

## **FACILITY USE AGREEMENT**

This FACILITY USE AGREEMENT (“Agreement”) is made and entered into this \_\_\_\_\_ day of \_\_ June, 2023, by and between CITY OF FORT LAUDERDALE, FLORIDA, a Florida municipal corporation, (“CITY”), whose address is 100 N. Andrews Ave., Fort Lauderdale, Florida 33301, and FLORIDA BEACH BOWL, INC, a Florida Not For Profit Corporation (“USER”), whose address is 2045 Biscayne Blvd, Suite 490, Miami, FL 33137.

### **RECITALS**

WHEREAS, the CITY owns DRV PNK Stadium located on the Inter Miami Site at 1350 N.W. 55th Street, Fort Lauderdale, Florida, subject to that Comprehensive Agreement dated July 18, 2019, by and between the City of Fort Lauderdale and Miami Beckham United, LLC, a Delaware limited liability company, (“MIAMI BECKHAM”), as amended by that First Amendment to Comprehensive Agreement between the CITY and MIAMI BECKHAM and approved on July 5, 2022 by the City Commission of the City of Fort Lauderdale (hereinafter collectively referred to as “the Comprehensive Agreement”); and

WHEREAS, pursuant to Section 5.01 of the Comprehensive Agreement, the CITY grants MIAMI BECKHAM the exclusive, year-round right to use, manage, occupy, operate, program, market, broadcast and telecast form, grant use to third parties, license, sponsor, install fixtures and construct facilities, improvements and other structures on and to, and make any other use of and to the Inter Miami Site; and

WHEREAS, pursuant to Section 5.08 of the Comprehensive Agreement the CITY has the right to use the DRV PNK Stadium for a minimum of four (4) days per year at no charge to the CITY, except for reimbursing MIAMI BECKHAM for any operating expenses incurred by MIAMI BECKHAM; and

WHEREAS, USER requests the CITY approve the use of the DRV PNK Stadium on Thursday, December 28, 2023, and waive the facility rental fee for the period of said use, for the sole purpose of hosting the first college football bowl game between a Historically Black College or University (“HBCU”) and a Mid-Major Division 1 football program; and

WHEREAS, the CITY finds USER’s community engagements serve a legitimate municipal and public purpose by promoting community recreational activities and athletic programs within the City of Fort Lauderdale; and

WHEREAS, the CITY is willing to permit USER to use the DRV PNK Stadium on December 28, 2023, as one (1) of the CITY’s allocated four (4) annual days under the Comprehensive Agreement, and waive the facility rental fee subject to the terms and conditions set forth in this Agreement; and

IN CONSIDERATION of the mutual terms, conditions, promises, covenants and payments hereinafter set forth, the receipt and sufficiency are hereby acknowledged, the CITY and USER agree as follows:

1. DESCRIPTION OF PREMISES.

The CITY does hereby grant USER the right, license, and privilege to occupy and use the premises branded and presently known as DRV PNK Stadium, which said premises are referred to and defined as "Stadium" in Section 1.02(o) of the Comprehensive Agreement, attached hereto and incorporated herein as Exhibit "A".

2. TERM.

USER shall have use of the Stadium, on Thursday, December 28, 2023, subject to the rights, title and interest of MIAMI BECKHAM outlined in the Comprehensive Agreement (the "Period of Use").

3. COMPENSATION.

- a. Except as otherwise provided in this Agreement, the CITY agrees to waive any and all rental fees during the Period of Use, subject to the terms and conditions contained in this Agreement.
- b. In consideration of the covenants exchanged above and herein contained, including USER's use of the Stadium, USER agrees to assume the following costs during the Period of Use:

Payment of any and all operating expenses incurred by MIAMI BECKHAM that are subject to reimbursement by the City in accordance with Section 5.08 of the Comprehensive Agreement. Such costs shall include, but are not limited to, the cost of any parking attendants, ticket takers, security personnel, clean-up crews, pro-rata utility cost, and the like provided by MIAMI BECKHAM. USER agrees to pay any and all amount due directly to MIAMI BECKHAM.

