

AGREEMENT FOR DOWNTOWN COUNTDOWN

This Agreement (the "Agreement") is entered in as of this day of _____, 2021, by and between O.B. Festival Events, LLC, a Florida not-for-profit limited liability company ("OB Events"), and the City of Fort Lauderdale (the "City").

WHEREAS, OB Events is operated for purposes beneficial to the community as a whole and the promotion of the social welfare of the State of Florida, to that end, OB Events sponsors, produces and/or participates in festivals, expositions, athletic contests and other similar or allied projects so that the residents of, and visitors to, the community shall become acquainted with, attracted to and interested in the climatic, recreational, commercial, agricultural, social, educational and economic resources of the area; and

WHEREAS, OB Events is wholly-owned by The Orange Bowl Committee, Inc. (the "OBC") and has the right to use certain trade names, logos and other intellectual property owned by the OBC pursuant to a License Agreement dated April 28, 2010 (the "License Agreement"); and

WHEREAS, the City annually organizes and operates the "Downtown Countdown" New Year's Eve Celebration (the "Event") which takes place in Downtown Fort Lauderdale, on December 31st/January 1st of each year, which Event is a community event open to the general public and visitors; and

WHEREAS, pursuant to Section 2-181(f)(3) of the Code of Ordinances of the City of Fort Lauderdale, as amended, the City Manager has determined that the services offered by OB Events are proprietary in nature and that it would be in the best interest of the City to not utilize competitive bids to purchase these services, but instead, the price and scope of services will be negotiated, and

WHEREAS, the City desires to retain OB Events to use its expertise to assist the City in promoting the Event, and OB Events agrees to do so pursuant to the terms and conditions set forth in this Agreement;

NOW, THEREFORE, in consideration of the mutual promises contained herein and such other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

Article I Duties and Obligations

1.1 Definitions.

- (a) City Marks shall mean such marks as shown on **Exhibit 1** attached hereto and made a part hereof.

- (b) Commercially Reasonable Efforts shall mean that level of effort which a prudent business would undertake in circumstances which are the same as or substantially similar to the circumstances referred to or described, but without any obligation to incur any unduly burdensome expenses or obligations.
- (c) Intentionally left blank.
- (d) Intentionally left blank.
- (e) OB Event Marks shall mean the OBC marks licensed to OB Events pursuant to the License Agreement, as shown on **Exhibit 2** attached hereto and made a part hereof.
- (f) Procuring Cause shall mean that cause and effort which brings about the result of securing a Sponsor based upon the facts and circumstances.
- (g) Net Revenue shall mean the gross revenue less all out-of-pocket costs and expenses incurred by OB Events in fulfillment of sponsorship contracts related to the Event (including, without limitation, tents, tables, food and beverages, banners, etc.), provided that, fulfillment costs and expenses shall not exceed twenty-five percent (25%) of the sponsorship fee without the prior written approval of the City not to be unreasonably withheld, as to which costs and expenses. OB Events shall maintain true, correct and complete books and records in accordance with Section 4.3(c) hereof.

1.2 OB Events Obligations.

- (a) OB Events hereby agrees to use Commercially Reasonable Efforts to obtain sponsors for the Event. OB Events shall also work with the City to mutually agree on the various levels of sponsorships and the fulfillment levels of such sponsorships, the current levels agreed upon by the City and the OBC are set forth on **Exhibit 3**, which may be modified upon the mutual agreement of the City Manager (or his/her designee) and OB Events not to be unreasonably withheld (as the same may be amended, the "Agreed Rate Card").
- (b) OB Events shall use commercially reasonable efforts to collect sponsorship fees from Sponsors for which it is the Procuring Cause (but shall not be required to threaten or institute litigation or collection proceedings) and shall also be responsible for sponsorship fulfillment for Sponsors for which it is the Procuring Cause. The sponsorship fees collected by OB Events shall be used to pay for fulfillment costs and expenses; it shall then retain the commissions due to the OB Events pursuant to Article IV and shall remit the balance thereof to the City as provided in Section 4.3 hereof.
- (c) For purposes of this Agreement, OB Events hereby grants the City a limited, non-assignable, non-exclusive license to use the OB Events Marks solely for

the purposes set forth in this Agreement. The City agrees to use the OB Event Marks in identical form to the specimens set forth on Exhibit 2 hereto without any alteration therefrom. Upon termination or expiration of this Agreement, the City agrees to cease all uses of the OB Events Marks.

