

2021 OKTOBERFEST EVENT LICENSE AGREEMENT

THIS EVENT LICENSE AGREEMENT (hereinafter referred to as “Agreement”) is made and entered into this ___ day of _____, 2021, by and between the CITY OF PORT ST. LUCIE, a Florida municipal corporation, by and through the Parks & Recreation Department, (hereinafter referred to as “CITY”), and THE GERMAN AMERICAN CLUB OF THE TREASURE COAST, INC. (hereinafter referred to as “GERMAN AMERICAN CLUB”), P.O. Box 8076, Port St. Lucie, Florida 34985. In consideration of the mutual covenants contained herein, the parties agree as follows:

WHEREAS, the CITY has historically produced and planned an annual Oktoberfest event (hereinafter referred to as the “Event”) each year to celebrate the traditions of the Fall Season and the German heritage. The Event is a festival which includes food, music, craft vendors, and other entertainment which draws an estimated 15,000 attendees.

WHEREAS, the 2021 Event will be held on October 1, 2021 from 5:00 pm to 10:00 pm and October 2, 2021 from 2:00 pm to 10:00 pm, subject to inclement weather, at Lyngate Park, 1301 SE Lyngate Drive, Port St. Lucie, Florida 34952 (hereinafter referred to as “Event Premises”);

WHEREAS, the GERMAN AMERICAN CLUB has agreed to provide and sell alcohol to attendees along with providing certain props and entertainment celebrating German heritage during the hours of the Event on the Event Premises; and

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. ALCOHOL

The GERMAN AMERICAN CLUB will be responsible for all alcoholic beverage sales, training of staff, and service during the Event. The GERMAN AMERICAN CLUB will obtain the necessary and proper license from the Division of Alcoholic Beverages and Tobacco for the Florida Department of Business & Professional Regulation to sell alcoholic beverages and shall retain all records and receipts related thereto. The GERMAN AMERICAN CLUB shall be responsible for all costs associated with the sales, training, and service of alcoholic beverages during the Event and shall retain all net profits from the sale of alcoholic beverages during the Event. The GERMAN AMERICAN CLUB shall comply with any reporting requirements of the liquor license issued by the Division of Alcoholic Beverages and Tobacco for the Florida Department of Professional & Business Regulation. The GERMAN AMERICAN CLUB shall be responsible to provide keg tapping for the Event.

2. EVENT FEE

The CITY shall charge the GERMAN AMERICAN CLUB an event fee of \$2,000.00 in conjunction with the Event for the right to participate in the Event. Said fee shall be paid to the CITY within thirty (30) days of the conclusion of the Event.

3. INDEMNIFICATION/HOLD HARMLESS

The CITY shall not be liable for damage claims from injury to persons or property from any cause relating to the occupancy, construction, improvement, maintenance, or operation of the Event Premises by the GERMAN AMERICAN CLUB during the term of this Agreement or any extension thereof. The GERMAN AMERICAN CLUB agrees to indemnify, defend and hold harmless, the CITY, its officers, agents, and employees from, and against any and all claims, actions, liabilities, losses and expenses including, but not limited to, attorney's fees for personal,

economic or bodily injury, wrongful death, loss of or damage to property, at law or in equity, which may arise or may be alleged to have arisen from the negligent acts, errors, omissions or other wrongful conduct of the GERMAN AMERICAN CLUB, agents, laborers, vendors, or other personnel acting under the GERMAN AMERICAN CLUB's control in connection with the terms of this Agreement and, to that extent, the GERMAN AMERICAN CLUB shall pay such claims and losses and shall pay all such costs and judgments which may issue from any lawsuit arising from such claims and losses including wrongful termination or allegations of discrimination or harassment, and shall pay all costs and attorney's fees expended by the CITY in defense of such claims and losses including appeals. The aforesaid hold-harmless Agreement by the GERMAN AMERICAN CLUB shall apply to all damages and claims for damages of every kind suffered, or alleged to have been suffered, by reason of any of the actions of the GERMAN AMERICAN CLUB or any agent laborers, or any employee or volunteer of the GERMAN AMERICAN CLUB, regardless of whether or not such insurance policies shall have been determined to be applicable to any of such damages or claims for damages. The GERMAN AMERICAN CLUB shall be held responsible for any violation of laws, rules, regulations or ordinances affecting in any way the conduct of all persons engaged in or the materials or methods used by the GERMAN AMERICAN CLUB during the performance of this Agreement. The GERMAN AMERICAN CLUB shall give all notices and comply with all laws, ordinances, rules, regulations and orders of any public authority bearing on this Agreement. The GERMAN AMERICAN CLUB shall secure all permits, fees, licenses, and inspections necessary for the execution of this Agreement.

