

RESOLUTION NO. 22-____

BE IT RESOLVED by the City Council of the City of Huntsville, Alabama, that the Mayor be, and he is hereby authorized to enter into an Agreement by and between the City of Huntsville and Huntsville Museum of Art Guild, on behalf of the City of Huntsville, a municipal corporation in the State of Alabama, which said agreement is substantially in words and figures similar to that certain document attached hereto and identified as "Facility Use Agreement between the City of Huntsville and Huntsville Museum of Art Guild", consisting of eight (8) pages, and the date of March 10, 2022, appearing on the margin of the first page, together with the signature of the President or President Pro-Tem of the City Council, an executed copy of said document being permanently kept on file in the Office of the City Clerk-Treasurer of the City of Huntsville, Alabama.

ADOPTED this the 10th day of March, 2022.

President of the City Council of
the City of Huntsville, Alabama

APPROVED this the 10th day of March, 2022.

Mayor of the City of Huntsville

FACILITY USE AGREEMENT
BETWEEN THE CITY OF HUNTSVILLE AND
HUNTSVILLE MUSEUM OF ART GUILD

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AND HUNTSVILLE MUSEUM OF ART GUILD

This License Agreement (the "Agreement") is entered into this 10th day of March, 2022, by and between the City of Huntsville, a municipal corporation in the State of Alabama (hereinafter referred to as the "City" or "Licensor"), and Huntsville Museum of Art Guild., a domestic nonprofit corporation, (hereinafter referred to as "Huntsville Museum of Art Guild" or "Licensee").

WHEREAS, the City of Huntsville has a public interest in promoting a vital and thriving downtown area;

WHEREAS, the Huntsville Museum of Art Guild is an organization dedicated to promoting awareness, appreciation, and knowledge of the visual arts by providing fundraising, volunteerism and education on behalf of the Huntsville Museum of Art; and

WHEREAS, the Huntsville Museum of Art Guild desires to sponsor an event known as "UNFRAMED: Off to the Races" to be held at Big Spring Park West, located at 200 Church Street, SW, Huntsville, Alabama 35801; and

WHEREAS, the purpose of the event is to raise funds for the Huntsville Museum of Art and to promote the Huntsville Museum of Art as the center for cultural arts throughout the greater Huntsville, Alabama community; and

WHEREAS, the City of Huntsville has determined that entering into this License Agreement will serve a public purpose;

NOW THEREFORE, for and in consideration of the mutual covenants herein, the parties agree as follows:

1. **Use of Premises, Timing and Road Closures.**

(a) Subject to the terms and conditions of this License Agreement, the City hereby grants Licensee a license to utilize Big Spring Park West, located at 200 Church Street, Huntsville, AL 35801, which is shown on the map attached hereto and incorporated herein by reference as **Exhibit A** and hereinafter referred to as the "Premises" to be used for the event called "UNFRAMED: Off to the Races" (the "Event").

(b) Licensee may access the Premises to set-up UNFRAMED: Off to the Races starting each day at 9:00 a.m. and ending at 5:00 p.m., on Thursday and Friday, May 5 and 6, 2022. Set up for the Event may continue Saturday, May 7 at 9:00 a.m. until the Event commences that evening at 5:00 p.m. The Event shall conclude no later than 7:30 p.m. on the night of Saturday, May 7, 2021. The take-down of and restoration of the Premises shall begin immediately after the Event and conclude no later than 10:00 p.m., Saturday, May 7, 2022, except for the tent, which will be removed by the vendor no later than May 9, 2022.

2. Security. Licensor shall be responsible for the provision of security within the Licensed Premises during the period of the lease. Licensor shall hire the number of officers and supervisory personnel as recommended by the Huntsville Police Department for the Event. Licensee agrees that the Supervisor of such security officers shall be authorized to make the determination that the Event should be cancelled in the event of inclement weather conditions, security issues or other threats to the safety of the sponsors or attendees of the Event.

3. Alcoholic Beverages. If Licensee (or the Huntsville Museum of Art) obtains a special event liquor permit for the Event, Licensee shall be permitted to serve alcoholic beverages at the Event. Licensee agrees to prevent any person from leaving the Premises while in possession of any alcoholic beverage. Licensee further agrees to post signs at each access way into the premises informing others (1) access will be denied to any person who attempts to bring alcoholic beverages into the Premises, and (2) no alcoholic beverages will be allowed to be removed from the Premises.

4. Restroom Facilities. Licensee has obtained permission from the Huntsville Museum of Art for its guests to be allowed to use the restroom facilities located at the Huntsville Museum of Art.

5. Set up and Construction of Event Exhibits. Licensee shall not affix any materials to the Premises without the prior approval of the City's Director of Landscape Management. Licensee shall obtain the approval of the City's Director of General Services prior to the use of electrical power for any part of the Event. Electricity may be obtained only from sources authorized by the General Services Director.

