

**JOINT DEVELOPMENT, USE, AND BRANDING AGREEMENT FOR THE
NEW STREET HOCKEY FACILITY AT APEX COMMUNITY PARK**

This Agreement (“**Agreement**”) made and entered into this ___ day of _____, 2023, by and among the Town of Apex, a municipal corporation of the State of North Carolina (the “**Town**”) having its principal place of business located at 73 Hunter Street Apex, NC 27502 and Hurricanes Hockey, LP (“**Hurricanes**”), a Delaware limited partnership, having its principal place of business located at 1400 Edwards Mill Road Raleigh, NC 27607 (jointly, the “**Parties**”).

WHEREAS, the Town and Hurricanes have entered into a Memorandum of Understanding dated February 14, 2023, related to the joint redevelopment and use of a Town facility; and

WHEREAS, the Town and Hurricanes desire to establish a partnership to construct, operate, and maintain a new street hockey facility within the Town of Apex (“**Facility**”); and

WHEREAS, the Project will consist of construction of a new street hockey facility, which will be built on land owned by the Town. The Town will be responsible for design and construction of the foundation of the rink based on the Hurricanes’ specifications and Hurricanes shall purchase and install equipment; and

WHEREAS, upon completion of construction of the rink and the installation of equipment, the Town shall be responsible for the operation and maintenance of the Facility. The Parties desire to establish branding and sponsorship as deemed appropriate by the Parties and coordinate scheduling for use of the Facility; and

WHEREAS, the Town is authorized to enter into this Agreement pursuant to the provisions of N.C.G.S. 160A-20.1.

NOW, THEREFORE, the Parties agree as follows:

1. Property Description.

Apex Community Park (“**ACP**”) is a Town-owned property located at 2200 Laura Duncan Road, comprising of approximately 162.14 acres, more or less, designated as PIN # 0752-28-9038 by the Wake County Revenue Department, and as shown on a map recorded in Book of Maps 1991, Page 0912, in the Wake County Registry, for its use and for the general use of its citizens. The new street hockey facility (“**Facility**”) shall consist of the portion of ACP which is currently a multipurpose field located on the north side of Apex Community Park Drive, immediately to the east of Laura Duncan Road and shares a parking lot with Field 3.

2. Term.

The term of this Agreement shall be for a period of seven (7) years from the date of execution by the party signing the Agreement last, unless terminated earlier in accordance with Section 12 of this Agreement.

3. Responsibilities of the Parties

A. Hurricanes' Contribution

1. Equipment. The Hurricanes will contribute up to \$600,000.00 in the form of equipment, and installation of equipment, needed for the development of the Facility. Equipment to be provided by the Hurricanes includes, but is not limited to, the equipment and materials necessary to properly upfit one (1) court area for street hockey programming, and one (1) multi-functional court area for street hockey, basketball, and futsal programming. Hurricanes will procure the desired court surface, boards, goals, nets, scoreboards, penalty boxes, scoring boxes, team boxes benches, accessory equipment and materials as desired and appropriate for street hockey programming. Hurricanes and its contractors shall leave the Facility in a condition approved by the Town. Hurricanes shall provide equipment for participants in street hockey programs to use, including protective goalie gear, sticks, balls, and nets.
2. Specifications. The Hurricanes shall require its contractor or subcontractors to provide the required construction specifications for the Facility's foundation to the Town's selected vendors, contractors, and subcontractors to facilitate accurate designing, planning, and construction of the foundation of the Facility. Hurricanes shall transfer to the Town all titles, warranties, and guarantees acquired from its vendors, contractors, and subcontractors related to equipment, materials, and installation of the equipment and materials at the Facility. Hurricanes shall ensure there are no liens on the equipment prior to transfer of title to Town.

B. Town Contribution

The Town will contribute an estimated \$300,000.00 for the design, planning, permitting, and construction of two (2) asphalt base surface court areas, accessible concrete walkways and plazas between the existing parking area and the two new court areas. The Town may, in its sole discretion, install a roof above one or both of the court areas. The Town shall be responsible for soliciting, bidding, contracting for, and administering the site grading, site drainage, and installation and construction of the accessible concrete walkways, concrete plazas, the two (2) asphalt base surface court areas, and, if applicable, any roofs above the court areas. The Town shall also provide power to the Facility including the scoreboard and any scorer's table. The Town will prepare, advertise, and solicit bids to design the Facility in accordance with the specifications provided by vendors selected by Hurricanes. The Town's selection of architect, engineer, general contractor, or any other professionals, contractors, and subcontractors shall be awarded in compliance with North Carolina law.