Nothing contained in this Agreement shall be deemed or otherwise interpreted as waiving the CITY's sovereign immunity protections existing under the laws of the State of Florida, or extending or increasing the limits of liability as set forth in Section 768.28 of Florida Statutes.

No provision of this Agreement shall be construed to create a partnership or joint venture of any type between the CITY and the GERMAN AMERICAN CLUB, or in any way make either responsible for any debts, losses or liabilities of the other, without limitation. This agreement shall not be assigned, subcontracted or transferred to any other entity without the express written approval of the CITY.

4. EQUIPMENT/VENDORS

The CITY shall furnish the band/entertainment, tables, chairs and a tent for use by the GERMAN AMERICAN CLUB during the Event. The CITY shall secure sponsors and vendors for the Event. Upon request, the CITY agrees to furnish power to the GERMAN AMERICAN CLUB in the form of a generator, fuel and/or electrical cords. The GERMAN AMERICAN CLUB shall provide decorations, traditional German attire, keg tapping and a parade of flags.

5. INSURANCE

The GERMAN AMERICAN CLUB shall, on a primary basis and at its sole expense, agree to maintain in full force and effect at all times during the life of this Agreement, insurance coverage, limits, including endorsements, as described herein. The requirements contained herein, as well as CITY's review or acceptance of insurance maintained by the GERMAN AMERICAN CLUB are not intended to, and shall not in any manner limit or qualify the liabilities and obligations assumed by the GERMAN AMERICAN CLUB under this Agreement.

The parties agree and recognize that it is not the intent of the CITY that any insurance policy/coverage that it may obtain pursuant to any provision of this Agreement, will provide insurance coverage to any entity, corporation, business, person, or organization, other than the CITY, and the CITY shall not be obligated to provide any insurance coverage other than for the CITY or extend its sovereign immunity pursuant to Section 768.28 of the Florida Statutes, under

its self-insured program. Any provision contained herein to the contrary shall be considered void and unenforceable by any party. This provision does not apply to any obligation imposed on any other party to obtain insurance coverage for this Agreement, any obligation to name the CITY as an additional insured under any other insurance policy, or otherwise protect the interests of the CITY as specified in this Agreement.

A. Workers' Compensation Insurance & Employer's Liability: The GERMAN AMERICAN CLUB shall agree to maintain Workers' Compensation Insurance & Employers' Liability in accordance with Section 440, Florida Statutes. Employers' Liability and must include limits of at least \$100,000.00 each accident, \$100,000.00 each disease/employee, \$500,000.00 each disease/maximum. A Waiver of Subrogation endorsement shall be provided. Coverage shall apply on a primary basis. If the GERMAN AMERICAN CLUB claims exemption under Florida Workers' Compensation insurance, the GERMAN AMERICAN CLUB must present a waiver of exemption from the Florida Division of Financial Services indicating such.

B. Commercial General Liability Insurance: The GERMAN AMERICAN CLUB shall agree to maintain Commercial General Liability insurance issued under an Occurrence form basis, including Contractual Liability, to cover the hold harmless agreement set forth herein, with limits of not less than:

Each occurrence	\$1,000,000
Personal/advertising injury	\$1,000,000
Products/completed operations aggregate	\$2,000,000
General aggregate	\$2,000,000
Fire damage	\$100,000 any 1 fire
Medical expense	\$10,000 any 1 person

C. Additional Insured: An Additional Insured endorsement must be attached to the certificate of insurance (should be CG2026) under the General Liability policy. Coverage is to be written on an occurrence form basis and shall apply as primary. A per event aggregate limit endorsement should be attached. Defense costs are to be in

addition to the limit of liability. A waiver of subrogation shall be provided in favor of the CITY. Coverage shall extend to independent contractors, fellow employees, and volunteers. Contractual Liability is to be included. Coverage is to include a cross liability or severability of interests provision as provided under the standard ISO form separation of insurers clause.

