

## **SPECIAL EVENT PARKING LOT USE AGREEMENT**

This parking lot use agreement (this “Agreement”) is effective as of May 2, 2023 (the “Effective Date”) and is entered into by and between the City of Seguin, Texas (“City”) and Alfredo Leos III (“Renter”).

### **RECITALS**

**A.** City is the owner of the parking lot used as auxiliary parking for its police department located on Medline Street at its intersection with Saunders Street (the “Parking Lot”). The Parking Lot is located across the street from the police department.

**B.** Renter desires non-exclusive use of the Parking Lot for parking vehicles of patrons attending ticketed live music events sponsored by Renter under the terms and conditions set forth below.

### **AGREEMENT**

In consideration of the foregoing Recitals, and in consideration of the mutual promises and covenants set forth in this Agreement, the parties agree as follows:

**1. Grant of Use and Purpose.** City hereby grants to Renter a non-exclusive right, privilege and permission, subject to the terms and provisions of this Agreement, to possess and occupy the Parking Lot for the purpose of enabling the parking of motor vehicles of patrons attending certain ticketed live music events sponsored by Renter and approved by City under applicable permitting processes.

**2. Term of Agreement.** The term of this Agreement shall commence on the Effective Date and end on April 30, 2024 (“Term”), unless terminated sooner in accordance with paragraph 3 of this Agreement.

**2.1 Option to Extend Initial Term.** Upon the mutual written agreement of the Renter and the City Manager of City the parties may extend the Term for up to two additional one-year terms, each beginning on May 1 and ending on April 30 of such years. Neither party shall be under any obligation to agree to an extension of the Term. In the event the parties mutually agree to an extension under this Subsection 2.1, the Term shall be deemed to end on the date as agreed by the parties. “Term” shall include the initial term and any extension thereof.

**3. Early Termination.** The City shall have the right to terminate this Agreement at any time, with or without cause, upon thirty (30) days’ written notice to Renter.

**4. Limitations to Agreement.** Renter’s use of the Parking Lot shall not be exclusive. City shall also have the right to use all or portions of the Parking Lot for its own purposes or to allocate portions to another user, which shall take priority over Renter’s right of use as to such portions. Such alternate use will be allowed with advance notice to Renter of at least 30 days. In

the case of an emergency, as determined by the City in its sole discretion, the 30-day notice requirement shall be waived allowing for immediate use and access by the City. There is no limit on such use.

**5. Agreement Fee.** It is mutually understood and agreed that the agreed upon fee for use of the Parking Lot (“Agreement Fee”) by Renter for each event shall be \$250.00, due and payable at least one day before the event.

**6. Compliance with Laws.** Renter shall, at all times during the Term, comply (and shall cause its employees, agents, visitors, invitees and licensees, to comply) with all laws, codes, statutes, ordinances and regulations applicable to this Agreement and Renter’s use of the Parking Lot. In conjunction therewith, Renter shall obtain, at its sole cost and expense, any other approvals and permits necessary to use the Parking Lot if applicable.

**7. Operation, Maintenance and Repairs.**

**7.1** As to the Parking Lot, Renter will not charge patrons and concertgoers for use of the Parking Lot. However, to the extent any portion of the Parking Lot is used for valet parking, Renter or Renter’s contractors may charge a valet parking fee for each vehicle parked by a valet attendant.

**7.2** As to each event for which the Parking Lot is used by Renter, Renter shall operate and maintain the Parking Lot in a clean, safe and sanitary manner. Renter is responsible for Parking Lot operation and maintenance including trash clean-up, traffic control, parking enforcement, parking violations, temporary signage, and security. Renter shall promptly, after each event, clean the Parking Lot by removing and lawfully disposing of all trash and debris. Renter shall also repair any damage to City property caused by Renter’s use of the Parking Lot.

**8. Signage.** No permanent signage will be allowed on the Parking Lot. On the day of each event for which the Parking Lot will be used, Renter may place temporary sandwich board style or portable signage identifying the Parking Lot as available for event parking, parking rates, parking instructions and similar event parking information. Such temporary signage shall be removed by Renter before 8:00 a.m. the day after an event.

**9. Indemnification.** *Renter agrees to defend, indemnify and hold harmless the City, its members, employees, agents, officers and officials from and against liabilities, losses, penalties, damages and expenses, including costs and attorney fees, arising out of all claims, liens, damages, obligations, actions, suits, judgments or settlements, or causes of action, of every kind, nature and character arising or alleged to arise out of injuries or death to and damage to or loss of property of Renter and Renter’s employees, agents, visitors, invitees and licensees, or out of the negligent or willful acts or omissions of Renter, its officers, employees, agents, visitors, invitees, licensees, and subcontractors in the performance of this Agreement. Renter shall, at its sole cost and expense, appear, defend and pay all attorney fees and, other costs and expenses arising hereunder. In addition, if any judgment shall be rendered against City in any such action, Renter shall, at its sole cost and expense, satisfy and discharge such obligation of the City. City shall have the right, at its*

*own expense, to participate in the defense of any suit, without relieving Renter of any of its obligations hereunder. City retains final approval of any and all settlements or legal strategies which involve the interest of City. The indemnities set forth herein shall survive the expiration or termination of this Agreement.*

**10. Assumption of Risk.** Renter acknowledges and agrees that by use of the Parking Lot, Renter assumes all risk of loss or damage to property, including, without limitation, property damage, and all risk of personal injury, including but not limited to death, attributable to any cause other than the gross negligence or unlawful conduct of City. Renter further agrees that it is familiar with the condition of the Parking Lot and the suitability of the Parking Lot for its intended use and accepts the Parking Lot on an "AS-IS" "WHERE-IS" basis. Renter forever releases City, its agents, manager, affiliates, members, volunteers and employees from and against any and all of Renter's claims, causes of action, liabilities and expenses arising out of or relating to any such loss, damage, or injury. City, its agents, manager, affiliates and employees shall not be responsible or liable for loss or damages by reason of fire, theft, collision or any other cause to parked vehicles or their contents.