4. Ownership, Maintenance, and Repair of the Facility.

The Town shall at all times own, operate, maintain, repair, and otherwise be responsible for the Facility. All improvements made to or upon the Facility, whether pursuant to this Agreement or otherwise, shall become the property of the Town. The Town shall maintain the parking lots adjacent to the Facility in a reasonable manner.

5. Joint Use and Scheduling of the Facility.

The Parties agree that use of the Facility shall be in accordance with the following conditions and provisions:

A. Administrative Control.

1. The Town of Apex Parks, Recreation and Cultural Resources Director or designee shall have administrative control of ACP and the Facility at all times.

B. Scheduling and Use.

1. The Parties shall designate at least one person as their point-of-contact for communications. Hurricanes designee and/or other responsible members shall:
 - a. Participate in the site coordination meeting (at least four times each year).
 - b. Communicate on a monthly basis to confirm or update the master calendar for the Facility.
 - c. Be responsible for making participants aware of any cancellations or rescheduling of Hurricanes events or activities at the Facility.
 - d. Be aware of special circumstances such as emergencies or severe weather conditions that may affect use of the Facility.
2. Use of the Facility shall be in accordance with the following conditions and provisions:
 - a. Hurricanes and Town designees shall:
 - (1) Coordinate and establish the times available for use.
 - (2) Make determinations for court accessibility and use based on court conditions and safety level.
 - b. Facility conditions may limit use.
3. Site Coordination Meeting. The Parties agree to meet a minimum of four times per year to coordinate use, develop and update the Town's master calendar, and evaluate the conditions of the Facility for necessary or desired repairs and maintenance.
 - a. The Parties shall work together to develop and maintain a master schedule.
 - b. The Parties shall maintain an on-going, open communication between one another while acting in good faith to build a positive reciprocal relationship.
4. Hurricanes or their designees shall have the right to schedule exclusive use of the Facility for a minimum of the following:
 - a. Two nights per week, for a minimum of two hours per night; and
 - b. One weekend every two months, for a minimum of eight hours and maximum of eighteen hours per weekendFor the purpose of this Agreement, a "night" shall be the time between 5 p.m. and the closing time of ACP.
5. During times which are not reserved for exclusive use by the Hurricanes or their designees, the Town reserves the right to schedule programming at the Facility. The Town may schedule programming and reserve time for unprogrammed use by the general public.

C. Inclement Weather.

The Town in its sole discretion will make decisions on when to close its parks, including ACP and the Facility, due to emergencies including inclement weather. Hurricanes agrees to comply with the Town's determinations and will not access the Facility on these days or times.

D. Fees/Charges.

The Parties agree that, except as expressly stated in this Agreement, there shall be no additional fees and/or charges associated with the Hurricanes' use of the Facility unless mutually agreed upon.

E. **Income from Hurricanes Programs.**

Town agrees that the income from Hurricanes programs and events operated at the Facility that are subject to this Agreement shall go to the Hurricanes.

F. **Income from Town Programs.**

Hurricanes agrees that the income from Town programs and events shall go to the Town.

6. **Branding and Sponsorship Placement**

For the term of this agreement, the Hurricanes shall have the exclusive right to the naming of the Facility ("Naming") and to advertisements on the goal posts, court tiles, dasher boards, scoreboards, and perimeter fencing ("Advertising"). Naming and Advertising shall, at all times, be in compliance with the Town's Naming Rights Policy, a copy of which shall be kept on file with the Town Clerk. If at any time during the term of this agreement and in the Town's sole discretion, the Naming or Advertising does not comply with the Town of Apex Naming Rights Policy, the Naming and Advertising shall be removed and Apex may, in its sole and absolute discretion, terminate the Agreement. The Town will exercise full editorial approval, which shall not be unreasonably withheld, over the placement, content, appearance, and wording of names, sponsorship acknowledgments, and related messages on Town Property and through Town communications media. Such messages are intended to be government speech.

