

# CITY OF FORT LAUDERDALE

## TEMPORARY BEACH LICENSE AND OUTDOOR EVENT AGREEMENT

**THIS AGREEMENT**, with and effective date of \_\_\_\_\_, 2023, is entered into by and between:

**THE CITY OF FORT LAUDERDALE**, a municipal corporation of the State of Florida, hereinafter referred to as “**City**”

and

**FLORIDA PANTHERS HOCKEY CLUB ENTERPRISES, INC.**, a Florida profit corporation, hereinafter referred to as “**Applicant.**”

WHEREAS, subject to the terms and conditions contained herein, Applicant has requested approval from the City to conduct the **2023 Truly Hard Seltzer NHL All-Star Beach Festival**, or other title as determined by Applicant, which includes a beachfront music concert together with the NHL All-Star Beach Bash presented by New Amsterdam Vodka,

hereinafter referred to as the “**Event;**”

WHEREAS, in accordance with the terms hereof, Applicant shall provide the required certificates of insurance and agrees to indemnify and hold harmless the City of Fort Lauderdale for any damage to persons or property that occurs as a sole and direct result of the actions or inactions of Applicant in connection with and/or as a result of the operation of said Event as set forth herein; and

WHEREAS, City recognizes that the Event is a unique branded event requiring significant capital and time investment and, as such, is willing to entertain extensions to this Agreement to accommodate any unforeseen scheduling conflicts by Applicant during the term of this Agreement, and the City will not enter into an Agreement or approve an event permit for another event on the same date and time as Applicant’s Event, not produced by the Applicant , which is substantially similar in size, scope, magnitude, and character to the Event; and

NOW, THEREFORE, in consideration of the mutual promises and covenants contained in this Agreement, and other good and valuable consideration, the receipt and adequacy of which are acknowledged, the parties agree as follows:

1. **RECITALS AND EXHIBITS INCORPORATED.** The foregoing recitals are true and correct and incorporated herein by this reference. All attached and referenced Exhibits are also incorporated herein by this reference.

2. **DEFINITIONS.** For the purposes of this Agreement and the various covenants, conditions, terms and provisions that follow, the Definitions set forth below are assumed to be true and correct and are therefore agreed upon by the parties:
- a. “Agreement” means this Agreement between the City and Applicant, including all of the attached and referenced Exhibits, as the same may be amended in writing from time to time, with an original on file with the City Clerk.
  - b. “Applicant” means Florida Panthers Hockey Club Enterprises, Inc., a Florida for-profit corporation.
  - c. “City” means the City of Fort Lauderdale, Florida, a municipal corporation of the State of Florida, of which the City Commission is its governing body.
  - d. “Contract Administrators” means the City of Fort Lauderdale’s City Manager for the City or designee and the authorized designees of Florida Panthers Hockey Club Enterprises, Inc. In the administration of this Agreement, as contrasted with matters of policy, all parties may rely upon instructions or determinations made by the Contract Administrators. Except as provided for in this Agreement, the Contract Administrators may not make any change to this Agreement without the approval and formal amendment to this Agreement in writing by City and Applicant.
  - e. “City Manager” means the City of Fort Lauderdale’s City Manager or his/her designee.
  - f. “Event Impact Areas” means the areas outside the Event Site that are directly impacted by the Event and because of the impact to these areas, mitigating services are provided at the sole cost of the Applicant including, without limitation, police services, emergency medical services, traffic control, crowd control and trash removal. The Event Impact Areas shall be determined by the City in consultation with Applicant and may change over time as the attendance at the event or the use of mass transit service changes. In the event of a disagreement between Applicant and the City regarding the Event Impact Areas, the City Manager’s decision shall be final as to the determined Event Impact Areas.
  - g. “Event Period” means the time periods as more fully described in **Exhibit “A”** of this Agreement.
  - h. “Event Site” means collectively the area on the barrier island used to hold the Event from the B Ocean extending north to SE 5<sup>th</sup> Street and A1A to the Atlantic Ocean, together with a portion of Las Olas Oceanside Park, as more specifically described in **Exhibit “B”** as part of the Site Plan.
  - i. “Maintenance of Traffic Plan” also referred to as MOT Plan shall have the meaning given to such term in Section 6.d of this Agreement and more specifically described in **Exhibit “C”** upon timely submission in accordance with this Agreement.

j. “Public Safety Plan” shall have the meaning given to such term in Section 6 of this Agreement.

k. “Repair” shall mean any work (including all third party labor, supplies, materials and equipment) reasonably necessary to repair, restore, or replace any equipment, building, structure or any other component of the Event Site, if such work is solely necessitated by any damage or destruction, including any damage or destruction resulting from the acts or omissions of other parties (other than the City and its agents, officers, contractors and employees), including licensees or invitees of the Applicant, related to the Event. Repairs shall also include work necessitated by damage or destruction caused by the negligence of the Applicant and/or their agents, employees, contractors or subcontractors.

l. “Site Plan” shall have the meaning given to such term in Section 8.

m. “Term” shall have the meaning given to such term in Section 4.

3. **PERMISSION TO USE.** Subject to the terms hereof, Applicant is hereby authorized and entitled to use the portions of the Event Site owned by the City during the Event Period in order to conduct the Event. The actual extent of the area to be used shall be limited by the water line and the Maintenance of Traffic (“MOT”) Plan and the approval by City of all street closures, including those streets and transportation corridors that are defined as part of the Event Site as allowed by law. It is Applicant’s sole responsibility to obtain written permission from owner(s) of any portion of the property described in the Event site that is not owned by the City. The right to use the Event Site does not imply that the Applicant is automatically allowed to close the streets and transportation corridors that are defined as part of the Event Site. Other City properties, if appropriate and mutually agreed upon in writing by the City and Applicant, may also be used for the Event. Upon request, and subject to the terms of this Agreement, the City Manager or designee shall have the right to approve or deny the use of promotional materials and advertising for the Event that contains the location, name and/or images of the Event Site, which approval shall not be unreasonably withheld. If, upon review, the City Manager or designee, acting in good faith, denies the use of certain promotional materials, the City shall identify with specificity the basis for such denial and the Applicant shall use best commercially reasonable efforts to remove the specifically restricted materials from future publication. All alcohol sales during the Event shall be governed in accordance with all applicable Florida Statutes and sections of the City of Fort Lauderdale Code of Ordinances.

Subject to and in accordance with the terms of this Agreement, Applicant shall have the sole, exclusive and unrestricted right, without any approval or consent from the City, to conduct the following activities (collectively, the “**Event Activities**”) at the Event Site during the Event Period, whether directly by Applicant or indirectly through the hiring of third-parties: (i) retail and merchandise services, including the sale of the merchandise; (ii) product serving, display and sampling, including food and beverage sampling by Applicant’s Partners (as defined below) and giveaways; (iii) traditional and interactive entertainment services, including live and recorded music; (iv) temporary advertising, promotion and sponsorship activities, including vehicle displays; (v) photographic, audio, visual and/or audiovisual recordings; and (vi) such other

activities in connection with the Event as Applicant shall determine in its sole discretion, subject to the terms of this Agreement. The beginning and ending times, setup and location of each of the foregoing shall be determined by Applicant in its sole discretion. As between the City, Applicant, Applicant shall retain one hundred percent (100%) of any and all revenue received in connection with the Event.

