

**AGREEMENT**

THIS AGREEMENT, made and entered into this 26 day of March, 2013 by and between the **CITY OF DELRAY BEACH, FLORIDA**, a municipal corporation (hereinafter referred to as "**CITY**"), and **CHRIS EVERT CHARITIES, INC.**, (hereinafter referred to as "**CHARITIES**").

WITNESSETH:

**WHEREAS**, the **CITY** owns and controls certain property upon which is located the City of Delray Beach Municipal Tennis Center; and,

**WHEREAS**, **CHARITIES**, is desirous of using the Municipal Tennis Center for the purpose of holding a sporting event to be known as the Chris Evert Pro-Celebrity Tennis Classic ("Classic") at the Tennis Center; and,

**WHEREAS**, the **CITY** believes that holding the Chris Evert Pro-Celebrity Tennis Classic at the Municipal Tennis Center (the Site) will grant the citizenry of Delray Beach many tangible and intangible benefits; and,

**WHEREAS**, **CHARITIES** understands that the **CITY** has an exclusive agreement with Ticketmaster of Florida for the sale of tickets for events.

**NOW, THEREFORE**, in consideration of the mutual premises, covenants and agreements contained herein, the parties hereby covenant and agree as follows:

1. **LICENSE; TERM.**

The **CITY** hereby grants to **CHARITIES** for the month of November, the right and privilege to stage, use, manage and operate the municipal tennis stadium and necessary surrounding property for a two Day Classic. **CHARITIES'** rights shall cover an additional five (5) day period before the commencement of the Classic to set up necessary facilities and an additional 2 days after the Classic to remove necessary facilities.

The term of this Agreement shall extend until December 31, 2017, however, if **CHARITIES** decides not to hold the Event in a particular year, **CHARITIES** shall not be in breach of this Agreement, provided it gives the **CITY** 60 days notice of its intent. The dates for the Event to be held in November of 2013 through 2017 shall be mutually agreed upon.

In the instance the CITY wishes to terminate this Agreement after 2015 Event, it may do so, with or without cause, upon providing nine (9) months notice to CHARITIES. In the event the CITY determines, in its sole and absolute discretion, to perform major renovations or reconstruction of the Site, such that the Site would be unavailable for use, CHARITIES agrees that this shall not constitute a breach of this Agreement provided the CITY has given nine (9) months advance notice of the unavailability.

2. **LICENSE AGREEMENT ONLY.**

This agreement between the CITY and CHARITIES is a license agreement, not a lease or purchase agreement, and should be construed by a court of competent jurisdiction to be a license agreement only. Furthermore, this License Agreement does not grant nor is CHARITIES receiving hereunder any rights to any real property of the CITY nor any property interests except as set forth in this agreement.

3. **FACILITIES AND SERVICES PROVIDED BY CITY.**

(a) Unless otherwise herein specified, CITY shall be responsible for, or agrees to provide, at no charge to CHARITIES the following facilities and production assistance in connection with the conduct of and staging of the Classic:

- (i) use of an 8,200 seat stadium court and three (3) practice courts throughout the Classic (the "Courts") with "seat kills" to be in place by the CITY to reduce the seating capacity to approximately 4,000 if so desired by CHARITIES;
- (ii) use of a mutually agreed upon number of courtside boxes and skyboxes;
- (iii) preparation and maintenance of the Courts throughout the Classic;
- (iv) television tower and platform and all necessary electricity to provide power to the tower and platform throughout the Classic;
- (v) a public address system;
- (vi) nets, net posts, single sticks, an umpire's chair, linepersons chairs, skirted tables, end and side line buntings, and numbered seating;
- (vii) parking for boxholders, players, sponsors, ticketholders, press, staff, and volunteers (CITY to implement, manage and staff parking, including

reserved areas); City will offer valet parking (**CITY** will be allowed to charge and retain all revenues from the valet parking) and also be allowed to charge, and retain all revenues, for general public parking at the County Courthouse garage at a nominal rate to be mutually agreed upon between City and Charities to offset parking attendant costs.

