structurally to the amount of weight it can hold. Approval by the Director, Teaching Gymnasium and University Facilities Planning department must be obtained prior to the event.

FLORIDA ATLANTIC UNIVERSITY

**FACILITIES USE APPLICATION, TENTATIVE RESERVATION AND
ESTIMATED CHARGE SCHEDULE**

Name of Applicant Organization/Sponsor: The School Board of Palm Beach County

Name of Authorized Agent/Contact: Chuck Shaw or Tom Pierson

Organization Address: 3308 Forest Hill Blvd. A-242 West Palm Beach FL 33406

_____ 561-434-8779 or 561-969-9821 _____ Phone: _____ 561-434-8908 or 561-4348161 _____ Fax:

Type of Organization:

- ___ FAU department or unit
Account number to be charged _____
- ___ FAU student government or direct support organization
Account number to be charged _____
- ___ FAU registered student organization
Account number to be charged _____
- ___ Authorized credit union or insurance company
- Tax exempt, non profit organization (evidence of status must be provided)
 - Scientific, public safety, literary, or educational organization or governmental unit
 - ___ Business, civic or recreational organization
 - ___ Religious, fraternal or charitable organization
- ___ For - profit organization
- ___ Other (specify)

Description of Activity:

Palm Beach County High School Graduations and Rehearsals

<u>Facilities Requested</u>	<u>Dates</u>	<u>Times</u>
<u>Gymnasium</u>	<u>5/17/05 – 5/27/05</u>	<u>See Attached Estimate for Times</u>

Estimated Attendance 3,800
Refreshments/Catering Yes No

Other Special Requirements:

NOTE: Written permission is required to serve alcoholic beverages or to sell/cater food/beverages from other than FAU's food service contractor.

I hereby affirm that the information given herein is true and accurate to the best of my belief and knowledge and that I am authorized to act on behalf of the named organization in this regard. If Florida Atlantic University facilities are used for the purpose requested, I agree that such use will conform with the Rules of Florida Atlantic University, Rules of the Florida Board of Regents and Florida Statutes. I also acknowledge that I will be responsible for informing all persons taking part in the event of the conditions and restrictions of usage of the facility or area.

Signature - Authorized Agent

Date

NOTE: THIS SECTION FOR UNIVERSITY USE ONLY

Facilities reserved as requested.

Facilities tentatively reserved as requested, pending approval and execution of a Facilities Use Agreement.

Application denied.

Reason:

Facility Administrator

Date

**Distribution: Applicant
Facility Administrator
Director of Space Utilization
University Police**