Applicant has various corporate marketing and other commercial agreements with third-parties that grant such third-parties various rights (exclusive and otherwise) for and in connection with the National Hockey League and its events and initiatives, including without limitation, the Event (each, an “**Applicant Partner**” and collectively, the “**Applicant Partners**”). Applicant will have the sole, exclusive and unrestricted right, without any approval or consent from the City, to sell advertising, sponsorship and other associated rights relating to the Event, including, without limitation, the Event title and presenting sponsorships, Event Activities and all forms of advertising, branding and other activation in, on and around the Event Site, during the License Period. In connection with the foregoing, Applicant’s right to sell advertising, sponsorship and other associated rights relating to the Event and Event Activities (and to announce the same) will be notwithstanding any other existing advertising, sponsorship or other third-party relationships in, on, around or otherwise related to the Event Site, or to any other obligations to which the City may be subject. The City shall not engage in any act or omission in connection with the Event which would interfere with, disturb or otherwise limit Applicant’s ability to fulfill its obligations to the Applicant’s Partners. Applicant shall control the design and printing of all Event-related signage for the Event, including, but not limited to, Event directional signage. Applicant agrees any and all speech displayed on any promotional or marketing material at the Event Activities, prepared or designed by Applicant or any of Applicant’s Partners under Applicant’s control, shall be content-neutral and shall not be obscene, defamatory or discriminatory in nature.

4. **TERM:** The Term of this Agreement shall commence on the effective date upon execution of this Agreement by all Parties and shall expire on February 9, 2023.

5. **TEMPORARY BEACH LICENSE GENERAL TERMS.**

a. The terms and conditions outlined in Sections 8-54 and 8-55 of the Code of Ordinances of the City of Fort Lauderdale, shall be incorporated into this Agreement as if fully stated herein.

b. The Applicant agrees to pay \$500.00 per day for each Event use of the beach.

6. **PUBLIC SAFETY PLAN FOR THE EVENT.** Because of the physical size of the Event and the number of people that may attend, City shall arrange for, in consultation with Applicant, all necessary personnel to provide public safety at the Event Site and Event Impact Areas. The parties will consult with each other in regard to the levels of security including the scaling down of such services for the set up and breakdown of the Event. City reserves the right to require, in good faith, and in consultation with Applicant, that additional services be provided, at the sole cost to Applicant, to ensure the appropriate level of public safety and other City services, and all such costs and expenses shall be paid to City within the time frame as set forth in Section 23, Reimbursement of Costs and

Expenses. These services shall include, without limitation, crowd control, traffic management, fire rescue, ocean rescue, emergency medical services, and police services. Applicant is required to provide signage, traffic barricades, and cones to facilitate public safety and will set up and remove same at no cost to the City.

a. The Applicant, shall provide a Public Safety Plan to City no later than ninety (90) days prior to the date of the Event. This plan shall include, but not be limited to, the Applicant's planned actions to respond to and mitigate various potential criminal and emergency incidents which may occur during the Event. After receiving the final private security and Event Public Safety Plan from the Applicant, the City shall work with the Applicant in order to properly determine the number of personnel necessary to effectively and efficiently carry out the Public Safety Plan. City shall develop an anticipated budget for the Public Safety Plan and other City services, and provide the anticipated budget to the Applicant not more than ten (10) days following receipt of the Public Safety Plan. In the event of a disagreement between Applicant and the City regarding the number of personnel required for the Public Safety Plan and the anticipated budget of the Public Safety Plan, the City Manager shall seek to resolve such disagreement by taking into account the best interest of the public's safety and the reasonable cost for implementing the Public Safety Plan. The City Manager's decision shall be final as to the appropriate level of staffing for the Public Safety Plan and the anticipated budget for the Public Safety Plan. City agrees to include in its anticipated budget to the Applicant the number of proposed on-site City personnel that will be assigned during the Event as allowed by Florida Statute. Due to the sensitive security and safety implications, including related input and responsive staffing plans provided by the City, the Public Safety Plan shall not be available for public or media distribution, except where disclosure is required by law.

b. The parties will act in good faith to keep the other party notified of the latest information and any new developments or incidents that might cause additional public safety personnel to be deployed to the Event. Both parties agree that an essential element of the Event's Public Safety Plan includes a procedure, mutually agreed upon in advance; that the Applicant, or its respective designees must follow during the Event to record the number of participants within the Event Site at any given time. Participant numbers must be real time and verifiable by City public safety personnel. In the event the primary participant count process fails during the Event, the Applicant, or its respective designees must have a contingency process in place and readily available for activation to ensure accurate continuation of participant counts. This contingency procedure along with the initial participant verification procedure shall be included and approved by the City in advance and as part of the Public Safety Plan. The City's Contract Administrator, City Police or Fire personnel shall have the right to request participant numbers from the Applicant at any time throughout the course of the Event.

c. In addition to the Applicant's Public Safety Plan, the City's Police and Fire Departments will author separate comprehensive Incident Action/Operational Plans specific to their duties. Such plans will take into consideration several factors, to include nationally accepted event planning and management guidelines utilizing the National Incident Management System (NIMS) and the Incident Command System (ICS). These

plans will be fluid up until the conclusion of the event and may change based on real time intelligence, threat information, and other relevant input. Local representatives and agents from the Federal Bureau of Investigation (FBI) Special Events Unit, the Department of Homeland Security (DHS), Navy Criminal Investigative Service (NCIS), and other public safety partners will assist in determining the level and magnitude rating of this event, advise of any potential national security considerations and provide intelligence gathering and event threat assessment assistance. Due to the sensitive security and safety implications of such plans, they will be kept confidential, accessible to City officials and Police/Fire personnel only and shall not be available for public or media distribution.

d. Not less than ninety (90) days prior to the date of the Event, Applicant shall provide to the City a MOT Plan, incorporated into this Agreement and marked as Exhibit "C". The MOT shall contain a construction automotive and pedestrian traffic flow schedule detailing the opening and closing times for all streets, lanes, pedestrian walkways and traffic corridors and outlining the use of any and all variable message signs for the City's review and approval. No additional street, lane or traffic corridor closures will be permitted unless included in an updated MOT Plan and approved by the City. Applicant agrees to provide the City with emergency access to all areas included in the Event Site to ensure the safety and welfare of the community.

e. The cost for any additional services or expansion of services requested by Applicant, in writing (email is sufficient), shall be an expense to Applicant and City shall be paid for all costs and expenses in association with any such addition or expansion of services provided to Applicant, and all such costs and expenses shall be paid to City within the time frame as set forth in Section 23, Reimbursement of Costs and Expenses. Expansion of services means enhancements of activities, any changes in the type of activities provided or changes in parameters of Event or the Event Site, caused by or requested by Applicant, including physical location and boundaries that result in an increase in the City's cost to provide all necessary services.

f. Should Applicant request non-critical public safety services, such as a police escort, or if such services are beyond the City's ability to provide, Applicant may make such arrangements and coordinate these services with the City. The cost for these additional services shall be an expense to Applicant, and all such costs and expenses shall be paid to City within the time frame as set forth in Section 23, Reimbursement of Costs and Expenses.

g. In the event of an emergency or disaster during the Event, at the Event Site or as a direct result from the Event activities, that requires public safety resources beyond the original Public Safety Plan, it shall be the responsibility of the Applicant to reimburse the City's reasonable, actual and documented additional cost to respond to such emergency or disaster that the City would not have otherwise incurred had such Event not been taking place. This section shall not apply to any natural disaster, act of terrorism, or act of God that may occur at the Event Site during the Event including, without limitation, a hurricane, lightning strike, tornado or any other such causes whatsoever beyond the control of the parties and unrelated to the Event.

h. Applicant acknowledges that traffic control plans shall accommodate the ingress and egress to residences during the course of the Event.

i. If the Event includes use of fireworks, Applicant shall obtain a fireworks permit from the City's Fire Department no less than ten (10) days prior to the Event. The Applicant shall comply with all applicable state laws and regulations regarding the use of fireworks.