- (d) OB Events agrees to include the Event in all of its Orange Bowl Festival marketing and promotions wherever initiated, including, but not limited to, South Florida and the two markets of the teams participating in the applicable Orange Bowl football game.
- (e) OB Events agrees to use the City Marks in identical form to the specimens set forth on Exhibit 1 hereto without any alteration therefrom. OB Events acknowledges that the City is the sole and exclusive owner of the City Marks and the goodwill associated with such marks, acknowledges the validity of the City Marks and agrees that it shall not at any time challenge or contest the validity of the City Marks or such party's ownership of the City Marks.

1.3 City Obligations.

- (a) The City agrees to be solely responsible for all aspects of Event production, staging, entertainment, management, security and operation, including, but not limited to, operations, tickets, concessions, grandstands, barricading, police, and business administration if the Event takes place, but excluding OB Events fulfillment of sponsorship obligations for which OB Events is the Procuring Cause. It is acknowledged that OB Events shall have no responsibility or liability with respect to the foregoing. The City shall reasonably cooperate with OB Events with all matters related to local government and permitting.
- (b) The City will notify OB Events in writing if it is unable to hold the Event by April 1 prior to the Event or as soon as possible prior to the Event if the Event cannot be held as a result of war, insurrection, terrorist activity, strikes, lockouts, riots, floods, earthquakes, fires, casualty, acts of God, acts of a public enemy, epidemic, quarantine restrictions, freight embargo, shortage of labor or materials, interruption of utilities service, lack of transportation, litigation, weather, breach of contract or bankruptcy or insolvency of any vendors, sub-contractors, material suppliers or any other third parties unaffiliated with City and which breach or bankruptcy results in a City being unable to hold the Event, City shall not be liable to OB Events for services rendered. OB Events acknowledges that the City adopts its budget in September for the upcoming fiscal year, which runs from October 1st through September 30th. In the event that funds in an amount at least equal to what was budgeted by the City for the 2020-2021 Event are not available or budgeted to hold the Event, then the City shall give immediate written notice thereof to OB Events and either of the parties may terminate this Agreement with respect to such Event (but not any future Events that may be due to occur during the term of this Agreement) without liability effective upon written notice to the other party. If the parties

agree to hold such Event, then the parties agree that the Event shall be financed based solely on the amount of sponsorship funds obtained by OB Events. for the Event.

- (c) The City further agrees that the Event name has been modified to incorporate the "Orange Bowl" in the Event name as follows: [____potential title sponsor's name____] Fort Lauderdale Orange Bowl Downtown Countdown Presented by [____potential presenting sponsor's name____]. In all promotions and media of the Event, the City shall include the OBC's trade name and logo in the forms attached hereto as Exhibit 2 (the "OBC Marks")
- (d)The City hereby grants OB Events a limited, non-assignable, non-exclusive license to use the City's trade name and other marks (collectively, the "City Marks") solely for the purposes of performing its responsibilities under this Agreement and promotion of the Event. Upon termination or expiration of this Agreement, OB Events agrees to cease all uses of the City Marks. If OB Events agrees to use the City Marks in accordance with the specifications set forth on Exhibit 1; any deviation therefrom shall require the prior approval of the City.

Article II

Event Insurance/ Indemnification

2.1 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, O.B. Events, at its sole expense, shall provide the City with proof of insurance coverage of such types and with such terms and limits as noted below. Providing proof of and maintaining adequate insurance coverage are material obligations of O.B. Events. O.B. Events shall provide the City a certificate of insurance evidencing such coverage. O.B. Events' insurance coverage shall be primary insurance for all applicable policies. The limits of coverage under each policy maintained by O.B. Events shall not be interpreted as limiting O.B. Events' 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 required to be relied upon by O.B. Events for assessing the extent or determining appropriate types and limits of coverage to protect O.B. Events 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 O.B. Events 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:

- \$2,000,000 each occurrence and \$2,000,000 aggregate for Bodily Injury, Property Damage, and Personal and Advertising Injury
- \$2,000,000 each occurrence and \$2,000,000 aggregate for Products and Completed Operations

Policy must include coverage for contractual liability and independent contractors.