USER accepts the compensation terms outlined in this Agreement and agrees all payments due shall be made payable to MIAMI BECKHAM and mailed directly to the following address:

[insert payment instructions]

4. USE OF THE PREMISES.

USER shall use and occupy the Stadium on Thursday, December 28, 2023, for the exclusive and limited purpose of hosting a football bowl game between a Historically Black College or University (“HBCU”) Bowl Game and a Mid-Major Division 1 football program. The Stadium shall not be used for any other purpose whatsoever without the written consent of the CITY. USER covenants that it will not, without written consent of the CITY, permit the Stadium to be used or occupied by any person, firm, entity, or corporation other than USER and its agents. USER shall not permit the Stadium to be used or occupied in any manner which will violate any laws or regulations of any governmental authority. USER shall not use or authorize the use of the Stadium in any manner which would have a material detrimental impact on the Stadium.

5. ALTERNATIONS AND IMPROVEMENTS TO THE STADIUM.

USER may not make any alterations, adjustment, partition, addition or improvement to the Stadium without obtaining prior written consent from the CITY and MIAMI BECKHAM. All requests by USER shall be in writing and shall contain all pertinent plans and specifications. All alterations, adjustments, partitions, additions or improvements shall remain the exclusive property of the CITY. All such alterations or improvements shall be made at the sole cost and expense of USER.

6. ASSIGNMENT OR SUBLETTING.

USER shall have no authority to assign all or any portion of the Stadium during the term of this Facility Use Agreement.

7. REIMBURSEMENT OF COSTS AND EXPENSES.

- a. Subject to the terms hereof, USER shall pay the CITY for all costs and expenses incurred by the CITY for which USER is responsible hereunder within fourteen (14) days of receipt of any invoice from CITY. If USER fails to pay the total amount due to the CITY within fourteen (14) days of the CITY’s invoice, USER agrees the CITY may apply interest charges of four percent (4%) annual percentage rate to the total balance due.
- b. Should USER disagree with the invoice provided by the CITY, USER shall state its reason(s) in writing no less than Forty-Eight (48) hours of USER’s receipt of the CITY’s invoice and may request the City Manager to review the charges and render a decision. If USER does not agree with the City Manager’s decision, USER may file a petition to the City Commission to review the City Manager’s decision. If USER does not agree with the results of such review, upon the filing of a lawsuit the parties shall agree to mandatory mediation.

## 8. INDEMNIFICATION.

Except in instances of the negligent or willful misconduct by the CITY, its agents, officers, and/or employees, USER agrees to indemnify, defend and hold harmless the CITY, its officers, agents, and employees from and against any and all lawsuits, penalties, damages, claims, losses, judgments, decrees, settlements, costs, liabilities or expenses of every kind, sort or description, including, but not limited to, any award of attorney fees and any award for costs at the trial and appellate levels, in connection with or arising from, directly or indirectly, claims and losses of bodily injury, property damage, illness and/or sickness caused by, in connection with, arising out of, or resulting from the use of the Stadium or caused by, in connection with, arising out of, or resulting from any act by USER, its partners, employees, officers and agents done in the performance or non-performance of this Agreement. If called upon by the CITY, USER shall defend not only itself, but also the CITY in connection with any such Claim at USER's expense, and at no expense whatsoever to the CITY. USER further agrees to defend, indemnify, save and hold harmless the CITY and the CITY's officers, agents and employees from any Claim, suit, loss, cost or expense or any damages arising out of any alleged infringement of any patent, trademark, copyright or any other tangible or intangible personal or property right, or any actual or alleged violation of any applicable statute or relating to USER's failure to obtain all necessary performing rights and licenses for the term of this Agreement (BMI, ASCAP, etc.). The CITY shall be liable for damages or injuries caused by the CITY's negligence as determined by a court of competent jurisdiction in the State of Florida. The foregoing sentence shall not serve as a waiver of the CITY's sovereign immunity or of any other legal defense available to the CITY and shall be subject to the limitations contained in Section 768.28, Florida Statutes, as amended or revised. This Section shall survive any cancellation or early termination of this Agreement.