- (viii) all electrical power and one on-site electrician (all costs and expenses are **CITY'S** responsibility) for the duration of the Classic (hook-ups not included);
- (ix) adequate space for and operation of concessions, retail booths, etc. (**CHARITIES** shall place and operate the concessions and retain all revenues from its concessions and retail booths);
- (x) restroom facilities and supplies;
- (xi) additional courts for pro-am, clinics, etc., as mutually agreed;
- (xii) the use of areas for celebrities, press, press interview, tournament staff, volunteers, ballkids, officials, ticket office, and VIP hospitality and the use of locker rooms, as mutually agreed. Areas should include tables, chairs, furniture and air conditioning, as mutually agreed;
- (xiii) on and off-site directional signage;
- (xiv) all necessary permits;
- (xv) on-site security including security for the celebrities, ticket office, and press area and overnight security coverage from Friday p.m. through Monday a.m.;
- (xvi) adequate police, fire support and traffic control;
- (xvii) teaching professionals to assist with tennis pro-ams held in connection with the Classic;
- (xviii) mutually agreed upon marketing and sponsorship support of the Classic; and
- (xix) access to utilities to include but not be limited to water/sewer, electric/lighting;
- (xx) reasonable use of the gymnasium at the Community Center, including floor cover as provided by the Community Center; and

- (xxi) use of existing dumpsters and arrange to have the dumpsters emptied at **CITY'S** expense.

(b) During the term of this Agreement (defined below) **CITY** agrees to pay to **CHARITIES** the following amounts with respect to the Classic:

(i)	<u>Year</u>	<u>Payment</u>	<u>Amount Due</u>	<u>Due Date</u>
	2013	US\$51,000	\$25,500 \$25,500	On or before Nov. 2, 2013 By Dec. 10, 2013
	2014	US\$53,000	\$26,500 > 53,000 \$26,500	On or before Nov. 2, 2014 By Dec. 10, 2014
	2015	US\$55,000	\$27,500 55,000 \$27,500	On or before Nov. 2, 2015 By Dec. 10, 2015
	2016	US\$57,000	\$28,500 57,000 \$28,500	On or before Nov. 2, 2016 By Dec. 10, 2016
	2017	US\$59,000	\$29,500 59,000 \$29,500	On or before Nov. 2, 2017 By Dec. 10, 2017

(ii) **CHARITIES** will contribute 50% of the total payment from the City to the Drug Abuse Foundation of Palm Beach County, Inc. by January 31 of the following year, provided they receive the above payments from the **CITY**.

(iii) If **CHARITIES** fails to hold the Classic and the **CITY** has paid the first installment to **CHARITIES**, then **CHARITIES** will refund the amount paid back to the **CITY** by January 31 of the following year. The **CITY** shall not be required to make the second payment to **CHARITIES** if the Event is not held during its scheduled time.

(c) If **CHARITIES** has ticket sales greater than \$100,000.00 but under \$125,000.00 then it shall pay to the **CITY** 15% of that amount over \$100,000.00 but under \$125,000.00. If **CHARITIES** has ticket sales greater than \$125,000.00 then it shall pay to the **CITY** 17.5% of that amount greater than \$125,000.00 on top of the 15% of the amount greater than \$100,000.00. Such payment shall be due within 30 days of the conclusion of the Classic or within 30 days of **CHARITIES** receiving money from ticket sales from Ticketmaster, whichever is later, and upon the submission of an invoice from the **CITY** to **CHARITIES**.

4. **STAGING AND PRODUCTION OF CLASSIC.**

The organization, staging, and conduct of each Classic will be the responsibility of **CHARITIES**, which responsibilities shall include the following:

- (a) handling ticket and box office sales;
- (b) Obtaining a Classic Director, all personnel involved in each Classic, and the Classic participants;
- (c) Administering the entire Classic;
- (d) Setting up each Classic on-site and handling all on-court activities of the Classic;
- (e) Soliciting sponsorship sales and television rights sales for each Classic;
- (f) Handling promotions, advertising, sales, public relations, and program production for each Classic;
- (g) Liaising with the charity beneficiaries selected by **CHARITIES** for each Classic;
- (h) **CHARITIES** shall be responsible for expenses incurred in site clean-up of restrooms and for garbage pick-up;
- (i) **CHARITIES** is responsible for expenses incurred in covering courts as set forth in Paragraph 7 if VIP tents are to be set up or if needed to cover courts used for contents; and
- (j) **CHARITIES** shall pay for all expenses relating to phone usage by **CHARITIES**, including, but not limited to, hook-up, dial tone, and usage charges.

