

STATE OF NORTH CAROLINA)
) MEMORANDUM OF UNDERSTANDING
) FOR JOINT RE-DEVELOPMENT AND
COUNTY OF WAKE) USE OF TOWN FACILITY

This Agreement, entered into the _____ day of January, 2023, by and between the Town of Apex (the “**Town**”), a North Carolina municipal corporation, and Hurricanes Hockey, LP (“**Sponsor**”), a Delaware limited partnership, (together referred to as the “**Parties**”) hereby sets forth the following terms and understandings of the Parties with respect to this memorandum of understanding for the redevelopment and joint use of a Town recreational facility, (the “**MOU.**”)

WHEREAS, the Town operates a Parks, Recreation, and Cultural Resources Department pursuant to Article 18 of N.C.G.S. § 160A for the purpose of providing recreational opportunities both athletic and cultural to people of all ages, and to effectively accomplish these goals enters into contracts with private entities to provide a wide selection of opportunities for the citizens of Apex and the surrounding areas; and,

WHEREAS, pursuant to N.C.G.S. § 160A-20.1, the Town is authorized to contract with private entities in order to carry out any public purpose that the city is authorized by law to engage in; and,

WHEREAS, pursuant to the Town of Apex Naming Rights Policy, the Town may enter into agreements with third parties who will further the Town’s mission in serving its citizens in an effort to generate funds or in-kind support for improving or expanding Town facilities, programs, or services; and,

WHEREAS, the Town owns, maintains, and utilizes property located at 2200 Laura Duncan Road, known as Apex Community Park, 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 (“**Apex Community Park**”), for its use and for the general use of its citizens; and,

WHEREAS, the Town does not currently own or operate a street hockey facility or offer street hockey programming to its citizens, and the Town is willing and able to redevelop one multipurpose field located within Apex Community Park into a street hockey facility (the “**Facility**”) to provide for the demand in street hockey programming; and,

WHEREAS, Sponsor is a local organization which, among other things, provides hockey recreational opportunities, including street hockey, to underserved and/or disadvantaged youths and adults in the Apex area to offer them an educational, friendly, competitive, and fun hockey experience centered on skill development, personal development, and physical fitness; and,

WHEREAS, Sponsor and Town are willing and able to contribute funds for the design and construction of a new street hockey facility located at Apex Community Park; and

WHEREAS, Sponsor and Town agree to provide educational and competitive street hockey opportunities to children and adults of the Apex area each year for the term of this Agreement in a nondiscriminatory fashion and agrees to charge only those fees to its participants that are necessary for the operation of its athletic programs.

NOW THEREFORE, in consideration of the foregoing which forms the basis for the forthcoming Agreement, the Parties do hereby agree as follows:

- 1. Capital Contribution by Sponsor.** Sponsor's contribution for redevelopment of the multipurpose athletic field located at Apex Community Park shall be up to \$600,000. These funds shall pay for the following portions of the redevelopment project, including but not limited to, upfitting of the court area with the desired court surface, boards, goals, nets, scoreboards, penalty boxes, scoring boxes, team boxes, benches, and other accessories as necessary for street hockey programming. In addition to the monetary capital contribution, Sponsor shall provide equipment, at Sponsor's sole discretion, including but not limited to, sticks, balls, and nets.
- 2. Capital Contribution by Town for Redevelopment of Licensed Property.** Town's contribution for redevelopment of the facility shall be approximately \$300,000. It is estimated that \$50,000 shall be allocated for design, plans, and permitting of the redevelopment project. The remaining amount shall be used for the redevelopment project, including construction of concrete walkways and plazas and the asphalt surface court area.
- 3. Redevelopment of Licensed Property.** Sponsor and Town shall collaborate in creating a request for bids for designers and contractors to bid for the redevelopment of the Licensed Property. The bidding and contracting shall comply with Article 8 of Chapter 143 of the North Carolina General Statutes. The Parties shall include in the bid parameters for two courts ready for street hockey, including one court ready for multi-functional programming use for street hockey, basketball, and futsal. Additionally, the Parties shall include technology for lighting controls, broadband internet access, cameras, a public address (PA) system, and other audio and visual equipment for live-streaming events.
- 4. Agreement to Create a License for Limited Exclusive Use.** A subsequent formal License Agreement shall be drawn pursuant to this MOU, which shall not be binding until such Agreement is reduced to writing, signed by an authorized agent of Sponsor, and approved by majority vote of the Town Council of Apex in an open meeting. It is contemplated by the parties that the following terms shall be necessary to include in such forthcoming License Agreement:

 - a. Allocation of costs for redevelopment of the Licensed Property.
 - b. Shared Use Policy delineating times at which the Town and Sponsor will enjoy exclusive use of the Licensed Property.
 - c. The term of the relationship between Town and Sponsor, including provisions for renewal and termination of the agreement.
 - d. Policy for Naming Rights, Branding, Signage, and Advertising Rights for Sponsor in relation to the Licensed Property.
 - e. Proposed License Fee.
 - f. Any Maintenance and Repair Obligations of Town and Sponsor in relation to the Licensed Property.
 - g. Rights of Town and Sponsor to make improvements to the Licensed Property.
 - h. Any Other Obligations of Town and Sponsor as appropriate.

- 5. **Termination.** This MOU shall terminate either upon execution of the License Agreement between the Parties or one (1) year after its Effective Date if no License Agreement is entered into by the Parties.
- 6. **No Third-Party Beneficiaries.** There shall be no Third-Party Beneficiaries to any promise, restriction, covenant, duty, or otherwise contained in this MOU or License Agreement.
- 7. **Governing Law and Venue.** The law governing this MOU shall be that of the State of North Carolina and the proper venue and jurisdiction for any legal dispute with respect to this MOU or the License Agreement is proper in Wake County, North Carolina.

IN WITNESS OF, THIS THE _____ DAY OF _____, 2023

<p>TOWN OF APEX, NORTH CAROLINA</p> <p>By: _____ Catherine Crosby, Town Manager</p>	
<p>ATTEST:</p> <p>By: _____ Allen Coleman, Town Clerk</p>	

Sponsor

By: 

Name: Don Waddell

Title: President