## 9. INSURANCE.

As a condition precedent to the effectiveness of this Agreement, during the term of this Agreement and during any renewal or extension term of this Agreement, USER, at its sole expense, shall provide insurance of such types and with such terms and limits as noted below. Providing proof of and maintaining adequate insurance coverage are material obligations of USER. USER shall provide the CITY a certificate of insurance evidencing such coverage. USER's insurance coverage shall be primary insurance for all applicable policies, in respect to the CITY's interests. The limits of coverage under each policy maintained by USER shall not be interpreted as limiting USER's liability and obligations under this Agreement. All insurance policies shall be through insurers authorized or eligible to write policies in the State of Florida and possess an A.M. Best rating of A-, VII or better, subject to approval by the CITY's Risk Manager.

The coverages, limits, and/or endorsements required herein protect the interests of the CITY, and these coverages, limits, and/or endorsements shall in no way be relied upon by USER for assessing the extent or determining appropriate types and limits of coverage to protect USER against any loss exposures, whether as a result of this Agreement or otherwise. The requirements contained herein, as well as the CITY's review or

acknowledgement, are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by USER under this Agreement.

The following insurance policies and coverages are required:

#### Commercial General Liability

Coverage must be afforded under a Commercial General Liability policy with limits not less than:

- \$5,000,000 each occurrence and \$5,000,000 aggregate for Bodily Injury, Property Damage, and Personal and Advertising Injury
- \$5,000,000 each occurrence and \$5,000,000 aggregate for Products and Completed Operations

Policy must include coverage for contractual liability and independent contractors.

The CITY, a Florida municipality, its officials, employees, and volunteers are to be covered as an additional insured with a CG 20 26 04 13 Additional Insured – Designated Person or Organization Endorsement or similar endorsement providing equal or broader Additional Insured Coverage with respect to liability arising out of activities performed by or on behalf of the USER. The coverage shall contain no special limitation on the scope of protection afforded to the CITY, its officials, employees, and volunteers.

#### Business Automobile Liability

Coverage must be afforded for all Owned, Hired, Scheduled, and Non-Owned vehicles for Bodily Injury and Property Damage in an amount not less than \$1,000,000 combined single limit each accident.

If USER does not own vehicles, USER shall maintain coverage for Hired and Non-Owned Auto Liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Business Auto Liability policy.

#### Workers' Compensation and Employer's Liability

Coverage must be afforded per Chapter 440, Florida Statutes. Any person or entity performing work for or on behalf of the CITY must provide Workers' Compensation insurance. Exceptions and exemptions will be allowed by the CITY's Risk Manager, if they are in accordance with Florida Statute.

USER waives, and USER shall ensure that USER's insurance carrier waives, all subrogation rights against the CITY, its officials, employees, and volunteers for all losses or damages. The CITY requires the policy to be endorsed with WC 00 03 13 Waiver of our Right to Recover from Others or equivalent.

USER must be in compliance with all applicable State and federal workers' compensation laws.

### Insurance Certificate Requirements

- a. USER shall provide the CITY with valid Certificates of Insurance (binders are unacceptable) no later than ten (10) days prior to the commencement of the License Term.
- b. USER shall provide to the CITY a Certificate of Insurance having a thirty (30) day notice of cancellation; ten (10) days' notice if cancellation is for nonpayment of premium.
- c. In the event that the insurer is unable to accommodate the cancellation notice requirement, it shall be the responsibility of USER to provide the proper notice. Such notification will be in writing by registered mail, return receipt requested, and addressed to the certificate holder.
- d. In the event the Agreement term or any surviving obligation of USER following expiration or early termination of the Agreement goes beyond the expiration date of the insurance policy, USER shall provide the CITY with an updated Certificate of Insurance no later than ten (10) days prior to the expiration of the insurance currently in effect. The CITY reserves the right to suspend the Agreement until this requirement is met.
- e. The Certificate of Insurance shall indicate whether coverage is provided under a claims-made or occurrence form. If any coverage is provided on a claims-made form, the Certificate of Insurance must show a retroactive date, which shall be the effective date of the initial contract or prior.
- f. The CITY shall be covered as an Additional Insured on all liability policies, with the exception of Workers' Compensation.
- g. The CITY shall be granted a Waiver of Subrogation on USER's Workers' Compensation insurance policy.
- h. The title of the Agreement, event dates, or other identifying reference must be listed on the Certificate of Insurance.