5. **ACKNOWLEDGMENT BENEFITS.**

In acknowledgment of the services provided by the **CITY** in Paragraph 3 hereof, **CHARITIES** agrees that **CITY** will have the following acknowledgment rights in relation to the Classic, subject to the provisions of this Agreement:

DESIGNATION

- Designation as Host Site of the Chris Evert Pro-Celebrity Tennis Classic

## MEDIA ADVERTISING

### Television:

- Sponsor logo included in advanced television and advertising campaign
- Audio and graphic mention during the telecast and best efforts to create overview shots of Delray Beach in the opening of the broadcast

### Print:

- Sponsor logo included in advanced newspaper and magazine advertising campaign
- One (1) full-page 4-color acknowledgement in the Official Souvenir Program

### Radio/Internet:

- Sponsor (verbal recognition) included in advanced radio advertising campaign
- Sponsor logo included on Classic website, [www.chrisevert.org](http://www.chrisevert.org)
- Internet link between Classic website and Sponsor website

## COLLATERAL ADVERTISING

Sponsor Logo/Name inclusion on the following materials as follows:

- Sponsor Logo
  - Save-the-Date
  - Brochure
  - Poster
  - Billboards (if applicable)
  - Movie Theater ad (if applicable)
  - Scoreboards
- Sponsor Name
  - Press Release(s)
  - Brochure

- Poster
- Souvenir Program Cover
- Sponsor acknowledgement within Souvenir Program
- Sponsor acknowledgement within Gala Dinner Dance Program
- VIP Sponsor Board
- Corporate identification on each box
- Sponsor acknowledgement on Video screen at the Gala Dinner Dance

#### ON-SITE BANNERS

- Two (2) banner spaces (3'x7') on Center Court throughout the Classic weekend (sponsor to provide banners)

#### PROMOTIONAL ADVERTISING

- One (1) sales/promotional/display tent (approximately 10'10') on site throughout the Classic weekend with internet and electrical capabilities (Sponsor to be responsible for all internet expenses incurred)
- Right to participate in advance promotions
- Center Court public address announcements
- Participation of City officials in Press Conference for the Classic
- Right to be present on Center Court and acknowledgement on Center Court during the awards ceremony

#### HOSPITALITY

- Thirty two (32) invitations to the Celebrity Classic Cocktail Party at the Boca Raton Resort & Club, Friday evening October 31.
- Four (4) seats at the Gala Dinner Dance at the Boca Raton Resort & Club, Saturday evening, November 1.

#### TICKETS/PASSES

- Four (4) Platinum Boxes (16 seats) for both Classic sessions (32 total tickets)



- Twenty (20) General Admission tickets for both Classic sessions (40 total tickets)
- Access to the VIP Hospitality Suite at the Delray Beach Tennis Center featuring a catered buffet and open bar
- VIP Parking Passes
- Special ticket offers to attend the Classic

6. **CLASSIC EXPENSES AND REVENUES.**

(a) Subject to Paragraph 43 hereof, **CHARITIES** shall be responsible for collecting all revenues generated by, and paying all expenses incurred for, the Classic, except for those expenses associated with **CITY'S** obligations set forth herein.

(b) **CITY** acknowledges that **CHARITIES** will not pay **CITY** for any expense incurred by **CITY** in conjunction with the Classic unless **CITY** has submitted a written estimate of such expense to **CHARITIES** and obtained written approval from **CHARITIES** of such expense in advance.

7. **INSTALLATION OF FLOORING.**

The **CITY** shall provide, at **CHARITIES'** option, up to 10,000 square feet of temporary flooring for the Classic. **CHARITIES** shall be responsible for paying all costs up to and not to exceed three thousand five hundred dollars (US\$3,500) for installation of the initial 10,000 square feet of flooring. The **CITY** shall be responsible for the actual installation of the floor. If more than 10,000 square feet of flooring is required by **CHARITIES**, then **CHARITIES** shall pay all costs involved in obtaining such additional flooring and for all costs of installation of the additional flooring.