7. **STREET CLOSINGS.** The City reserves the right to approve all street closings, including those streets and transportation corridors that are defined as part of the Event Site, in association with the Event and any requests for street closings should be included with the MOT Plan that is submitted by Applicant and any updated MOT Plan. Applicant agrees to coordinate and make the appropriate arrangements with any merchants or residents affected by any street closures to ensure they are provided sufficient and reasonable access to their businesses and residences.

8. **SITE PLAN.** Not less than ninety (90) days prior to the date of the Event, Applicant shall provide to the City the following:

a. For the Event Site and Event Impact Areas, a detailed Site Plan for the Event showing locations that will be designated for Applicant's, and its respective designees' exclusive use, detailing the locations of any tents, sanitary facilities, parking, stages, booths, concessions, alcoholic beverage service areas, and other such services together with the boundary lines, including those down to the waterline as allowed by law, of any fences, barriers etc. to be constructed at the Event Site, and the times when such borders, fences and/or facilities will be constructed, operated and dismantled. Such Site Plan shall be subject to the review and approval by the appropriate City departments, such approval not to be unreasonably withheld or delayed. Any additional changes made to the Site Plan by Applicant, after reviewed by the appropriate City departments, must be approved by the City, which such approval will not be unreasonably withheld or delayed. A final inspection will be conducted by the City immediately prior to the Event to ensure that the location of all tents, booths, sanitary facilities, stages, etc. are in accordance with the City approved site plan and code regulations. The Site Plan shall be incorporated into this Agreement and marked as **Exhibit "D."**

b. A description of all activities and events to occur at the Event Site and Event Impact Areas including permissible activities and any maintenance of the waterline fence, barrier and borders during the Event.

c. The cellular and business phone numbers of the individuals in charge of the various aspects of the Event.

d. Copies of all applicable permits and licenses required by the City's Sustainable Development Department and Fire Department. These permits include, but are not limited to, permits necessary for tents, merchandise, food and beverage vendors, electrical connections, fireworks, Florida Department of Environmental Protection (FDEP) permits,

and other County or State permits.

9. **NON-PUBLIC SAFETY SERVICES.** City shall provide, as necessary, oversight, coordination and direction, but not supervision, of Applicant's, and its respective employees or contractors related to Event transportation, setup, storage, maintenance, Repair or replacement of property, cleanup and breakdown of Event Site including removal of barricades and safety cones. Applicant shall remain an independent entity at all times.

10. **MAINTENANCE OF EVENT SITE AND EVENT IMPACT AREAS.**

a. Applicant shall be responsible for and shall provide sufficient temporary public sanitary facilities which shall be of the type and in sufficient number as to meet the requirements established by the Department of Sustainable Development. Applicant shall provide daily service of the facilities at all times during the Event Period. The cost of such temporary public sanitary facilities shall be an expense to Applicant and all costs and expenses for facilities furnished by the City to Applicant shall be paid to City within the time frame as set forth in Section 23, Reimbursement of Cost and Expenses.

b. Applicant shall be responsible for all cleanup costs and expenses associated with the removal of trash and debris that accumulates on any portion of Event Site or in the designated Event Impact Areas. All trash shall be collected and removed throughout the Event with final cleanup being completed within 24 hours of the Event completion or take-down of the Event, or within established time frames as agreed to by City. The requirement to remove trash and debris includes street sweeping. Applicant will reimburse City for all actual and documented costs associated with trash and debris removal within the Event Site and Event Impact Areas.

c. In the event the Applicant wishes to utilize temporary mobile cellular communication (service boosting) towers, which can also benefit public safety by increasing the E-911 capabilities of the specific service provider, the Applicant must notify the City Police and Fire Departments and agrees that the contracted equipment provider with whom they procure such equipment, services etc. will work closely with the City Radio Engineers to confirm the temporary towers will not interfere with the City or County public safety radio frequencies.

d. Applicant shall be responsible for the clean-up of all temporary flooring which supports tour buses and equipment.

11. **PARKING AND TRANSIT SERVICES.** It will be the responsibility of Applicant to arrange and coordinate all parking at City facilities and any transit services from these facilities to the Event Site. All proposed shuttle routes and bus stops shall be approved by the City as part of the MOT Plan and any updated MOT Plan. City agrees to invoice Applicant at the approved special event parking rate of \$30 dollars per space per day to use the Fort Lauderdale Beach Park Parking Lot during the Event Period and any other public metered parking spaces that are removed from public use as requested by the Applicant and approved by the City. All parking lot requests must be in writing at thirty (30) days in advance of the Event. An estimate of parking charges will



be provided to Applicant no more than seven (7) days after receiving written requests. Applicant understands that the approved special event parking rate is a daily rate and may not be prorated. Requests to change an issued City parking invoice must be made in writing prior to the end of the Event. Applicant agrees to reimburse the City, for any loss of parking property from any City parking facilities within the Event Site that occurred during the Event, whether such loss is the result of theft or vandalism, including but not limited to parking meter machine, meter bags and parking signs, to an amount equal to the actual and documented cost of repair or replacement of the item.

## **12. CONSTRUCTION OF FACILITIES, STRUCTURES, CANOPIES, TENTS AND CONCESSION STANDS.**

a. Applicant, and/or its respective designees shall be allowed to construct and maintain on the Event Site, such facilities and structures that are necessary for the Event including, but not limited to, fences, barriers and grandstands and signs as approved by the City and at such locations as approved by the City, such approvals not to be unreasonably withheld, conditioned or delayed, and otherwise in accordance with the terms and conditions of this Agreement.

b. All such structures, facilities, concession stands and canopies may be erected and deliveries related thereto may begin at the Event Site on the date specified in Exhibit A. All such structures must be removed by the specified take-down date set forth in Exhibit A. Except where such structures, facilities, concession stands, canopies and tents are permitted by this Agreement, the same shall not otherwise interfere with the normal operations of the property. Any setup or breakdown of such structures at the Event Site shall be in accordance with the terms contained in the City's Noise Ordinance, Chapter 17 of the City of Fort Lauderdale Code of Ordinances, as amended.

c. Applicant is hereby granted permission to erect canopies, tents, and concession stands, at such locations in accordance with the approved Site Plan. It is further agreed and specifically understood that permission to erect such canopies, tents and concession stands, as aforementioned is conditioned upon Applicant complying with the following:

- (i) Within ten (10) days of the Event Period, Applicant shall file with the City Manager a detailed Concession Plan specifying the locations, hours, dates and types of concessions that will operate during the Event. The Concession Plan shall identify and list the individuals, corporations, partnerships or other entities that are or will be operating such concessions, tents or canopies at the Event Site. Any and all third-party vendors with which Applicant contracts for the sale or distribution of alcohol shall submit a copy of the vendor's liquor liability license at this time. Sponsors of events at which food or beverages will be sold or distributed shall meet all applicable state, county and city health codes. This shall be evidenced by a permit by the appropriate entity.
- (ii) Current flameproof certificates must be provided for all canvas tents,

awnings or canopies and shall be submitted for approval to the city fire departments. Applicant shall obtain approval by the City Fire Department and file with its application evidence that such canopies, tents, awnings and/or concession stands which are to be used during the period of time encompassed by this Agreement are of fireproof material and will not constitute a fire hazard. City's Sustainable Development Department shall review and approve the proposed use of any temporary structure used in association with the Event in accordance with the standard criteria as outlined in the City's Code of Ordinances and Florida Building Code.