### The Certificate Holder should read as follows:

City of Fort Lauderdale  
100 N. Andrews Avenue  
Fort Lauderdale, FL 33301

USER has the sole responsibility for all insurance premiums and shall be fully and solely responsible for any costs or expenses as a result of a coverage deductible, co-insurance penalty, or self-insured retention; including any loss not covered because of the operation of such deductible, co-insurance penalty, self-insured retention, including any loss not covered because of the application of such deductible, co-insurance penalty, self-insured

retention, or coverage exclusion or limitation. Any costs for adding the CITY as an Additional Insured shall be at USER's expense.

If USER's primary insurance policy/policies do not meet the minimum requirements, as set forth in this Agreement, USER may provide evidence of an Umbrella/Excess insurance policy to comply with this requirement.

USER's insurance coverage shall be primary insurance in respect to the CITY, a Florida municipality, its officials, employees, and volunteers. Any insurance or self-insurance maintained by the CITY shall be non-contributory.

Any exclusion or provision in any insurance policy maintained by USER that excludes coverage required in this Agreement shall be deemed unacceptable and shall be considered breach of contract.

All required insurance policies must be maintained until the contract work has been accepted by the CITY, or until this Agreement is terminated, whichever is later. Any lapse in coverage may be considered breach of contract. In addition, USER must provide to the CITY confirmation of coverage renewal via an updated certificate should any policies expire prior to the expiration of this Agreement. The CITY reserves the right to review, at any time, coverage forms and limits of USER's insurance policies.

USER shall provide notice of any and all claims, accidents, and any other occurrences associated with this Agreement to USER's insurance company or companies and the CITY's Risk Management office, as soon as practical.

It is USER's responsibility to ensure that any and all of USER's independent contractors and subcontractors comply with these insurance requirements. All coverages for independent contractors and subcontractors shall be subject to all of the applicable requirements stated herein. Any and all deficiencies are the responsibility of USER. The CITY reserves the right to adjust insurance limits from time to time at its discretion with notice to USER.

#### 10. AUTHORITY OF CITY MANAGER.

USER shall coordinate the use of the Stadium in accordance with the terms and conditions outlined in this Agreement. The City Manager shall notify USER when, in the City Manager's reasonable opinion, such activities may be or are detrimental to the public or to the CITY, or if the CITY has reason to believe that USER, its agents, subcontractors, independent contractors and/or employees have violated any law, rule or ordinance. After consultation with USER, the CITY reserves the right to eject or cause to be ejected from the Stadium any person or persons causing a disturbance and neither the CITY nor any of its officers, agents or employees shall be liable to USER for any damages that may be sustained by USER through the exercise by the CITY of such right. The decision of the City Manager in such regard shall be final and binding.

11. LICENSE SUSPENSION OR REVOCATION.

The CITY may temporarily suspend USER's use of the Stadium without any prior written notice upon the issuance of a severe storm, tropical storm or hurricane watch or warning by the National Weather Service or any other local, state or federal authority, including the National Hurricane Center. USER shall immediately discontinue all functions at the Stadium upon receipt of the City's suspension or revocation of this license or any use authorized by this Agreement.