The City, a Florida municipal corporation, 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 O.B. Events. 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 O.B. Events does not own vehicles, O.B. Events 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.

O.B. Events waives, and O.B. Events shall ensure that O.B. Events' 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.

O.B. Events 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. O.B. Events shall provide the City with valid Certificates of Insurance (binders are unacceptable) no later than thirty (30) days prior to the start of work contemplated in this Agreement.

- b. O.B. Events 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 O.B. Events 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, O.B. Events 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 liability policies, with the exception of Workers' Compensation.
- g. The City shall be granted a Waiver of Subrogation on O.B. Events' 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

O.B. Events 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, or coverage exclusion or limitation. Any costs for adding the City as an Additional Insured shall be at O.B. Events' expense.

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

O.B. Events' insurance coverage shall be primary insurance as respects to the City, a Florida municipal corporation, its officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, a Florida municipal corporation, its officials, employees, or volunteers shall be non-contributory.

Any exclusion or provision in any insurance policy maintained by O.B. Events 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 shall be considered breach of contract. In addition, O.B. Events 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 O.B. Events' insurance policies.

O.B. Events shall provide notice of any and all claims, accidents, and any other occurrences associated with this Agreement to O.B. Events' insurance company or companies and the City's Risk Management office, as soon as practical, but no later than five (5) business days of such occurrence(s).

It is O.B. Events's responsibility to ensure that any and all of O.B. Events' 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 O.B. Events.

2.2 Indemnification.

Except in cases of City, its agents, officers, and/or employees negligence or willful misconduct, O.B. Events agrees to indemnify, defend and hold harmless City, its officers, agents and employees, against any and all 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 Site or Impact Area or caused by, in connection with, arising out of, or resulting from any act by O.B. Events, its partners, employees, officers and agents done in the performance of this Agreement. If called upon by City, O.B. Events shall defend not only itself, but also City in connection with any such Claim at O.B. Events's expense, and at no expense whatsoever to City. O.B. Events 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 or relating to O.B. Events'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 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.

Article III Term; Renewal

3.1 Term; Termination.

- (a) The term of this Agreement shall commence as of the date hereof and shall terminate on January 2, 2026, provided the license agreement dated April 28, 2010, between the Orange Bowl Committee, Inc. and the O.B. Festival Events, LLC, remains in full force and effect throughout the entire term of this Agreement.
- (b) Either party shall have the option to terminate this Agreement within ninety (90) days of the previous year's event with no cause.

3.2 First Refusal.

In addition, upon the termination or expiration of this Agreement, the City hereby grants to OB Events a right of first refusal to provide the services contemplated by this Agreement exercisable by written notice by OB Events to the City given prior to expiration of the Term. In such event, the City and OB Events shall negotiate in good faith for a 60-day period. In the event that the City and OB Events are unable to mutually agree on the terms of any new agreement within such 60-day period, then the City shall be free to retain a third party to provide such services.

Article IV Sponsorships

4.1 Sponsors.

With respect to Sponsors for which OB Events is the Procuring Cause, Net Revenues shall be paid fifty percent (50%) to the City and fifty percent (50%) to OB Events.

4.2 Procedures.

- (a) Payments to the City shall be made by OB Events with respect to all sponsorship fees received by OB Events no later than February 15th after each Event during the Term.
- (b) OB Events shall use all commercially reasonable efforts to collect all sponsorship fees with respect to Event Sponsors for which it is the Procuring Cause but shall not be responsible for uncollectible accounts receivables from Event Sponsors nor shall it be required to institute any collection action or litigation with respect thereto.
- (c) OB Events shall keep true, complete and correct books and records of all transactions and activities pursuant to this Agreement and shall maintain such

books and records for a minimum period of three (3) years after each Event or such time period as is required by the Florida General Records Schedule for Local Governments. The City shall have the right to inspect and copy such books and records upon reasonable prior written notice during normal business hours at OB Events' office, provided that they shall conduct such inspection in a manner so as to not unreasonably interfere with the business operations of OB Events. OB Events recognizes and acknowledges that all such records shall be subject to Florida Public Records Law, Section 119.0701, Florida Statutes. IF OB EVENTS HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, AND ITS DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (954) 828-5002, CITY CLERK'S OFFICE, 100 N. ANDREWS AVENUE, FORT LAUDERDALE, FLORIDA 33301.