**11. Security.** Renter acknowledges that as of the Effective Date and at all times during the Term, it shall maintain security measures appropriate to reasonably protect the Parking Lot and any and all Renter employees, guests, agents, contractor, visitors, and licensees and their property.

**12. Insurance Requirements.** The procuring of required policies of insurance shall not be construed to limit Renter's liability thereunder, nor to fulfill the indemnification provisions and requirements of this Agreement. Notwithstanding said policies of insurance, Renter shall be obligated for the full and total amount of any damage, injury, or loss caused by negligence or neglect connected with this Agreement or with Renter's use or occupancy of any portion of the Parking Lot.

Renter shall purchase, maintain and keep in force during the term of this License at Renter's sole cost and expense the following insurance:

**A. CERTIFICATE OF WORKERS' COMPENSATION INSURANCE** statutory minimum as required by state law.

**B. CERTIFICATE OF GENERAL LIABILITY INSURANCE** with accompanying "Additional Insured" endorsement documents. All endorsements shall clearly state policy number. Commercial General Liability policies shall include endorsements naming City, its officers, agents, members, volunteers and employees as additional insured. Endorsements for General Liability shall state that the Renter's insurance is "primary" and City is "non-contributory," with a waiver of subrogation, or copies of the complete policy which state the equivalent may be submitted in their entirety. Minimum Insurance Requirements:

General Liability Insurance:

One million dollars (\$1,000,000) each occurrence (combined single limit)

One million dollars (\$1,000,000) for personal injury liability  
Two million dollars (\$2,000,000) in the aggregate

**13. Renter Events of Default.** Events of default (“Events of Default”) include, but are not limited to, the following:

**A.** Any material misrepresentation by Renter in the inducement of this Agreement or the use of the Parking Lot.

**B.** Breach of any agreement, representation or warranty made by Renter in this Agreement.

**C.** Failure of Renter to perform in accordance with or comply with the terms and conditions of this Agreement, including, but not limited to the following:

**i)** Action or failure to act which affects the safety and/or welfare of individuals on or around the Parking Lot;

**ii)** Failure to perform in accordance with terms and conditions of this Agreement;

**iii)** Failure to operate and maintain the Parking Lot in a manner satisfactory to City, or inability to operate and maintain the Parking Lot satisfactorily as a result of insolvency, filing for bankruptcy or assignment for the benefit of creditors.

**iv)** Abandonment of the Parking Lot for reasons not beyond Renter’s reasonable control.

**v)** Failure to comply with any term of this Agreement, including but not limited to, the provisions concerning insurance and nondiscrimination, and any other acts specifically and expressly stated in this Agreement constituting an Event of Default.

**vi)** Default by Renter under any other agreement Renter may have with City.

**14. Assignment and Successor and Assigns.** The interest of Renter under this Agreement is personal to Renter and may not be assigned or transferred to any other individual or entity without City’s prior written consent.

**14.1 Assignment to Event Sponsor.** To the extent that any business organization affiliated with Renter is the actual sponsor or legally responsible party under a contract for any performer or musical act featured in an event, Renter shall partially assign this Agreement to such business organization and shall notify the City Manager of the assignment before the event. The City Manager must acknowledge and approve the

assignment in writing before the event is allowed to proceed. The assignment shall be written such that the assignee assumes all obligations and liabilities under this Agreement jointly and severally with Renter.

**15. Notices.** All notices required hereunder shall be in writing and shall be deemed properly served if delivered in person or if sent by hand-delivery, email, text message, or registered or certified mail. All notices required hereunder shall be deemed received on the date of delivery, or attempted delivery if delivered in person, or if mail, on the date which is two (2) days after the date such notice is deposited in the U.S. mail.

**16. Severability.** In the event that any provision(s) of this Agreement is (are) determined to be legally invalid, the parties hereto agree that that particular provision shall be null and void, but that the remainder of this Agreement shall remain in full force and effect.

**17. No Third-Party Beneficiary.** This Agreement is not intended and shall not be construed so as to grant, provide or confer any benefits, rights, privileges, claims, causes of action or remedies to any person or entity as a third-party beneficiary under any statutes, laws, codes, ordinances or otherwise.

**18. No Waiver.** No waiver of any default under this Agreement shall constitute or operate as a waiver of any subsequent default hereunder, and no delay, failure or omission in exercising or enforcing any right, privilege or option under this Agreement shall constitute a waiver, abandonment or relinquishment thereof.

**19. Entire Agreement and Amendment.** The Agreement, including all exhibits and referenced documents, constitutes the entire Agreement of the parties with respect to the matters contained herein. No modification of or amendment to the Agreement shall be effective unless such modification or amendment is in writing and signed by both parties hereto. Any prior agreements or representations, either written or oral, relating to the subject matter of the Agreement, are of no force or effect.

EXECUTED to be effective as of the Effective Date.

CITY:

RENTER:

By:

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Steve Parker, City Manager

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