- D. Liquor Liability Insurance: The GERMAN AMERICAN CLUB shall agree to maintain Liquor Liability insurance issued under an Occurrence form basis, in limits not less than \$1,000,000 each occurrence, \$2,000,000 general aggregate. A waiver of subrogation shall be provided in favor of the CITY. Certificate holder must be listed as an additional insured.
- E. Automobile Liability Insurance: The GERMAN AMERICAN CLUB shall agree to maintain Business Automobile Liability at a limit of liability not less than \$1,000,000.00 each accident covering any auto, owned, non-owned and hired automobiles. In the event, the Contractor does not own any automobiles; the Business Auto Liability requirement shall be amended allowing the GERMAN AMERICAN CLUB to agree to maintain only Hired & Non-Owned Auto Liability. This amended requirement may be satisfied by way of endorsement to the Commercial General Liability, or separate Business Auto Coverage form. Certificate holder must be listed as additional insured. A waiver of subrogation shall be provided. Coverage shall apply on a primary basis.
- F. Except as to Workers' Compensation and Employers' Liability, said Certificate(s) and policies shall clearly state that coverage required by the Agreement have been endorsed to include the City of Port St. Lucie, a municipality of the State of Florida, its officers, agents and employees as Additional Insured added to its Commercial General Liability, Auto Liability, and Liquor Liability policies. The name for the Additional Insured endorsement issued by the insurer shall read "**City of Port St. Lucie, a municipality of the State of Florida, its officers, employees and agents, and shall include 2021 Oktoberfest Event License Agreement.**" The Policies shall be specifically endorsed to provide thirty (30) days written notice to the CITY prior to any adverse changes, cancellation, or non-renewal of coverage thereunder. Copies of the Additional Insured endorsements shall be attached to the Certificate of Insurance.

G. Waiver of Subrogation: The GERMAN AMERICAN CLUB shall agree, by entering into this Agreement, to a Waiver of Subrogation for each required policy. When required by the insurer, or should a policy condition not permit an Insured to enter into a pre-loss Agreement to waive subrogation without an endorsement, then GERMAN AMERICAN CLUB shall agree to notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy where a condition to the policy specifically prohibits such an endorsement, or voids coverage should GERMAN AMERICAN CLUB enter into such an Agreement on a pre-loss basis.

H. Deductibles: All deductible amounts shall be paid for and be the responsibility of the GERMAN AMERICAN CLUB for any and all claims under this Agreement.

It shall be the responsibility of the GERMAN AMERICAN CLUB to ensure that all vendors, independent contractors, and/or subcontractors utilized in this Agreement comply with the same insurance requirements referenced above. The CITY, by and through its Risk Management Department, reserves the right, but not obligation, to review, modify, reject, or accept any required policies of insurance including limits, coverages or endorsements, herein. All insurance carriers must have an AM Best rating of at least A-VII or better. A failure on the part of the GERMAN AMERICAN CLUB to execute the Agreement and/or punctually deliver the required insurance within 14 days of the event may be cause for annulment of this Agreement.

6. **FORCE MAJEURE**

In the case that a state of emergency may be declared, or the Event Premises or any part thereof shall be destroyed or damaged by hurricane, fire, water, or any other cause, or as the result of any other casualty or unforeseen occurrence, the City may determine that fulfillment of the Agreement is not possible. If any of these shall occur, this Event Agreement shall be subject to termination. Should it become necessary in the judgment of the City to evacuate the Event

Premises because of a bomb threat or for other reasons of public safety, the dates and times provided in this Agreement will be extended for sufficient time to complete the Event without additional terms and conditions providing such time does not interfere with rights previously granted to another event. The parties also agree that if unforeseen circumstances due to weather materially affect attendance, the parties may renegotiate the payment of costs and expenses set forth herein, except that any expenses and proceeds related to the sale of alcohol shall remain as set forth herein.

7. ENTIRE AGREEMENT

It is agreed that this document contains the entire Agreement between the parties regarding the Event, and this Agreement shall not be modified in any respect except in writing signed by both parties.

[The remaining space on this page has been intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have set their respective hands this ___ day
of _____, 2021.


CITY OF PORT ST. LUCIE,
a Florida municipal corporation

By: _____
Russ Blackburn
City Manager

GERMAN AMERICAN CLUB OF THE TREASURE COAST, INC.

By: _____
Frederick Schneider, President

Approved as to Form and Sufficiency:



Sebastian K. Poprawski, Esquire
Title: Deputy City Attorney