- (d) In the event that this Agreement is not renewed for any reason OB Events agrees and acknowledges that OB Events shall not be entitled to any percentage of sponsorship fees derived from any Event Sponsors acquired by OB Events during the Term of this Agreement once this Agreement expires or terminates, and that the City will no longer use the Orange Bowl name in the title of the Event.
- (e) All sponsors of the Event, all goods and services to be promoted, and all items to be distributed, sold, or given away must have the prior approval of the City Manager (or his/her designee), which shall not be unreasonably withheld or delayed.
- (f) Each of the parties shall at all times comply with all federal, state and local laws and all rules, regulations and ordinances of the City and any other governmental agency having jurisdiction applicable to its performance under this Agreement.

Article V Miscellaneous

5.1 Notices.

Notice by any party is deemed given when mailed (postage prepaid, certified or registered, return receipt requested), delivered by overnight courier service, facsimile transmission or by personal delivery addressed to the other parties at the addresses appearing below:

To OB Events: 14360 NW 77th Court
Miami Lakes FL 33016
Attn: Chief Financial Officer

Facsimile: (305) 341-4750
Email address: bpark@orangebowl.org

To the City: Parks & Recreation Administration Building 701 S. Andrews Ave
Fort Lauderdale, FL 33316
Email address: Pthornburg@fortlauderdale.gov

With a Copy to: City Attorney's Office
100 N. Andrews Avenue
Fort Lauderdale, FL 33301
Facsimile: (954) 828-5195
Email address: PSaintVil-Joseph@fortlauderdale.gov

Any party may, by written notice to other, change the address to which any such communications shall be sent directly to such party at such changed address.

5.2 Governing Law.

This Agreement shall be governed by and construed in accordance with the laws of the State of Florida without regard to conflicts of law principles thereunder.

5.3 Binding Effect.

This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

5.4 Severability.

In the event that any provision of this Agreement or the application thereof to any party or circumstance shall be finally determined by a court of proper jurisdiction to be void, invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provision to parties or circumstances other than those to which it is held invalid or unenforceable shall not be affected thereby, and each provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

5.5 Agreement; Amendment.

This Agreement contains the full and complete understanding between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, whether written or oral, pertaining to the subject matter covered herein. This Agreement may not be amended, altered, or modified except by an instrument in writing, duly executed by the parties hereto.

5.6 Relationship.

No agency, partnership, joint venture, or other representative or fiduciary relationship between OB Events, on the one hand, and the City, on the other hand, is created by, or may be implied or inferred from, the execution of this Agreement, the conduct of their respective activities as contemplated by this Agreement, or the performance of the transactions contemplated hereby. It is acknowledged and agreed that each party is acting as an independent contractor, with sole control over the manner and means of its performance hereunder.

5.7 Further Assurances.

The parties agree to take or cause to be taken such further actions and to execute and deliver, or cause to be executed and delivered, such further documents and instruments, in order to effectuate fully the purposes, provisions, and conditions of this Agreement.

5.8 Execution.

To facilitate execution, this Agreement may be executed in counterparts; and it shall not be necessary that the signatures of each party appear on each counterpart; but it shall be sufficient that the signature of each party appear on one or more of the counterparts. Delivery of executed signature pages hereof by facsimile transmission shall constitute effective and binding execution and delivery thereof.

5.9 No Third Party Rights.

The provisions of this Agreement are for the exclusive benefit of the parties hereto and no other party (including, without limitation, any creditor of any of the parties) shall have any right or claim against the parties by reason of these provisions or be entitled to enforce any of those provisions against the parties.

5.10 Selection of Forum; Venue; Service of Process.

The parties hereby irrevocably submit in any suit, action or proceeding arising out of or relating to this Agreement or any transactions contemplated hereby to the exclusive jurisdiction of the Circuit Court located in Broward County, State of Florida or the United States District Court for the Southern District of Florida, Fort Lauderdale Division, and waive any and all objections to such jurisdiction or venue that they may have under the laws of any state or country, including, without limitation, any argument that jurisdiction, situs and/or venue are inconvenient or otherwise improper.