d. All construction, installations and services, including electrical hook-ups, shall be made at Applicant's expense and approved in advance by the City's Sustainable Development Department, such approval not to be unreasonably withheld, conditioned or delayed, and otherwise in accordance with the terms and conditions of this Agreement. If electricity is required, Applicant, and/or its respective designees shall negotiate arrangements for such service with the City or a licensed contractor. This cost shall be an expense to Applicant and, if furnished by City, shall be paid to City within the time frame as set forth in Section 23, Reimbursement of Costs and Expenses. The Department of Sustainable Development shall conduct electrical inspections of all electrical facilities whether power is supplied by local utilities or is self-provided by generator systems. The Applicant shall permit the City staff to conduct electrical inspections of all electrical facilities.

e. Unless Applicant receives prior specific written permission by the City Manager, no construction or installations shall involve the use of stakes or other material that may break the surface or deface any infrastructure such as asphalt, concrete, brick or any plant material.

f. City will provide Applicant with a list of all City staff members who are required to work at the Event at least ten (10) days prior to the Event. Applicant shall provide City with an "all-access" Event pass for each City staff member identified on the City's list, subject to Applicant's internal policies, and Applicant shall deliver to the City all requested all-access Event passes no later than five (5) days prior to the Event. City shall be responsible for the negligent or wrongful acts and omissions of all City agents, officers, contractors and employees *while acting within the scope of the employee's office or employment, subject to the limitations contained in Section 768.28, Florida Statutes, as amended or revised.* Additionally, Applicant shall provide an operations tent to be utilized by the City of Fort Lauderdale during the Event days. Location of this operations tent shall be determined by the City.

### 13. **USE OF EVENT SITE AND PAYMENT FOR DAMAGE TO CITY PROPERTY.**

a. Applicant will exercise reasonable care in its use of the Event Site and Event Impact Areas. If such areas are damaged beyond normal wear and tear by the negligent acts or wrongful conduct of the Applicant, or its agents, employees, contractors, subcontractors, invitees, licensees, or attendees, Applicant will reimburse the City an

amount equal to the actual and documented costs of Repair, subject to the provisions of this section.

No more than five (5) days prior to the Event, City, and Applicant shall inspect and document the condition of the Event Site and Event Impact Areas. It shall be the responsibility of the Applicant during the initial walk-through inspection to point out to the City the areas of disrepair or pre-existing conditions reasonably visible to Applicant upon a cursory inspection and walk-through. Prior to the end of the Event, City, and Applicant shall inspect the condition of the Event Site and Event Impact Areas and City shall inform Applicant of all necessary Repairs. Applicant shall make all necessary Repairs to restore the Event Site and Event Impact Areas to a condition equal to that existing prior to the Event.

b. Applicant agrees to Repair all core drilling holes in the asphalt, concrete, and all other paved and unpaved surfaces, made to facilitate the erection of barriers, stages, fences, tents and other improvements to the Event Site and Event Impact Areas, according to City standards, as determined by the City Manager in his sole discretion, within seventy-two (72) hours after the conclusion of the Event.

c. Applicant shall be responsible for damage to all plants, shrubs, trees, other landscaped areas, paved surfaces, and to any and all structures located or situated upon any portion of the Event Site or Event Impact Areas. Applicant shall be responsible for the costs to Repair any part of the Event Site or Event Impact areas that are damaged during the Event Period as a result of the negligence and/or wrongful acts of Applicant or Applicant's agents, employees, contractors, subcontractors, invitees, licensees, or attendees. Applicant shall be responsible, at Applicant's sole expense, for the repair or loss of its officers', contractors', subcontractors', and agents' personal property, except for repairs or losses of such property caused by the negligence or willful misconduct of the City or its officers, contractors, employees or agents.

d. It is further agreed that if damage is found to exist, as a result of the Applicant's or its agents, employees, contractors, subcontractors, invitees, licensees, or attendees' negligence during the Event Period, City shall furnish Applicant with a written report of such damage by the close of business on the Tuesday following the Breakdown of Event. The report shall estimate the cost to remedy such damage. If Applicant arranges for such damages to be repaired by or on behalf of City, such cost shall be paid by Applicant to City within fourteen (14) days after Applicant receives the City's invoice of the cost of said damage.

14. **SECURITY OF APPLICANT'S PROPERTY.** All construction materials, equipment, goods, signs and any other personal property of Applicant shall be protected solely by Applicant. Applicant acknowledges and agrees that City assumes no responsibility or liability, whatsoever, for any such item and that the security and protection of any such item from theft, vandalism, the elements, acts of God, or any other cause, are strictly the responsibility of Applicant, unless caused by the wrongful or negligent acts of the City or its officers, contractors, employees or agents.

15. **APPLICANT'S CONTRACTS.** Applicant agrees to be solely responsible for all contracts or agreements of any nature including, without limitation, those for entertainment and vendors for the Event. All contracts for the Event shall be negotiated by Applicant, and/or its respective designees and secured at the sole expense of Applicant, and/or its respective designees, respectively. City shall not be named as a party in any contract for the Event and City shall have no obligation to ensure payment to any individual or entity for goods and/or services provided in conjunction with such Event. No employment relationship exists between City and Applicant.

16. **SUBLEASES, ASSIGNMENTS, OR TRANSFERS.** Applicant or any of the principals of the corporation shall not assign, sublease or transfer any of its obligations and/or rights under this Agreement, in whole or in part, to any person, business or entity, without the prior written approval of City, such approval not to be unreasonably withheld or denied. Any action by Applicant in contravention of this Section 16 will result in immediate cancellation and termination of this Agreement by City.

17. **LICENSES AND PERMITS; COPYRIGHTS, PATENTS AND TRADEMARKS.** Applicant agrees to secure and pay for all licenses and permits required by any governmental agency having jurisdiction over the Event Site for any dispensing, serving, sale and/or distribution of the appropriate governmental agency. Additionally, if Applicant intends to use any item which is or may be protected from infringement, such as but without limitation, copyrights, patents and trademarks, if requested by City, Applicant shall provide City ten (10) days in advance of the first date of property use, evidence showing that the applicable licenses, permits and/or permission have been secured and, if applicable, that all fees have been paid in full by Applicant. The provisions of this paragraph specifically apply to the American Society of Composers, Authors and Publishers ("ASCAP"), Broadcast Music Incorporated ("BMI") and any other similar organization that may require written permission and payment of a fee for use of protected music material. Applicant shall ensure that all performance payments required to be made under such licenses are made promptly and directly to the licensing organizations. Copies of all said licenses or reports shall be submitted to City upon request, as permitted by law. In the event Applicant fails to submit the licenses or reports as required herein or the documentation is not satisfactory to City, Applicant shall be responsible for payment to City for all license fees incurred by the City in connection with the Event. City shall have no responsibilities to any performing rights licensing organizations for any performance during the Event.