6. Alteration of Premises. Licensee may not remove or alter any trees or make any other changes to the Premises without the prior approval of the Director of Landscape Management.

7. Vandalism or Weather Damage. Licensee shall promptly repair any damage to its property or the Premises caused by vandalism or weather events. The City shall not be responsible for any damage to property of Licensee, its sponsors, vendors, patrons or any other third parties.

8. Compliance with Laws. Licensee agrees to comply with all ordinances, laws, rules, and regulations pertaining to the use of the Premises and shall not use the Premises in an unlawful manner nor create or allow to exist any nuisances or trespass nor deface or damage the Premises. The Event shall further comply, at all times, with the Special Event Permit issued for it by the Huntsville Police Department.

9. Licensing and Permits. Licensee shall, if applicable, obtain and maintain all licenses and permits and pay all fees necessary or required to hold the Event and to sell and serve food on the Premises. Licensee shall provide proof of proper permitting or licensure prior to or during the event.

10. Access. Licensee shall, at all times, maintain handicap access throughout the Premises and maintain the Premises in such a way so as to meet the Americans with Disabilities Act (ADA) standards for accessibility.

11. Indemnification; non-liability. Licensee shall indemnify and hold harmless and does hereby agree to indemnify and hold harmless the City of Huntsville, its officials, officers, elected officials, employees, agents, contractors and volunteers performing an authorized city function, (hereinafter referred to as "indemnitees") from and against any and all claims, liability, loss, judgments, suits, penalties, costs, expenses and damages aforesaid (including but not limited to reasonable attorneys' fees and expenses and court costs and fees). Licensee further agrees to indemnify and hold harmless those named above for exposure, infection, and/or spread of COVID-19 related to Licensee's utilization of the Premises as more particularly set forth in **Exhibit B**, which is attached here to and incorporated herein by reference. Licensee's duty to indemnify shall not apply to loss, injury, death or damage arising by reason of the sole negligence of the indemnitees. Licensee's duties hereunder shall survive the termination or expiration of this Agreement.

Nothing contained in this section 11 shall be construed as a waiver of any immunity of statutory protection of the City of Huntsville, Alabama, and no third party may expand any recovery against the City due to Licensee's duty of indemnification.

12. Restoration. Licensee agrees to provide for and pay all costs and expenses associated with clean-up of, and damage to, the City's property resulting from Licensee's use of the Premises. The Premises shall be cleaned and restored entirely by Licensee no later than the end of the Agreement term, to the sole satisfaction of the City.

13. Insurance. Licensee, or the Huntsville Museum of Art at Licensee's request, shall obtain and maintain in effect throughout the term of this agreement, Commercial General Liability with the following minimum limits:

\$1,000,000 Per Occurrence Limit
\$1,000,000 Personal and Advertising Injury
\$1,000,000 Products/Completed Operations
\$2,000,000 General Aggregate Limit

Such insurance shall be written on an occurrence basis and shall specifically insure Licensee against all liability assumed by it hereunder as well as liability imposed by law. The City of Huntsville, its officers, employees, elected officials, agents, contractors, and specified volunteers shall be named as additional insureds through ISO Additional Endorsement CG 20 10 or equivalent that is sufficient to provide coverage for ongoing operations and CG 20 37 or equivalent to provide coverage for completed operations. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, employees, elected officials, agents, contractors, or specified volunteers except it shall be limited except in the case

of the indemnitee's or indemnitees' sole negligence. Coverage under the Licensee policy shall be written or endorsed to provide primary coverage to any other valid or collectible insurance. Any City of Huntsville coverage is noncontributory. Licensee shall provide, or shall have Huntsville Museum of Art provide, a Certificate of Liability Insurance evidencing required insurance coverage and contractual verbiage prior to the commencement of any use of the facilities; however, failure of The City to procure the Certificate of Insurance does not waive any insurance provisions. The Certificate Holder section shall read as follows:

City of Huntsville, AL its officers, employees, elected officials, agents, contractors and specified volunteers

Attn: City Attorney

P.O. Box 308

Huntsville, AL 35804

bruce.pitts@huntsvilleal.gov

Such policy of insurance shall be issued by a company authorized to engage in the insurance business in the state of Alabama and shall be approved by the City Attorney of the City of Huntsville prior to Licensee entering upon the Premises upon the terms of this agreement. It is not the intention of the parties to limit the insurance coverage to the minimum limits stated in the contract but the entire limits of coverage carried if limits are higher than those noted on the Certificate of Insurance.

14. Fee. Licensee shall pay to the City the sum of Three Hundred and No/100 Dollars (\$300.00) for the use of the premises.

15. Non-compliance. In the event of any breach of any condition or term of this Agreement, the City may cancel the Event and terminate this Agreement at any time. Huntsville Police Department, Huntsville Fire and Rescue or any other official of the city of Huntsville acting within the line and scope of his/her authority may take any action they deem necessary in order to protect the public health or safety, to prevent damage or destruction to public or private property, or to enforce applicable laws.