5.11 Survival.

Notwithstanding the expiration or termination of this Agreement, Articles I and V and Sections 3.1(b) and 13.2 shall survive in accordance with their respective terms and conditions.

5.12 Representations.

Each of the parties represents and warrants to the other that this Agreement has been duly authorized, executed and delivered by it and constitutes the valid and binding agreement of such party, enforceable in accordance with its terms.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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

ATTEST

CITY OF FORT LAUDERDALE

By: _____
Jeffrey A. Modarelli
City Clerk

By: _____
Dean J. Trantalis
Mayor

_____ day of _____, 2021

By: _____
Christopher J. Lagerbloom, ICMA-CM
City Manager

_____ day of _____, 2021

APPROVED AS TO FORM:
Alain Boileau, City Attorney

By: _____
Patricia SaintVil-Joseph
Assistant City Attorney

WITNESSES:

Signature

Print Name

Signature

O.B. FESTIVAL EVENTS, LLC,
a Florida Limited Liability
Company

By: **THE ORANGE BOWL
COMMITTEE, INC.,** a Florida Not
For Profit Corporation, as
managing member.

By: _____
ERIC POMS
Chief Executive Officer

STATE OF _____:

COUNTY OF _____:

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this ____ day of _____, 2021, by ERIC POMS as Chief Executive Officer for THE ORANGE BOWL COMMITTEE, INC., a Florida Not For Profit Corporation, in its capacity as managing member of O.B. FESTIVAL EVENTS, LLC, a Florida Limited Liability Company, on behalf of the company.

SEAL

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

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

Personally Known ____ OR Produced Identification ____

Type of Identification Produced _____

"EXHIBIT 1"



CITY OF FORT LAUDERDALE

"EXHIBIT 2"

NON-EXCLUSIVE LICENSE AGREEMENT

THIS NONEXCLUSIVE LICENSE AGREEMENT (the "Agreement") made this 28th day of April, 2010, by and between the Orange Bowl Committee, Inc., a Florida not-for-profit corporation ("LICENSOR") and the O.B. Festival Events, LLC, a Florida not-for-profit limited liability company ("LICENSEE").

RECITALS

WHEREAS, OBC is the owner of certain trademarks, service marks, names, symbols, logos, emblems, designs and colors, pertaining to the Orange Bowl Festival which include, but are not limited to, "Orange Bowl," and the "Obie" logo which have been adopted and are in use by OBC; and

WHEREAS, LICENSEE is a wholly-owned affiliate of LICENSOR, and LICENSOR desires to grant a limited license to LICENSEE to use the "Licensed Marks" (as hereinafter defined) in connection with its charitable activities, events and programs in the Territory; and

WHEREAS, the LICENSOR has determined that the charitable purposes of the LICENSEE are similar to those of the LICENSOR, and that permitting the LICENSEE to obtain a license for its marks and otherwise use certain facilities and services of LICENSOR supports the charitable purposes of LICENSOR;

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained, the LICENSOR and the LICENSEE agree as follows:

1. DEFINITIONS

For the purposes hereof:

- (a) "Activities" of LICENSEE shall mean those activities and programs within the charitable purposes of LICENSEE, including, without limitation, the sponsorship, organization, production, promotion and/or participation in festivals, expositions, athletic contests and other similar or allied projects so that the residents of and visitors to the community shall become acquainted with, attracted to and interested in the climatic, recreational, commercial, agricultural, social, educational and economic resources of the State of Florida;
- (b) "Licensed Marks" means the trademarks, service marks, names, symbols, emblems, logos, designs and colors pertaining to the marks referenced in the preface hereto and such others as may from time-to-time be set forth on Appendix A hereto.
- (c) "License Period" means the period beginning on the date hereof and ending as provided in Section 8 hereof.

2. GRANT OF LICENSE

(a) Grant. LICENSOR hereby grants to LICENSEE a nonexclusive, nonassignable, royalty-free license to use the Licensed Marks in connection with the LICENSEE Activities.

(b) Term. This Agreement shall be effective as of the date first written above and shall expire effective upon written notice to LICENSEE from LICENSOR, unless sooner terminated in accordance with the provisions hereof.