18. **STANDARDS OF CONDUCT; COMPLIANCE WITH RULES, REGULATIONS, ORDINANCES.** Applicant agrees that at all times it will conduct its activities with full regard for public safety and will observe and abide by all applicable federal, state and local laws, the federal and state constitutions, and all rules, regulations and ordinances of City and any other governmental agency having jurisdiction including, without limitation, those relating to noise, building, zoning, gambling, fire protection, liquor regulation, sanitation and food facilities and hours of operation, in connection with its obligations under this Agreement. Applicant shall further take all precautions and use due care to conduct its operations in a safe and prudent manner with respect to its agents, employees and visitors to the Event. The City agrees that it and its employees, contractors, officers and agents will observe and abide by all applicable federal, state and local laws and the federal and state constitutions in the performance of all work and services to be provided under this Agreement.

19. **INSURANCE.** As a condition precedent to the effectiveness of this Agreement, during the term of this Agreement, the Applicant, at the Applicant's 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 the Applicant. The Applicant shall provide the City a certificate of insurance evidencing such coverage. The Applicant's insurance coverage shall be primary insurance for all applicable policies. The limits of coverage under each policy maintained by the Applicant shall not be interpreted as limiting the Applicant's liability and obligations under this Agreement. All insurance policies shall be from insurers authorized to write insurance policies in the State of Florida and that possess an A.M. Best rating of A-, VII or better. All insurance policies are subject to approval by the City's Risk Manager.

The coverages, limits, and endorsements required herein protect the interests of the City, and these coverages, limits, and endorsements may not be relied upon by the Applicant for assessing the extent or determining appropriate types and limits of coverage to protect the Applicant against any loss exposure, 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 the Applicant 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:

- \$10,000,000 each occurrence and \$10,000,000 aggregate for Bodily Injury, Property Damage, and Personal and Advertising Injury
- \$10,000,000 each occurrence and \$10,000,000 aggregate for Products and Completed Operations

Policy must include coverage for Contractual Liability and Independent Contractors which shall include coverage for pyrotechnics.

The City and the City's officers, employees, and volunteers are to be covered as additional insureds 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 Applicant. The coverage shall contain no special limitation on the scope of protection afforded to the City or the City's officers, employees, and volunteers.

Liquor Liability

If Applicant engages in the sale and/or distribution of alcohol, Applicant shall provide evidence of coverage for liquor liability in an amount not less than \$1,000,000 per occurrence. If the Commercial General Liability policy covers liquor liability (e.g. host or other coverage), the Applicant shall provide written documentation to confirm that coverage already applies to this Agreement.

If Applicant contracts with a third party vendor for the sale and/or distribution of alcohol, Applicant agrees to cause any and all third party vendors to obtain, pay for and keep in force continuously during the event, liquor liability insurance in an amount not less than \$1,000,000.00 per occurrence. Applicant is required to confirm, in writing, that each vendor of the Applicant carries insurance coverages and limits that meet or exceed the conditions set forth in this Agreement.

#### Active Shooter Insurance

Applicant shall ensure that there are no exclusions in its liability insurance policy for liability associated with an Active Shooter event.

#### 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 the Applicant does not own vehicles, the Applicant 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.

Watercraft Liability – Not applicable.

#### 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.

The Applicant waives, and the Applicant shall ensure that the Applicant's insurance carrier waives, all subrogation rights against the City and the City's officers, 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.

The Applicant must be in compliance with all applicable State and federal workers' compensation laws, including the U.S. Longshore Harbor Workers' Act and the Jones Act, if applicable.

#### Insurance Certificate Requirements

- a. The Applicant shall provide the City with valid Certificates of Insurance (binders are unacceptable) no later than thirty (30) days prior to the start of the Event Period contemplated in this Agreement.
- b. The Applicant 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 the Applicant 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 goes beyond the expiration date of the insurance policy, the Applicant 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 named as an Additional Insured on all applicable liability policies, with the exception of Workers' Compensation.
  - g. The City shall be granted a Waiver of Subrogation on the Applicant's Workers' Compensation insurance policy.
  - h. The title of the Agreement, Bid/Contract number, 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

The Applicant has the sole responsibility for the payment of 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, or coverage exclusion or limitation. Any costs for adding the City as an Additional Insured shall be at the Applicant's expense.

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

The Applicant's insurance coverage shall be primary insurance as applied to the City and the City's officers, employees, and volunteers. Any insurance or self-insurance maintained by the City covering the City, the City's officers, employees, or volunteers shall be non-contributory.

Any exclusion or provision in the insurance maintained by the Applicant that excludes coverage for work contemplated in this Agreement shall be unacceptable and shall be considered breach of contract.

All required insurance policies must be maintained until the end of the Event Period, or until this Agreement is terminated, whichever is later. Any lapse in coverage shall be considered breach of contract. In addition, Applicant 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 Applicant's insurance policies.

The Applicant shall provide notice of any and all claims, accidents, and any other occurrences associated with the Event to the Applicant's insurance company or companies and the City's Risk Management office, as soon as practical.

It is the Applicant's responsibility to ensure that any and all of the Applicant's independent contractors and subcontractors maintain commercially reasonable types and amounts of insurance.

**20. INDEMNIFICATION AND HOLD HARMLESS.** Except in cases of City, its agents, officers, contractors and/or employees negligence or willful misconduct, Applicant agrees to indemnify, defend and hold harmless City, its officers, agents and employees, against any and all third-party damages, claims, losses, liabilities and expenses including claims and losses of bodily injury, property damage, illness and/or sickness (including, without limitation, reasonable legal fees and disbursements) caused by, in connection with, arising out of, or resulting from the use of the Event or caused by, in connection with, arising out of, or resulting from any act or omission by Applicant, its partners, employees, officers and agents done in the performance of this Agreement. If a party is called upon by the other party, such party shall defend not only itself, but also the other party in connection with any such claim at the indemnifying party's expense, provided that the indemnified party shall reasonably participate, at the indemnifying party's expense. Applicant further agrees to defend, indemnify, save and hold harmless the City and the City's officers, agents and employees from any third-party claim, suit, loss, cost or expense or any damages arising out of or relating to Applicant's failure to obtain all necessary performing rights and licenses for the Event (BMI, ASCAP, etc.). City shall be liable for damages or injuries caused by the City's and its agents, officers, contractors and employees' negligence or willful misconduct, 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.

Except in cases of Applicant, its agents, officers, contractors and/or employees negligence or willful misconduct, the City agrees to indemnify, defend and hold harmless the Applicant, its affiliates and its respective officers, agents and employees, against any and all third-party damages, claims, losses, liabilities and expenses including claims and losses of bodily injury, property damage, illness and/or sickness (including, without limitation, reasonable legal fees and disbursements) caused by, in connection with, arising out of, or resulting from any negligent or wrongful act or omission by the City, its agents, officers, contractors and/or employees done in the performance of this Agreement while acting within the scope of the employee's office or employment, and subject to the limitations contained in Section 768.28, Florida Statutes, as amended or revised. This Section shall survive any early cancellation or termination of this Agreement.