7. **Revenues.**

Fifteen (15%) of Net Revenue ("Net Revenue" shall be defined as revenues collected by the Hurricanes in connection with the Advertising rights less any hard costs paid by the Hurricanes and less any sales commissions paid by the Hurricanes) received by the Hurricanes in connection with the Advertising rights granted in this Agreement shall be paid to the Town.

8. **Logos.**

The Parties shall collaborate on the placement of branding for both Party's logos and trademarks.

9. **Liability and Indemnification.**

Hurricanes agrees that the Town is authorizing the use of its property pursuant to this Agreement, and that the Town does not hereby incur any liability to the Town or any member of the public for permitting this use. No liability shall attach to the Town, individually or collectively, for any injury suffered by reason of Hurricanes use pursuant to this Agreement. To the extent permitted by law, Hurricanes shall indemnify the Town, its agents, and employees from and against claims or damages, including attorney's fees, caused by the negligence or intentional wrongdoing of Hurricanes, its agents, invitees, contractors, or employees in the performance of this Agreement.

No liability shall attach to the Hurricanes, individually or collectively, for any injury suffered by reason of Town's use pursuant to this Agreement. To the extent permitted by law, the Town shall indemnify the Hurricanes, its agents, and employees from and against claims or damages,

including attorney's fees, caused by the negligence or intentional wrongdoing of the Town, its agents, invitees, contractors, or employees in the performance of this Agreement.

9. Insurance.

A. Commercial General Liability.

Each party shall maintain at all times during the term of this Agreement and during any and every extension thereof commercial general liability insurance in the amount of \$1,000,000 / \$2,000,000, or the minimum amount required by North Carolina state law, covering personal injury for each accident or occurrence growing out of the Parties' development and use of the Facility and at least \$1,000,000 or the minimum amount required by North Carolina state law to cover property damage growing out of each accident or occurrence. Each contractor and subcontractor working on redevelopment of the Facility on behalf of either Party shall maintain commercial general liability insurance in the amount of \$1,000,000 / \$2,000,000, or the minimum amount required by North Carolina state law, covering personal injury and property damage for each accident or occurrence growing out of the redevelopment of the Facility. The Town shall be named as an additional insured on Hurricanes insurance policies and insurance policies held by the Hurricanes' contractors and subcontractors. The Parties are each responsible for insuring replacement value of their respective personal property.

B. Commercial Automobile Liability.

Each party shall maintain during the redevelopment of the Facility commercial automobile liability insurance in the minimum amount of \$1,000,000.

C. Workers' Compensation and Employer's Liability.

Each party, their contractors, and their subcontractors shall maintain workers' compensation insurance as mandated by state law for employees or contractors performing work at or around the Facility, and will maintain employer's liability insurance in an amount of at least \$1,000,000.

D. Certificates of Insurance.

Each party shall furnish the other party with evidence of such insurance and of its renewal as the premiums become due. Each party shall provide the other party with thirty days prior written notice of any reduction in coverage or cancellation of such insurance.

10. Use of Care.

The Parties acknowledge that any development, construction, repair, maintenance, and/or use pursuant to this Agreement will take place at a Town parks facility at which children and adult members of the public may be present. Town shall take reasonable care under the circumstances to protect and secure any construction and/or maintenance areas to minimize the possibility of injury to the public. No use of the Facility shall be inconsistent with the proper care and preservation of Town property used for recreational programming. The Parties agree to keep the Facility in a clean and safe condition at all times and to ensure that any equipment, materials, or supplies brought to the Facility are properly and safely stored when not in use.

11. Nondiscrimination.

Pursuant to Section 3-2 of the Town of Apex Code of Ordinances, neither Hurricanes nor the Town shall discriminate against any participant in a program at the Facility who is a member

of a protected class. For the purposes of this Agreement, "protected class" includes age, race, religious belief or non-belief, ethnicity, color, national origin, creed, sex, sexual orientation, gender identity, marital status, natural hairstyle, genetic information, pregnancy, familial status, disability, veteran or military status, or disabled veteran status.