(c) Sublicense. The license granted by subparagraph (a) of this Section 2 does NOT include the right to grant sublicenses, except with the express consent of LICENSOR. Any attempt by LICENSEE to grant a sublicense under this Agreement without first receiving such consent shall be grounds for immediate termination of the license granted hereunder and any such attempted sublicense shall be void ab initio and of no force and effect.

(d) Limitations on License. This license is limited to the LICENSEE Activities. LICENSEE will not separately use the Licensed Marks for any other purpose nor shall LICENSEE use any component or constituent elements of the Licensed Marks. LICENSEE agrees to use the Licensed Marks in identical form to the specimens of the Licensed Marks approved by LICENSOR or as set forth on Appendix A without any alteration therefrom. No license is granted hereunder for the use of Licensed Marks for any purpose other than in connection with LICENSEE's Activities and in strict accordance with the terms and conditions of this Agreement. LICENSOR shall have the final decision in deciding any question regarding the Licensed Marks and LICENSEE's use thereof.

(e) Ownership of Licensed Marks and Goodwill. LICENSEE acknowledges that LICENSOR is the sole and exclusive owner of the Licensed Marks and the goodwill associated with such marks, acknowledges the validity of the Licensed Marks and agrees that it shall not at any time challenge or contest the validity of the Licensed Marks or LICENSOR's ownership of the Licensed Marks. Any and all goodwill accrued from the use of the Licensed Marks by the LICENSEE, as well as any other rights acquired by LICENSEE as a result of its use of the Licensed Marks during the term of this Agreement, shall inure solely to the benefit of LICENSOR. LICENSEE agrees that it shall not assert any claim to such goodwill or to the ownership of the Licensed Marks. LICENSEE shall at no time adopt or use, without LICENSOR'S prior written consent, any variation of the Licensed Marks or any word or mark similar to or likely to be confusingly similar with the Licensed Marks.

3. PROTECTION OF RIGHTS

(a) LICENSEE shall assist and cooperate in the protection of the rights of LICENSOR in, to and under the Licensed Marks, and any copyright, trademark or service mark procured with respect thereto shall be procured by and in the name of LICENSOR.

(b) In the performance of this Agreement, LICENSEE shall comply with all applicable laws and regulations, and those laws and regulations particularly pertaining to the proper use and designation of Licensed Marks. LICENSEE shall cooperate with LICENSOR to enable LICENSOR to effect trademark registration, maintenance and renewal of the Licensed Marks. Should LICENSEE be or become aware of any applicable laws or regulations which are inconsistent with the provisions of this Agreement, LICENSEE shall promptly notify LICENSOR in writing of such inconsistency.

4. LABELING OF LICENSED ARTICLES

Upon request, if LICENSOR permits LICENSEE to use the Licensed Marks on goods or products, LICENSEE shall cause to appear on or within each article sold under this license, by means of a tag, label, imprint or other appropriate device, such copyright, trademark or service mark notices as LICENSOR may designate. All Licensed Articles shall bear the legend "Officially Licensed Product" on either the article or its packaging and also the name or other identification of LICENSEE.

5. USE OF PREMISES; SERVICES.

LICENSOR hereby agrees to provide certain space to LICENSEE on the premises leased by LICENSOR free of charge. LICENSOR also agrees to provide to LICENSEE certain accounting, financial reporting and similar services from time-to-time. LICENSOR shall have the right to terminate such use and services at anytime upon thirty (30) days advance written notice to LICENSEE or at any time that LICENSOR determines, in its sole discretion, that the charitable purposes of LICENSEE are no longer consistent with the LICENSOR's charitable purposes.