**21. LIMITATION OF LIABILITY.**



a. The City desires to enter into this Agreement only if in so doing the City can place a limit on the City's liability for any cause of action for money damages due to an alleged breach by the City of this Agreement or for any action or claim arising from this Agreement, so that its liability for any such breach or claim or action never exceeds the sum of the City's sovereign immunity under Section 768.28, Florida Statutes, as amended or revised. Applicant hereby expresses its willingness to enter into this Agreement with Applicant's recovery from the City for any damage action for breach of contract or for any action or claim arising from this Agreement to be limited to a maximum amount of the City's sovereign immunity under Section 768.28, Florida Statutes, as amended or revised. This Section shall survive any cancellation or early termination clause.

b. Accordingly, and notwithstanding any other term or condition of this Agreement, Applicant hereby agrees that the City shall not be liable to Applicant for damages in an amount in excess of \$ the City's sovereign immunity Section 768.28, Florida Statutes, as amended or revised, for any action for breach of contract or for any action or claim arising out of this Agreement. Nothing contained in this paragraph or elsewhere in this Agreement is in any way intended to be a waiver of the limitation placed upon City's liability as set forth in Article 768.28, Florida Statutes, as amended. This Section shall survive any cancellation or early termination clause.

c. The limitation of liability set forth in this section shall not apply to City's indemnification obligations hereunder, claims involving fraud or intentional misconduct of the City or its agents, officers, contractors or employees, or for damages or injuries caused by the City or its agents, officers, contractors or employees' negligence or wrongful misconduct while acting within the scope of the employee's office or employment, and subject to the limitations contained in Section 768.28, Florida Statutes, as amended or revised, as determined by a court of competent jurisdiction in the State of Florida as referenced in Section 20 above.

## 22. **COSTS AND EXPENSES FOR CITY SERVICES.**

a. As provided for in Section 6 above, Applicant shall plan and provide and coordinate with City personnel to implement the Public Safety Plan. Applicant agrees to reimburse the City for all actual and documented out-of-pocket costs and expenses incurred by the City for services provided for the Event including, without limitation, public safety, maintenance, cleanup, utility connections, breakdown and removal, storage and Repair or replacement of property, and staff time incurred as a result of the Event; provided, however, that Applicant shall not be charged for any of the foregoing unless Applicant has provided prior written approval (email is sufficient) of any such costs and expenses, which said approval shall not be unreasonably withheld or delayed prior to the Event. The police department may require the Applicant to provide and pay for security personnel for crowd control and traffic direction purposes, which security services would be deemed a part of this Agreement and not require a separate agreement between Applicant and the City. The fire department may require the applicant to provide and pay for EMS and fire watch personnel or both, which EMS and fire services would be deemed a part of this Agreement and not require a separate agreement between Applicant and the City. Police, fire and EMS costs are exempt from prior notice provisions. Applicant agrees and understands that the

off duty rate for police personnel for all special events is calculated at a three (3) hour minimum rate. There is a 24 hour cancellation requirement to avoid the three (3) hour minimum payment per officer. All payments will be paid within two (2) weeks of the payroll being submitted and receipt of an undisputed invoice from the City. Applicant agrees to work in good faith with the City and local police regarding positions for all security and supplemental police details for the Event should first be offered to City personnel at the detail rate. If an insufficient number of personnel are available at the detail rate, Applicant shall have the option to utilize outside Florida sworn agencies to fill the deficiency prior to the City mandating personnel to work at the overtime rate, with this request made through and coordinated by the City Police and/or Fire Rescue Departments. The Fort Lauderdale Police Department and Fire Department shall retain the command and control of their respective event operation areas at all times and any mutual aid or assisting agency personnel shall follow such command procedures. Applicant further agrees to be responsible for any capital improvements that the City must make to accommodate Applicant's request for any building, electrical, plumbing, fire, municipal, or county code requirements; provided, however, that Applicant shall not be charged for any of the foregoing unless Applicant has provided prior written approval (email is sufficient) of any such capital improvements, including the costs associated therewith, which said approval shall not be unreasonably withheld or delayed prior to the Event. Applicant shall also be responsible for any replacement and restoration costs as set forth in this Agreement.

b. Applicant agrees to secure a bond, or alternatively, send payment via wire transfer in an amount equal to one hundred and ten percent (110%) of the estimated cost of reimbursement for City services (the "Deposit"), to cover all costs and expenses associated with hosting the Event including, without limitation, public safety, maintenance, cleanup, utility connections, breakdown and removal, storage and Repair or replacement of property. In the event that the total amount payable by Applicant hereunder is less than the amount of the Deposit, the City shall return the difference between the actual and documented amount payable by Applicant hereunder and the amount of the Deposit, within thirty (30) days following the conclusion of the Event. City reserves the right to approve the bonding company or institution issuing the bond and the instrument shall be kept in full force and effect for the period of the Agreement. No later than thirty (30) days prior to the date of permission from City to first use the Event Site, Applicant shall provide the City with a valid payment bond in the amount specified above. The bond shall be written by a corporate surety company holding a Certificate of Authority from the Secretary of Treasury of the United States, executed and issued by a resident agent licensed by and having an office in the State of Florida, representing such corporate surety, providing that if Applicant fails to duly pay for any labor, materials, or other supplies used by Applicant, the surety will pay the same in the amount not exceeding the sum provided in such bond. Applicant shall also have the option to escrow the funds in an amount equal to one hundred and ten percent (110%) of the cost of reimbursement for City services ("Obligated Amount") in which case a bond would not be required by the City. The Obligated Amount shall be placed into the City of Fort Lauderdale Escrow Account to be held in escrow under the terms and conditions hereinafter set forth ("Escrow Deposit"). The City acknowledges and agrees that in the event Applicant pays the Deposit via a wire transfer, that no bond or escrow would be required by the City under this Agreement.

c. In the event the Applicant elects to deposit the Obligated Amount with the City of Fort Lauderdale Treasurer, who shall be the Escrow Agent, the Escrow Agent shall promptly deposit, retain and disburse the Escrow Deposit in accordance with the terms hereof or as may be directed in writing by both the Applicant and City Manager on behalf of the City or as may be directed by a court of competent jurisdiction.

d. If the Escrow Agent is in doubt as to his or her duties, the Escrow Agent shall retain the Escrow Deposit until Applicant and City, through its City Manager, collectively agree in writing to the disposition of the funds or until a court of competent jurisdiction has adjudicated the rights of Applicant and the City.

e. Any suit between Applicant and City where Escrow Agent is made a party because of acting as Escrow Agent, or in any suit where Escrow Agent interpleads the Escrow Deposit, Escrow Agent shall recover reasonable attorney's fees and costs from the Escrow Deposit, as between Applicant and City, and such fees and costs shall be charged and assessed against the non-prevailing party.

f. The parties agree that the Escrow Agent shall not be liable to any party or person for misdelivery of the Escrow Deposit or any portion thereof to Applicant or City, unless misdelivery is due to willful breach of the terms hereof or gross negligence on the part of Escrow Agent.

g. The escrow deposit will be held until all effected departments have submitted their final invoice for the reimbursement of City services including without limitation Public Safety Services. Once the final invoice has been received, the Applicant will be notified for approval. Once approved, the release of escrowed funds earmarked for police services will be wired back to the Applicant's bank account. The Applicant shall release checks to police personnel for payment of off-duty details at the Event within three (3) business days of receiving the escrowed funds.