8. **OFFICE SPACE.**

The **CITY** shall provide to **CHARITIES** office space in the community center and reasonable use of the board room and ticket window section of the ticket office at a date beginning upon the Monday preceding the Event and ending one day after the completion of the event. The exact space to be use by **CHARITIES** shall be determined as mutually agreed upon by the parties. In the event the parties cannot mutually agree upon a space, the **CITY** shall have

the sole discretion to determine the space to be used by **CHARITIES**. Upon vacating the office space, **CHARITIES** shall leave the space utilized in a condition equal to that which existed on the date **CHARITIES** occupied the space, ordinary wear and use thereof only excepted.

9. **FORCE MAJEURE.**

If **CHARITIES** or the **CITY** is prevented from or interfered with in any manner whatsoever in fully performing its agreements (including its ability to conduct the Classic(s)) hereunder, for any reason beyond its reasonable control such as any law, regulation, act of God, earthquake, flood, fire, accident, labor controversy, act or threat of terrorism or delay of a common carrier (the foregoing all being examples of an "event of force majeure"), then **CHARITIES'** and the **CITY'S** obligations hereunder will be suspended as often as any such event of force majeure occurs and during such occurrences, **CHARITIES'** and **CITY'S** nonperformance will not be deemed a breach of this Agreement

10. **AUTHORIZED AGENT.**

**CHARITIES** hereby designates Chris Evert Charities, 7200 W. Camino Real, Suite 310, Boca Raton, FL 33433, Attn: Tami Starr, as **CHARITIES'** authorized agent for all purposes hereunder. All notices or submissions to be made or delivered by **CITY** to **CHARITIES** pursuant to this Agreement shall be delivered to said address free of all charges, such as, for example, shipping charges and customs charges.

11. **TAXES.**

**CHARITIES** shall be liable for any and all taxes which are or may be imposed as a result of this agreement. Taxes shall be paid to the appropriate authority and including, but not limited to, sales and use tax.

12. **PROOF OF INSURANCE.**

**CHARITIES** shall provide the **CITY** with proof of insurance being in force. The type and quantity of insurance is more particularly set forth in Exhibit "A" to this agreement. Proof of such insurance shall be due by 30 days prior to the first day of the event. The insurance shall name the **CITY** and its designee as additional insured.

13. **FINANCIAL RESPONSIBILITY.**

**CHARITIES** agrees, subject to the provisions of this Agreement, to accept all financial responsibilities for the Classic including, but not limited to, all accounting and reporting as may be required by law. **CHARITIES** further agrees to accept sole responsibility for any financial commitments or obligations it incurs as a result of the Classic, and which are not provided for in this Agreement.

14. **OTHER SERVICES AND SUPPLIES.**

**CHARITIES** further agrees that all services and supplies not specifically identified herein shall be provided by or through **CHARITIES**.

15. **CONCESSION RIGHTS OF CHARITIES.**

**CHARITIES** may sell food, beverages, confections, refreshments and novelties or may, subject to approval by **CITY**, contract with another to provide such service. **CHARITIES** shall not be required to use the **CITY'S** exclusive soda vendor if it does not wish to do so.

In providing the concession service, **CHARITIES** or any person, firm, or corporation with whom it contracts for such purpose (hereinafter referred to as "concessionaire") shall comply with the following provisions provided, however, that **CHARITIES** shall remain ultimately responsible to **CITY** for all obligations required of the concessionaire:

a. Concessionaire shall, prior to commencing any activities, obtain any and all permits and licenses that may be required in connection with the operation of this concession.

b. All food, drinks, beverages, confections, refreshments, etc. sold or kept for sale shall be first class and quality, in accordance with the Department of Health requirements, shall conform to all federal, state, county, and municipal laws, ordinances and regulations in all respects.

c. Concessionaire may have the option to sell alcoholic beverages at the Tennis Center. Sale of alcoholic beverages must comply with all federal, state, county, and municipal laws, ordinances and regulations and must be properly licensed by the State of Florida.

d. Concessionaire may, at its expense, furnish additional equipment and fixtures to be utilized in the concession. Concessionaire shall submit plans and specifications concerning fixtures and equipment to **CITY** for approval prior to installation of any items. For the purpose of this Agreement, "fixture" shall be defined as anything

annexed or affixed to a building or structure or which appears to be so affixed or annexed, regardless of whether it is capable of being removed.