6. INDEMNIFICATION

(a) LICENSEE hereby agrees to be solely responsible for, to defend, hold harmless and indemnify LICENSOR and its respective members, directors, officers, agents and employees, and to hold each of them harmless from any claims, demands, causes of action or damages (including, without limitation, attorneys' fees and expenses), whether suit is instituted or not and, if instituted, whether at any trial or appellate level, and whether raised by parties hereto or a third party, arising out of the activities of LICENSEE or its use of the Licensed Marks (other than claims arising from alleged infringement of trademark, service mark or other proprietary rights relating to LICENSEE's use of the Licensed Marks in accordance with this Agreement) and arising from the breach of representations, warranties and covenants contained in this Agreement and any act or omission to act of the LICENSEE, its officers, directors, employees or agents. At all times during the continuance of the license granted by, and throughout the term of this Agreement, and throughout the terms of all renewals of this Agreement, LICENSEE will maintain general liability insurance. Such insurance coverage shall be for at least \$1,000,000 property damage per occurrence and \$1,000,000 general liability. Such insurance policies shall provide that they may not be canceled or modified without at least thirty (30) days prior written notice to LICENSOR. LICENSEE shall deliver certificates of such insurance to LICENSOR on the date it executes and delivers this Agreement. Such certificates of insurance shall name LICENSOR as an additional named insured under such policies.

(b) LICENSOR hereby agrees to indemnify LICENSEE, its directors, officers, agents and employees and to hold them harmless against any claims, demands, causes of action or damages (including, without limitation, attorneys' fees and expenses) for trademark or service mark infringement arising out of the use of the Licensed Marks as authorized in this Agreement, provided LICENSOR is given immediate written notice of and shall have the option to undertake and conduct the defense of any such claim, demand or cause of action.

7. APPROVALS

(a) LICENSEE agrees that all uses of the Licensed Marks shall be in compliance with the terms and conditions of this Agreement. To assure LICENSOR that LICENSEE is complying with such standards and that LICENSEE's use of the Licensed Marks is and continues to be acceptable to LICENSOR, LICENSEE shall furnish to LICENSOR free of cost

for its inspection, as requested by LICENSOR, samples of graphics to be used of the Licensed Marks. Once the same has been approved by LICENSOR, LICENSEE shall not thereafter, without prior written approval by LICENSOR, make any change in the quality, appearance or style of either the graphics or the Licensed Marks to which such graphics are applied; violation by LICENSEE of this provision shall be grounds for immediate termination by LICENSOR of the license granted by this Agreement.

(b) In the event there is an occurrence or circumstance connected with any use of the Licensed Marks or with LICENSEE which, in the reasonable opinion of LICENSOR, reflects unfavorably upon the professional, business or personal reputation of LICENSOR, LICENSOR shall have the right, in the exercise of its reasonable discretion, to withdraw its approval of such uses or to terminate the license herein granted or this Agreement or both. LICENSEE shall cease the use of the Licensed Marks immediately upon notice from LICENSOR.

8. TERMINATION BY LICENSOR

(a) In addition to the other termination rights set forth elsewhere in this Agreement, LICENSOR shall have the right to terminate in its entirety the license granted by this Agreement effective upon receipt by LICENSEE of LICENSOR's notice of termination, in any of the following situations:

- (1) LICENSEE uses unapproved graphics or promotional materials bearing the Licensed Marks;
- (2) LICENSEE acts to damage or reflect unfavorably upon the reputation of LICENSOR or its sponsors;
- (3) LICENSEE attempts to assign or sublicense its rights in violation of this Agreement;
- (4) LICENSEE permits any required insurance policies to lapse; or
- (5) LICENSEE uses the Licensed Marks on products or articles not included within the license granted under this Agreement.
- (6) LICENSEE commits a material breach of this Agreement in respect to a provision which is not otherwise expressly listed as a ground for termination herein, whether or not under this Section 8, and the breach is not cured within the thirty (30) days written notice thereof;
- (7) LICENSEE ceases to be a not-for-profit corporation or ceases to be wholly-owned by the LICENSOR or LICENSOR determines, in its sole discretion, that the charitable purposes of LICENSEE are no longer consistent with the LICENSOR's charitable purposes; or
- (8) LICENSEE : (a) is dissolved or liquidated; (b) admits in writing its inability to pay its debts; (c) makes an assignment for the benefit of its creditors; (d) institutes or suffers the institution of a case or other proceeding under any section or chapter of the Federal Bankruptcy Code (Title 11 of the United States Code) as now existing or hereafter amended or becoming effective, or any similar order or decree having the same general purpose, and which, if involuntary, is not dismissed, stayed, discharged or vacated within sixty days thereafter; (e) causes, suffers, permits or consents to the appointment of a receiver, custodian, trustee, administrator, conservator, sequestrator, liquidator or similar official in any federal, state or foreign judicial or nonjudicial proceeding, to hold, administer and/or liquidate all or substantially all of its assets and such appointment is not revoked or terminated and such official is not discharged of his duties within sixty days of his appointment; or (f) suffers

the attachment, execution or other judicial seizure of all or any substantial part of its assets remaining undismissed or undischarged for a period of fifteen days after the levy thereof.