12. TERMINATION.

- a. USER may elect, during the Term of this Agreement, to terminate this Agreement and no longer operate the Stadium and all licenses granted to USER and/or use(s) permitted to USER pursuant to this Agreement shall immediately terminate and be of no further force or effect. If USER elects to terminate this Agreement, USER shall notify the CITY in writing of such election upon no less than thirty (30) days prior to the effective date of the termination. USER shall be obligated to reimburse the CITY for any out of pocket costs and expenses incurred by the CITY in connection with the fulfillment of the CITY's obligations under this Agreement.
- b. USER expressly understands and agrees that the CITY may seek to terminate this Agreement if the CITY decides it is necessary to protect the public's health, safety and welfare. The CITY may also seek to terminate this Agreement upon the breach by USER of its obligations under this Agreement. If the CITY seeks to terminate this Agreement due to USER's breach, the CITY shall provide USER with written notice of the breach as set forth in the Notice section of this Agreement, and the USER shall have Forty-Eight (48) hours to cure the breach to the exclusive satisfaction of the CITY. In the event of a declaration of an emergency or imminent threat to the public's health or safety, the CITY may terminate this Agreement at any time without prior notice to the USER.

13. BREACH.

A material, monetary, breach of this Agreement by the USER shall be grounds for the CITY to terminate this Agreement and any and all permitted use and licenses approved thereunder, except that before such termination, the CITY shall provide the USER with written notice of the breach and USER shall be provided an opportunity to cure the breach within Forty-Eight (48) hours from the receipt of the CITY's notice. Notice of any breach may be sent by facsimile followed by hand delivery of the notice as provided in this Agreement.



14. FORCE MAJEURE.

In the event the Stadium shall, at any time during the term of this Agreement, be destroyed or rendered unusable by fire, storm or threat of a named storm within five hundred (500) miles of the Stadium, act of terrorism, war, act of God or other disaster or epidemic, (collectively or separately, "Force Majeure Event"), then either party may terminate this Agreement by providing prior written notice to the other party. In such instance, each party shall be responsible for its own costs and expenses, except that USER will reimburse the CITY for all actual costs incurred related to the License and/or its compliance as provided in this Agreement, as otherwise provided for hereunder.

15. GOVERNING LAW.

This Agreement shall be interpreted and construed in accordance with the laws of the State of Florida and shall inure to and be binding upon the parties, their successors and assigns. Venue for any action brought in state court shall be in Broward County, Florida, or in the event of federal jurisdiction, in the Southern District of Florida, Fort Lauderdale Division. The parties consent to the personal jurisdiction of the aforementioned courts and irrevocably waive any objections to said jurisdiction.

16. AMENDMENT.

No modification, amendment or alteration of the terms or conditions of this Agreement shall be effective unless contained in a written document duly executed by both parties, with the same formality as this Agreement.

17. WAIVER OF BREACH.

Failure by the CITY to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement.

18. EXTENT OF AGREEMENT.

This Agreement represents the entire and integrated Agreement between CITY and USER and supersedes all prior negotiations, representations or agreements either written or oral.

19. NOTICE.

Whenever any party desires to give notice to any other party, it must be given by written notice sent by registered United States mail, with return receipt requested, addressed to the party for whom it is intended at the place designated below and the place so designated shall remain such until they have been changed by written notice in compliance with the provisions of this section. For the present, the parties designate the following as the respective places for giving notice:

CITY:  
City Manager  
City of Fort Lauderdale  
100 North Andrews Avenue  
Fort Lauderdale, FL 33301

With a copy to:  
City Attorney  
City of Fort Lauderdale  
100 North Andrews Avenue  
Fort Lauderdale, Florida 33301

USER:  
Florida Beach Bowl, Inc.  
2045 Biscayne Blvd, 490  
Miami, Florida 33137

20. SEVERANCE.

In the event this Agreement or a portion of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective unless CITY or USER elects to terminate this Agreement. The election to terminate this Agreement based upon this provision shall be made within seven (7) days after the court's becomes final.

21. NON-DISCRIMINATION.

In the performance of this Agreement, USER shall not discriminate against any vendor, hotel guest, concessionaire, employee, patron, visitor, attendee or customer because of sex, age, race, color, religion, ancestry, national origin or sexual orientation. USER agrees to comply with the terms and provisions of the Americans with Disabilities Act and shall make the Stadium accessible for persons with disabilities.