16. Miscellaneous.

(a) This Agreement shall not be amended except by written instrument signed by the parties hereto. This Agreement, together with all exhibits, constitutes the entire agreement between the parties and shall be interpreted under and according to the Laws of the State of Alabama with venue in the courts of Madison County, Alabama. This Agreement shall be binding upon and inure to the benefit of Licensee, its successors and permitted assigns, and the City, its successors and assigns.

(b) Licensee shall not be excused from complying with any of the terms and conditions of this Agreement by any failure of the City upon one or more occasions to insist upon or to seek compliance with any such terms or conditions, nor shall such failure on the part of the City be construed or held to be a waiver of the City's rights thereafter to strictly enforce any provision of this Agreement.

(c) The captions of this Agreement are for convenience and reference only and in no way define, describe, extend or limit the intent or scope of this Agreement.

(d) If, for any reason, any agreement(s), provision(s), or term(s) of this Agreement (whether material to the bargain of City and Licensee or not) should be declared illegal, null and void, unconstitutional or unenforceable, in whole or in part, by any court of competent jurisdiction, the offending portion of this Agreement shall be deemed severed herefrom as though the same was never a part hereof; provided, however, the remainder of this Agreement shall not be impaired and shall remain in full force and effect according to its remaining agreements, covenants, provisions and terms.

17. The parties represent and warrant that they have full authority to enter into this Agreement.

18. The parties acknowledge and agree that this Agreement may be executed by electronic signature, which shall be considered as an original signature for all purposes and shall have the same force and effect as an original signature. Without limitation, "electronic signature" shall include faxed versions of an original signature or electronically scanned and transmitted versions (e.g. via pdf) of an original signature.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed under their respective seals and delivered as of the date first above written.

ATTEST

**LICENSOR:
THE CITY OF HUNTSVILLE, ALABAMA**

Kenneth Benion
City Clerk-Treasurer

By: _____
Tommy Battle, Mayor

**LICENSEE:
HUNTSVILLE MUSEUM OF ART GUILD**

By: _____
Its: _____



EXHIBIT B

RELEASE, INDEMNIFICATION, AND HOLD HARMLESS RELATED TO CORONAVIRUS/COVID 19

The Huntsville Museum of Art Guild, ("Licensee") has entered a Facility Use Agreement with the City of Huntsville for the use of Big Spring Park West for specific days and times May 5 – 9, 2022, for the UNFRAMED: Off to the Races event, including set up and take down, and executes this document as further consideration for the use of the said facilities.

Coronavirus Disease 2019 ("COVID-19") is present in Alabama and constitutes a public health emergency. The State Board of Health has designated it to be a disease of epidemic potential and a threat to the health and welfare of the public.

While medical knowledge of COVID-19 is evolving, the virus is believed to spread from person-to-person contact and/or by contact with contaminated surfaces and objects, and even possibly in the air. People reportedly can be infected and show no symptoms and therefore spread the disease. The exact methods of spread and contraction are unknown, and there is no known treatment or cure for COVID-19. Evidence has shown that COVID-19 can cause serious and potentially life-threatening illness, permanent disability, and even death.

Although the City of Huntsville ("City") has put into place various preventive measures to reduce the spread of COVID-19, it cannot prevent Licensee or Licensee's guests and other persons present at the Event ("attendees") from being exposed to, contracting, or spreading COVID-19 while utilizing the City's services and Facilities for the Event. It is not possible to prevent the presence of the disease. Licensee agrees to take all reasonable precautions for the safety of attendees and shall provide all effort to protect attendees from exposure, infection, and/or spread of COVID-19 related to Licensee's utilization of the City's services and Facilities.

Licensee releases, absolves, and exonerates; covenants not to sue; and agrees to indemnify and hold harmless the City of Huntsville and all of its services, Facilities and grounds, its directors, officers, agents and employees against any and all liability, losses, claims, demands, actions, debts, expenses and causes of action of every name and nature for personal or bodily injury (including any resulting death), or other damages which may be sustained by any person, resulting from the exposure, infection, and/or spread of COVID-19, during, as a result of, incident to, or in any way arising out of the use of the Facilities. Said indemnification shall include but not be limited to reasonable attorney's fees and all court costs. This indemnification shall survive the Date of Event or earlier termination of this Agreement.

Licensee agrees to comply with any mandates of Alabama's Governor, State Health Officer, and/or the Alabama Department of Public Health with regard to COVID-19. In addition, Licensee agrees that attendees of Licensee's Event will be required to observe practices in keeping with State guidelines. Licensee understands and agrees that the law of the State of Alabama will apply to this agreement.

[SIGNATURE ON FOLLOWING PAGE]

I have carefully read and fully understand all provisions of this release, indemnification, and hold harmless.

Huntsville Museum of Art Guild

Printed Name

Signature

Date