**23. REIMBURSEMENT OF COSTS AND EXPENSES.**

a. Subject to the terms hereof, Applicant shall pay City for all actual and documented costs and expenses incurred by City for which Applicant is responsible hereunder within fourteen (14) days of receipt of an undisputed invoice from City. In the event that the total amount payable by Applicant hereunder is less than the amount of the Deposit, the City shall return the difference between the actual and documented amount payable by Applicant hereunder and the amount of the Deposit, within thirty (30) days following the conclusion of the Event. If total amount of any undisputed sums are not paid within fourteen (14) days of invoice receipt, interest charges of four percent (4%) annual percentage rate shall be applied.

b. Should Applicant disagree with the invoice provided by the City, it shall state its reason(s) in writing and may request the City Manager to review the charges and render a decision. If Applicant does not agree with the City Manager's decision, Applicant may

make a petition to the City Commission. If Applicant does not agree with the results of such review, upon the filing of a lawsuit the parties shall agree to mandatory mediation.

24. **AUTHORITY OF CITY MANAGER.** Applicant shall coordinate the use of Event Site in accordance with the terms hereof and the approved Site Plan, in consultation with the City Manager. The City Manager shall notify Applicant 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 Applicant, its agents, subcontractors, independent contractors and/or employees have violated any law, rule or ordinance. After consultation with Applicant, City reserves the right to eject or cause to be ejected from the Event Site any person or persons causing a disturbance and neither the City nor any of its officers, agents or employees shall be liable to Applicant for any damages that may be sustained by Applicant through the exercise by City of such right, unless due to the fraudulent, bad faith, negligent or wrongful acts or omissions of the City or its officers, agents, contractors or employees in connection with the foregoing **while acting within the scope of the employee's office or employment, and subject to the limitations contained in Section 768.28, Florida Statutes, as amended or revised.** The decision of the City Manager in such regard shall be final and binding.

25. **TERMINATION:**

- a. This Agreement may be terminated as follows:
  - i. Upon the mutual written agreement of the parties.
  - ii. Applicant may elect, during the Term of this Agreement, to terminate this Agreement and no longer conduct the Event without penalty. If Applicant elects to terminate this Agreement, Applicant shall notify the City in writing of such election one hundred and twenty (120) days prior to the date of the Event. Applicant shall be obligated to reimburse City for any costs and expenses incurred by the City in connection with the fulfillment of the City's obligations under this Agreement prior to such termination. It is expressly understood that City may seek to terminate this Agreement if the City decides, in its reasonable, good faith discretion, it is necessary to protect the public's health, safety and welfare. City may also seek to terminate this Agreement upon the material breach by the Applicant of its obligations under this Agreement. If the City seeks to terminate this Agreement, the City shall provide notice of the reason for termination as set forth in the Notice section of this Agreement, and the Applicant shall have seventy-two (72) hours to cure the reason for the termination to the exclusive satisfaction of the City, acting reasonably. In the event of an imminent threat to the public's health or safety, the City may terminate this Agreement at any time by providing notice as set forth in the Notice section of this Agreement. Prior to exercising such right, the City will use best efforts to consult with Applicant on a meaningful basis to determine if the parties may reasonably mitigate such threat, unless immediate action is required given the circumstances.

- iii. By a party upon the Default of the other party, without limitation of any other available rights or remedies available to such party at law or in equity. “Default” means, after expiration of the applicable notice and cure periods, the failure of a party to comply with or perform any material term, condition, or covenant contained herein which continues for more than thirty (30) business days after the defaulting party’s receipt of written notice thereof (or in the event of an allegation of material breach or default not reasonably curable within thirty business days of such notice, if the defaulting party has not begun using diligent efforts to cure such alleged breach or default within such period). If the alleged breach occurs within thirty (30) business days of the start of the Event Period, the cure period may be reasonably reduced given the circumstances and the imminency of the Event, as set forth in such notice.
- iv. In addition to the termination rights set forth above, the City may seek to temporarily suspend or cancel an Event if the City determines, in its reasonable, good faith discretion, that an imminent and legitimate threat or risk to the public’s health, safety and welfare exists. Prior to exercising such right, the City will use best efforts to consult with Applicant on a meaningful basis to determine if the parties are reasonably able to mitigate such threat or risk, unless immediate action is required given the circumstances. The City’s exercise of the right set forth in this paragraph shall not result in a termination of the Agreement as to any remaining Events, unless otherwise agreed in writing by the parties.

In the event of a termination of this Agreement under this Section 25, Applicant shall pay City for all actual and documented costs and expenses incurred by City for which Applicant is responsible hereunder up to and including the effective date of termination. In the event that the total amount payable by Applicant hereunder is less than the amount of the Deposit, the City shall return the difference between the actual and documented amount payable by Applicant hereunder and the amount of the Deposit, within thirty (30) days following the effective date of termination.

26. **BREACH.** A material, monetary, breach of this Agreement by the Applicant shall be grounds for the City to terminate this Agreement, except that before such termination, the Applicant shall be entitled to thirty (30) days written notice and an opportunity to cure the breach within such period. Notice of any breach may be sent by electronic mail, followed by hand delivery of the notice as provided in Section 32 of this Agreement.

27. **FORCE MAJEURE.** In the event the Event Site 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 Event Site, act of terrorism, war, act of God or other disaster or epidemic, act or failure to act of any governmental or regulatory body (whether civil or military, domestic or foreign) or governmental regulation imposed after the fact (collectively or separately, “Force Majeure Event”), or the Event is cancelled or postponed, including, due to a Force Majeure Event, then either party, following good faith consultation with the other party, may terminate this

Agreement by providing prior written notice to the other party. In such instance, each party shall be responsible for their own costs and expenses incurred prior to such termination except if the Force Majeure Event occurs during the Event Period, whereas Applicant will reimburse City for all actual and documented costs incurred related to the Event, as otherwise provided for hereunder. In the event that the total amount payable by Applicant hereunder is less than the amount of the Deposit, the City shall return the difference between the actual and documented amount payable by Applicant hereunder and the amount of the Deposit, within thirty (30) days following such termination.

28. **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. Venue for any action brought in Federal Court shall be 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.

29. **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.

30. **WAIVER OF BREACH.** Failure by City or Applicant to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement.

31. **EXTENT OF AGREEMENT.** This Agreement represents the entire and integrated Agreement between City and Applicant with respect to the Event and supersedes all prior negotiations, representations or agreements either written or oral.

32. **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 of Fort Lauderdale  
Attn: City Manager  
100 North Andrews Avenue  
Fort Lauderdale, FL 33301

With a copy to:

City of Fort Lauderdale  
Attn: City Attorney  
100 North Andrews Avenue

Fort Lauderdale, Florida 33301

**APPLICANT:**

Florida Panthers Hockey Club Enterprises, Inc.  
Attn: Matthew Caldwell  
One Panther Parkway  
Sunrise, FL 33323  
[caldwellm@floridapanthers.com](mailto:caldwellm@floridapanthers.com)

With a copy to:

Florida Panthers Hockey Club Enterprises, Inc.  
Attn: Ed Wildermuth  
One Panther Parkway  
Sunrise, FL 33323  
[wildermuthe@floridapanthers.com](mailto:wildermuthe@floridapanthers.com)

With a courtesy copy sent to:

Dean Matsuzaki, Executive Vice President, Events  
NHL Enterprises, L.P. ([DMatsuzaki@nhl.com](mailto:DMatsuzaki@nhl.com))

33. **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 Applicant 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.

34. **NON-DISCRIMINATION.** In the performance of this Agreement, Applicant shall not discriminate against any vendor, concessionaire, employee, patron, visitor, attendee or customer because of sex, age, race, color, religion, ancestry, national origin or sexual orientation. Applicant agrees to comply with the terms and provisions of the Americans with Disabilities Act and shall make the Event Site accessible for persons with disabilities.