e. The Concessionaire shall provide all maintenance, repair and service required on all equipment used on the concession.

f. Concessionaire shall keep all fixtures, equipment and personal property, whether owned by Concessionaire or **CITY**, in a clean and sanitary condition and shall cleanse, fumigate, disinfect and deodorize as required and whenever directed to do so by **CITY**. All state health laws and state health department regulations must be strictly complied with. All janitorial services necessary in concession area shall be provided by Concessionaire at Concessionaire's expense.

g. Concessionaire agrees to dispose of all refuse and garbage, in compliance with all applicable laws, ordinances and health codes, at Concessionaire's expense, and to keep outside container areas cleaned at all times.

h. If the concession is operated by a person, firm or corporation other than **CHARITIES**, such person, firm, or corporation shall at all times maintain workers' compensation insurance coverage for all employees which it employs within the areas and facilities covered by this Agreement, together with the policy or policies of public liability and products liability insurance and provides limits of at least One Million (\$1,000,000.00) Dollars for combined single limit coverage; provide liquor liability insurance with limits of at least One Million (\$1,000,000.00) Dollars and provide fire legal liability in the amount of Five Hundred Thousand (\$500,000.00) Dollars. Such policies shall provide that they will not be cancelled or amended without at least ten (10) days written notice to the Risk Manager of **CITY** and shall name **CITY**, its officers, agents and employees as additional insured.

#### 16. ACCEPTANCE OF TOURNAMENT SITE.

(a) Prior to the Classic, **CHARITIES** may inspect and examine the Site to determine that said Site is in adequate and satisfactory condition for the uses contemplated. **CHARITIES** assumes full responsibility and liability for all damages, losses and liability caused by conditions on the Site, which arise once it commences use and occupancy of the Site, and which conditions are caused by or result from the actions of or failure to act by **CHARITIES**, its employees, agents or representatives, or by the actions of or failure to act by exhibitors, independent contractors, workers or invitees of **CHARITIES** while on the Site. **CHARITIES** indemnifies, defends and holds **CITY**, and its designee, harmless for any such claims unless such damage, loss or liability was caused by conditions on the Site which are inherent in the structures

involved, or the direct result of **CITY'S** (including its employees and agents), negligence or misconduct.

(b) **CITY**, and its designee, shall not be responsible for any damage or injury to, or personal conduct, safety and welfare of **CHARITIES**, its employees, agents or representatives, or exhibitors, independent contractors, workers, and invitees while on the premises and **CHARITIES** expressly indemnifies, holds harmless and releases **CITY** from any and all such claims, damages, losses or liability associated therewith, unless such claim, damage, or liability is the result of **CITY'S** (including employees and agents) negligence or misconduct.

17. **REPAIR, REPLACEMENT AND MAINTENANCE.**

**CHARITIES** shall pay all costs for cleanup, repair and replacement and all damages of whatever origin or nature, for which it is responsible, ordinary wear and use thereof only excepted, which may occur during the term of this Agreement in order to restore the Site to a condition equal to the condition at the time **CHARITIES** occupies the Site.

**CHARITIES** shall be responsible for clean-up of the Site during and after the Classic. If at any time **CITY** determines that the clean-up services provided by **CHARITIES** are not adequate or that said services endanger public health and safety, **CITY** shall notify **CHARITIES** in writing and if **CHARITIES** fails to clean up after receipt of written notification, **CITY** may provide these services. **CHARITIES** shall reimburse **CITY** for the costs of providing these services and for the actual costs of any supplies.

18. **TICKET SALES.**

All tickets for admission shall contain language approved by **CHARITIES** and **CITY** establishing that the tickets create a revocable license. Prior to the sale of any admission ticket, **CHARITIES** shall provide City Manager or his designee with the established selling price of each type and kind of ticket for his review and approval.