12. Termination.

A. This Agreement may be terminated by either party, in the event the breaching party should fail to keep, perform or abide by any term, condition or covenant of this Agreement for a period of thirty (30) days after written notice (email inclusive) of such failure by the non-breaching party. If the Hurricanes is the breaching party, the Town may suspend the Hurricanes' use and ability to schedule events until the Hurricanes demonstrates to the Town's satisfaction that the Hurricanes has corrected its breach and is fully performing its obligations under the terms, conditions, and covenants of this Agreement. If the Hurricanes fail to correct its breach and Town exercises this right of termination, Hurricanes shall relinquish any interest in any of the improvements made to the Facility under this Agreement and no reimbursement shall be due.

13. Notices.

All notices, requests, approvals, or consents required to be given hereunder shall be in writing and hand delivered or sent by certified mail, return receipt requested, postage prepaid, and addressed as follows:

Hurricanes: General Manager: Don Waddell
 Carolina Hurricanes
 1400 Edwards Mill Rd
 Raleigh, NC 27607

With a copy to:

Youth & Amateur Hockey Specialist: Thomas Weathers
Carolina Hurricanes
1400 Edwards Mill Rd
Raleigh, NC 27607

Town: Town Manager
 Town of Apex
 P.O. Box 250
 Apex, NC 27502

With a copy to:

Town Attorney
Town of Apex
P.O. Box 250
Apex, NC 27502

or to such other address as either party may specify in the manner hereinabove prescribed.

14. Severability.

In the event any term or provision of this Agreement shall be adjudged to be partially or completely invalid or unenforceable, then such term or provision shall be severed from this Agreement, and the remainder of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

15. Governing Law.

This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina.

16. Non-Assignment.

Hurricanes may not assign this Agreement without written mutual agreement signed by the parties. Hurricanes may schedule and use the Facility only as provided in this Agreement.

17. Entire Agreement.

The Parties agree that this document constitutes the entire agreement between the parties and may only be modified by a written mutual agreement signed by the parties. To the extent that there is any conflict between the terms of this Agreement and any prior understanding or agreement between the parties, the terms of this Agreement shall control.

18. Agreement in Counterparts.

This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same instrument.

19. Amendment:

This Agreement may not be amended except in writing signed by both parties.

**[SIGNATURE PAGES FOLLOW]
[REMAINDER OF PAGE INTENTIONALLY BLANK]**

IN WITNESS WHEREOF, Hurricanes Hockey, LP has caused this Agreement to be signed by its President, attested by its Secretary, and sealed with its seal, and the Town of Apex has caused this Agreement to be signed by its Manager, attested to by its Town Clerk, and sealed with its seal, by order of the respective governing boards duly given the day and year first written above.

HURRICANES HOCKEY, LP

By: Donald Waddell (SEAL)
President

ATTEST

By: _____
Secretary

(Affix Seal)

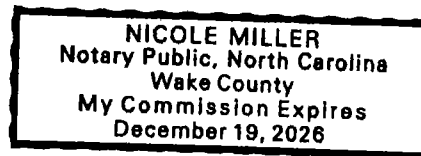
NORTH CAROLINA
WAKE COUNTY

The undersigned, a Notary Public of the County and State aforesaid, hereby certified that Donald Waddell personally appeared before me this day, and being duly sworn by me, acknowledged that he/she is Secretary of the Hurricanes Hockey, LP, and that by authority duly given and as the act of the Hurricanes the forgoing instrument was signed by its President, sealed with its seal, and attested by him/her as its Secretary.

Witness my hand and notarial seal this 5 day of April, 2023.

Nicole Miller
Type or Print Notary Name
Commission expires: 12/19/2026

Nicole Miller
Notary Signature



TOWN OF APEX

ATTEST

By: _____(SEAL)
Town Manager

By: _____
Town Clerk

(Affix Town Seal)

**NORTH CAROLINA
WAKE COUNTY**

The undersigned, a Notary Public of the County and State aforesaid hereby certified that _____ personally appeared before me this day, and being duly sworn by me acknowledged that he/she is Town Clerk of the Town of Apex, and that by authority duly given and as the act of the Town, the forgoing instrument was signed by its Town Manager, sealed with its corporate seal, and attested by him/her as its Town Clerk.

Witness my hand and notarial seal this _____ day of _____, 2023.

Type or Print Notary Name
Commission expires: _____

Notary Signature