(b) Upon termination of either the license granted by this Agreement or of this Agreement itself, LICENSEE shall immediately cease all use of the Licensed Marks and vacate any space being used pursuant to Section 5 hereof.

9. EFFECTS OF EXPIRATION OR TERMINATION

After the expiration or termination of this Agreement and the license granted hereunder, for whatever reason, LICENSEE will refrain from further use of the Licensed Marks, directly or indirectly, or any further reference to them, directly or indirectly. LICENSEE further agrees following such expiration or termination that it shall not use any mark, design or logo which would result in a likelihood of confusion to the public with respect to the Licensed Marks.

10. CONFIDENTIALITY

During the term of this Agreement, each party shall keep confidential and, other than as provided herein, shall not use, disclose or publish, directly or indirectly, any trade secrets, confidential or proprietary information, or any other knowledge, information, documents or materials, owned, developed or possessed by the other party, whether in tangible or intangible form, the confidentiality of which such other party takes reasonable measures to protect. Each party shall take any and all lawful measures to prevent the unauthorized use, disclosure or publication of such information. Each party further agrees to refrain from directly or indirectly taking any action which would constitute or facilitate the unauthorized use or disclosure of such information.

11. NOTICES

All notices and statements to be given, all reports to be made, and all payments to be made hereunder, shall be given or made at the respective addresses of the parties set forth below unless notification of a change of address is given in writing in accordance with the method set forth in this Section 12. Any notice shall be sent by registered or certified mail, return receipt requested, properly addressed and stamped, and shall be deemed to have been given at the time it is mailed.

Notice to LICENSOR shall be addressed as follows:

Orange Bowl Committee, Inc.
14360 NW 77th Court
Miami Lakes FL 33016
Attn: Chief Financial Officer

Notice to LICENSEE shall be addressed as follows:

Director of Licensing
O.B. Festival Events, LLC
14360 NW 77th Court
Miami Lakes FL 33016
Attn: Chief Financial Officer

12. NO JOINT VENTURE

None of the parties intend, nor shall this Agreement be construed, to create hereby any joint venture, partnership, or employee-employer relationship. Each of the parties agrees that it is acting solely as an independent contractor hereunder and that it is not, and shall not hold itself out to be, an employee, partner or agent of the other, and that it shall determine the manner, means and method in which it shall perform its obligations hereunder and shall have sole control thereof. LICENSEE shall have no power to obligate or bind LICENSOR in any manner whatsoever.

13. SURVIVAL

The parties agree that notwithstanding the termination or expiration of this Agreement, the provisions of Sections 1, 2(e), 6, 8(b) and 9 through 14 shall survive such termination or expiration.

14. MISCELLANEOUS

This Agreement and any rights herein granted are personal to LICENSEE and shall not be assigned or encumbered, directly or indirectly, by law or by contract, without LICENSOR's prior written consent (which consent may be granted or withheld in the sole discretion of LICENSOR). None of the provisions of this Agreement can be waived or modified except expressly in writing signed by both parties. This Agreement shall be construed and enforced in accordance with the laws of the State of Florida without regard to the conflicts of law principles thereunder. The Agreement including the exhibits hereto constitutes the entire agreement between the parties with respect to its subject matter, supersedes all prior contracts, arrangements and understandings, and there are no agreements, understandings, representations or covenants among the parties other than those set forth in the Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

LICENSOR:

THE ORANGE BOWL COMMITTEE, INC.

By: 

Eric Poms, CEO

LICENSEE:

O.B. FESTIVAL EVENTS, LLC

By: 

Eric Poms, CEO



APPENDIX A
LICENSED MARKS



EXHIBIT 3
RATE CATEGORIES

Category	Rate
Title Sponsor	\$30,000
Presenting Sponsor	\$20,000
Beverage Sponsor	\$15,000
Automotive Sponsor	\$15,000
Kid's Zone Sponsor	\$15,000
Entertainment Sponsor	\$10,000
Supporting Sponsor	\$2,000