22. EMERGENCY ACCESS.

USER agrees to provide any and all emergency access to the Stadium to emergency first responders and as required by the CITY and its employees for the safety and general welfare of the community and all Fort Lauderdale residents, and proper entrances into any gates which are locked. If, in the course of USER's operations, USER or CITY, or their officers, agents and/or employees, become aware of any condition in or about the Stadium which may be dangerous or compromised by unruly individuals, USER shall immediately correct such condition or cease operations upon becoming aware or being notified of such condition so as not to endanger persons or property, and immediately notify the Fort Lauderdale Police Department.

23. PUBLIC RECORDS.

USER shall keep true, complete and correct books and records of all transactions and activities pursuant to this Agreement. USER recognizes and acknowledges that all such records shall be subject to Florida Public Records Law, Section 119.0701, Florida Statutes, as amended. **IF THE USER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE USER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT CITY CLERK'S OFFICE, 100 N. ANDREWS AVENUE, FORT LAUDERDALE, FLORIDA, 33301, PHONE: 954-828-5002, EMAIL: [PRRCONTRACT@FORTLAUDERDALE.GOV](mailto:PRRCONTRACT@FORTLAUDERDALE.GOV).**

24. MISCELLANEOUS PROVISIONS.

- a. USER agrees to exercise a good faith and reasonable effort to work with the City Police Department and representatives of the adjacent Homeowners Associations to implement a plan permitting homeowner's ingress and egress to their residences during the term of the Agreement.
- b. USER acknowledges that it is solely responsible for all utilities for the Stadium including, without limitation, electrical, water, and sewer and storm sewer hookup requirements.
- c. USER shall be responsible for and agrees to pay CITY any additional fee structures approved by the City Commission.
- d. In the event that the CITY is required to file any legal action against USER to collect any fees due under this Agreement, CITY shall be entitled to its costs of collection, repairs, attorney's fees and costs and interest at the maximum rate allowable by law.
- e. The USER, after receiving permission by the CITY's Contract Administrator, reserves the right to add decor, including, but not limited to signage to the location or cover any existing signage, as authorized by the City of Fort Lauderdale Code of Ordinances.
- f. The USER, after receiving permission by the City's Contract Administrator, may conduct its operations on any portion of the Stadium and shall retain all rights to such, unless such license is suspended or revoked, or this Agreement is otherwise terminated.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

IN WITNESS OF THE FOREGOING, the parties have set their hands and seals the day and year first written above.

**CITY**

WITNESSES:

**CITY OF FORT LAUDERDALE**

Print: \_\_\_\_\_

By \_\_\_\_\_  
Dean J. Trantalis, Mayor  
\_\_\_\_ day of June, 2023

Print: \_\_\_\_\_

BY \_\_\_\_\_  
Greg Chavarria, City Manager  
\_\_\_\_ day of June, 2023

(CORPORATE SEAL)

ATTEST:

\_\_\_\_\_  
David Soloman, City Clerk

Approved as to form:  
D'Wayne M Spence  
Interim City Attorney

\_\_\_\_\_  
Patricia SaintVil-Joseph, Esq.  
Assistant City Attorney

**USER**

WITNESSES:

**FLORIDA BEACH BOWL, INC.**, a  
Florida Not For Profit Corporation,  
2045 Biscayne Blvd, Suite 490, Miami,  
FL 33137

\_\_\_\_\_  
Signature

By \_\_\_\_\_  
Robenson Victor, CEO/President

\_\_\_\_\_  
Print Name

\_\_\_\_ day of June, 2023

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

(CORPORATE SEAL)

ATTEST:

\_\_\_\_\_  
Secretary Signature

\_\_\_\_\_  
Print name above

STATE OF FLORIDA;  
COUNTY OF \_\_\_\_\_:

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization, this \_\_\_\_\_ day of \_\_\_\_\_, 2023, by **Robenson Victor**, as CEO/President of **FLORIDA BEACH BOWL, INC.**, a Florida Not For Profit Corporation.

(NOTARY SEAL)

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_  
(Signature of Notary Public)

\_\_\_\_\_  
(Print, Type, or Stamp Commissioned Name  
of Notary Public)

Personally Known \_\_\_OR Produced Identification \_\_\_

Type of Identification Produced \_\_\_\_\_