35. **EMERGENCY ACCESS:** Applicant agrees to provide any and all emergency access required by the City and its employees for the safety and welfare of the community and those attending the Event, and proper entrances into any gates which are locked. If, in the course of Applicant's operations, Applicant or City, or their officers, agents and/or employees, become aware of any condition in or about the Event Site or Event Impact Areas which may be dangerous, Applicant will promptly correct such condition or cease operations upon becoming aware or being notified of such condition so as not to endanger persons or property.

36. **PUBLIC RECORDS:**

Applicant shall keep true, complete and correct books and records of all transactions and activities pursuant to this Agreement. Applicant recognizes and acknowledges that all such records shall be subject to Florida Public Records Law, Section 119.0701, Florida Statutes, as amended. **IF THE**

**APPLICANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE APPLICANT'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).**

**37. MISCELLANEOUS PROVISIONS:**

a. Applicant 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 course of the Event. In addition, the Applicant will work with the City Public Affairs Division to disseminate traffic plan information to impacted residents and businesses in the Event Impact Areas, as well as schedule and facilitate a public meeting at a location near the Event Site to communicate general event and traffic plan information to the public. The logistics and date/time of the meeting shall be approved by the City, with the meeting taking place at least ninety (90) days prior to the first performance day of the Event.

b. The use of fireworks shall comply with all applicable state laws and shall require a fireworks permit from the City fire department.

c. Applicant acknowledges that it is solely responsible for all utilities for the Event including, without limitation, electrical, water, and sewer and storm sewer hookup requirements.

d. Applicant understands that City periodically amends its fee structure for events being held within the City. Applicant agrees that any additional fee structures approved by the City Commission prior to the 2023 Event will be applied and Applicant shall be responsible for the same, so long as the City gives Applicant at least six (6) months prior written notice of any such additional fees, and where such fees are excessive (as determined by Applicant in its sole discretion), Applicant shall have the right to terminate this Agreement with respect to the 2023 Event upon written notice to the City.

e. In the Event that the City is required to file any legal action against Applicant to collect any fees due under this Agreement and prevails in such legal action, City shall be entitled to its costs of collection, repairs, reasonable attorney's fees and costs and interest at the maximum rate allowable by law.

f. The Applicant shall be permitted to serve alcoholic beverages as a concession of the Event, and the Applicant may extend this right to permitted third parties, in accordance with all applicable licenses, regulatory requirements and the City of Fort Lauderdale Code of Ordinances.

g. The Applicant, after receiving permission by the City's Contract Administrator and subject to the terms of this Agreement, reserves the right to add decor, including, but not



limited to signage in and around the Event Site or cover any existing signage, as authorized by the City of Fort Lauderdale Code of Ordinances.

h. As between the parties, the Applicant, and its respective designees, after receiving permission by the City's Contract Administrator, such permission not to be unreasonably withheld, conditioned or delayed, may conduct filming anywhere at the Event Site that is part of this Agreement and as between the parties, shall retain all rights to such.

i. The Applicant will have a right to an independent audit of City's records to confirm the accuracy of the fees and expenses incurred by the City.

j. Notwithstanding anything contained herein to the contrary, any timelines set forth herein may be revised and/or determined by the City and Applicant, upon the mutual written consent of the Parties

k. Where any provision of this Agreement requires approval by or agreement with the City, the agreement or approval of [\_\_\_\_\_] ([email address and cell phone number]), shall be sufficient for such purpose. Where any provision of this Agreement requires approval by or agreement with the Applicant, the agreement or approval of Bryce Hollweg ([hollwegb@floridapanthers.com](mailto:hollwegb@floridapanthers.com) and 954.838.1353), shall be sufficient for such purpose. Where any provision of this Agreement requires approval by or agreement by the Applicant, , Dean Matsuzaki, Executive Vice President, Events ([dmatsuzaki@nhl.com](mailto:dmatsuzaki@nhl.com) and 347.853.4339), or Nick Gennarelli, Vice President, Events ([ngennarelli@nhl.com](mailto:ngennarelli@nhl.com) and 917.647.3239), shall be contacted for such purpose. The City and Applicant agree that such approval may be provided via email.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

[SIGNATURE PAGES TO FOLLOW]

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

**CITY**

WITNESSES:

CITY OF FORT LAUDERDALE, a  
municipal corporation of the State of  
Florida:

\_\_\_\_\_  
Signature

By: \_\_\_\_\_  
Dean J. Trantalis, Mayor

\_\_\_\_\_  
[Witness print or type name]

\_\_\_\_\_  
Signature

By: \_\_\_\_\_  
GREG CHAVARRIA  
City Manager

\_\_\_\_\_  
[Witness print or type name]

ATTEST:

APPROVED AS TO FORM:  
D'WAYNE M. SPENCE  
Interim City Attorney

By: \_\_\_\_\_  
DAVID R. SOLOMAN, City Clerk

By: \_\_\_\_\_  
Patricia SaintVil-Joseph  
Assistant City Attorney

**APPLICANT**

**FLORIDA PANTHERS HOCKEY CLUB ENTERPRISES, INC.**, a Florida profit corporation

**WITNESSES:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
[Witness print or type name]

\_\_\_\_\_  
Signature

\_\_\_\_\_  
[Witness print or type name]

(CORPORATE SEAL)

STATE OF \_\_\_\_\_ :  
COUNTY OF \_\_\_\_\_ :

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization, this \_\_\_\_\_ day of \_\_\_\_\_, 2023, by **Matthew Caldwell**, President/CEO for Florida Panthers Hockey Club Enterprises, Inc., a Florida profit corporation. He/she is personally known to me or has produced as identification.

(SEAL)

By: \_\_\_\_\_  
Matthew Caldwell, President/CEO

**ATTEST:**

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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

\_\_\_\_\_  
Name of Notary Public)

Personally Known \_\_\_\_\_ OR Produced Identification \_\_\_\_\_  
Type of Identification Produced \_\_\_\_\_

My Commission Expires: \_\_\_\_\_  
Commission Number: \_\_\_\_\_

**EXHIBIT “A”  
EVENT PERIOD**

Set Up:

Wednesday, January 25, 2023, through Wednesday, February 1, 2023 (8:00 am – 6:00 pm)

Event:

Thursday, February 2, 2023, through Saturday, February 4, 2023 (10:00 am – 10:00 pm)\*

\* The NHL All-Star Beach Bash presented by New Amsterdam Vodka will take place Saturday, February 4, 2023 (6:30 pm – 11:59 pm)

Breakdown of Event:

Sunday, February 5, 2023 – Thursday, February 9, 2023 (8:00 am – 6:00 pm)

Notwithstanding anything contained herein to the contrary, the Applicant, and its respective designees, employees, contractors and agents (including, the Outside Vendors), shall have 24/7 access to the Event Site during the Event Period, commencing at 8:00 am on January 25, 2023, and ending at 6:00 pm on February 9, 2023.

## **EXHIBIT “B”**

### **DESCRIPTION OF EVENT SITE**

Event site means collectively the area on the barrier island used to hold the event from the B Ocean extending north to SE 5<sup>th</sup> Street and A1A to the Atlantic Ocean together with a portion of Las Olas Oceanside Park.

**EXHIBIT “C”**  
**MAINTENANCE OF TRAFFIC PLAN**

**EXHIBIT "D"**  
**SITE PLAN MAP**

**EXHIBIT “E”  
CREATIVE GRAPHICS**