19. **ADVERTISING MATTER.**

(a) **CHARITIES** agrees, subject to its rights, if any, under any applicable License Agreements, to identify the City of Delray Beach as the site of the Classic in all publications, advertising and any electronic broadcast, and to permit **CITY** to use **CHARITIES'** trademark or any trademark authorized to be used by **CHARITIES**, and **CITY** agrees to permit **CHARITIES**

to use the **CITY'S** name and logo and trademark during the term of this Agreement solely in the connection with the Classic. **CITY** agrees that promotional material created by **CITY** with regard to the Classic is subject to the approval of **CHARITIES**. **CHARITIES** agrees that any material submitted by **CITY** will not be unreasonably disapproved, and, if it is disapproved, that **CITY** will be advised of the specific grounds of the disapproval.

(b) All printed material and advertising matter to be used prior to or at the Classic which include the name City of Delray Beach or its official seal shall be submitted to the City Manager or his designee for his approval at least two (2) days prior to the proposed use of the same. Approval shall not be unreasonably withheld by the City Manager or his designee. **CITY** agrees that it shall always use the official name of the Classic as designated by **CHARITIES** and no other name when making reference to the Classic in **CITY'S** promotional materials.

(c) If **CHARITIES** is able to secure television coverage for the Classic, **CHARITIES** shall ensure that any such television coverage of the Classic shall specifically mention the **CITY** as the host in the opening of each and every broadcast. **CHARITIES** will use best efforts to provide **CITY** with an overview of the City of Delray Beach.

(d) **CITY** or its designee, at the request of **CHARITIES**, shall temporarily cover advertisements, corporate logos or trademarks that appear throughout the Tennis Center, at its sole expense.

**20. EVENT PERSONNEL AND EQUIPMENT.**

**CHARITIES** shall provide all personnel needed for the Classic, including, but not limited to, set up and take down personnel, ticket sellers, ticket takers, ushers, sound technicians and stage hands except as otherwise set forth in Paragraph 3(a) or elsewhere in this Agreement.

**21. POLICE AND EMERGENCY PERSONNEL.**

**CHARITIES** agrees to make arrangements with the **CITY** designated representative to provide for **CITY** police personnel which the **CITY** determines, in its sole discretion, is necessary for the Classic. Also, **CHARITIES** shall contact the **CITY** designated representative to make arrangements for Emergency Medical Technician personnel to be present at the Classic.

22. **CITY'S RIGHT TO CONTROL PREMISES.**

CITY at all times reserves the right to eject or cause to be ejected from the premises any person or persons violating or to keep persons from violating any of the rules or regulations of the Tennis Center or any city, county, state or federal laws, and neither CITY nor of any its officers, agents or employees shall be liable in any manner to CHARITIES or its officers, agents or employees for any damages which may be sustained by CHARITIES through the exercise of this right by CITY.

23. **ALCOHOLIC BEVERAGE LICENSE.**

In the event an alcoholic beverage license is required, CHARITIES or its agents shall apply for and obtain a temporary alcoholic beverage license from the State of Florida Department of Business Regulations, Division of Alcoholic Beverages and Tobacco for the sale of alcoholic beverages at the Site for the Classic. CHARITIES, or its agents, shall display said license in a conspicuous place at the Site of the sale and/or distribution of the alcoholic beverages. CHARITIES shall be solely responsible for timely reporting and remitting the appropriate retail surcharge on the alcoholic beverages sold for consumption to the Division of Alcoholic Beverages and Tobacco. CHARITIES, or its agents, shall strictly comply with all rules and regulations established by the Division of Alcoholic Beverages and Tobacco of the State of Florida and any other applicable statutory and regulatory regulations.

24. **VACATION OF CLASSIC SITE.**

CHARITIES agrees to vacate the licensed Classic Site no later than two (2) days after the completion of the Classic; to leave said Classic Site in a condition equal to that at the commencement date CHARITIES occupies the Classic Site each year, ordinary wear and use thereof only excepted, and that CHARITIES shall remove from the Classic Site within five (5) days following the closing of the Classic, all material and equipment owned by CHARITIES.

25. **NON-DISCRIMINATION.**

A. That **CHARITIES** for itself, its personal representatives, successors in interest, assigns, subcontractors, and sublicensees, as a part of the consideration hereof, does hereby covenant and agree that:

1. No person on the ground of race, color, national origin, age, or sex shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
2. That in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the ground of race, color, national origin, age, or sex shall be excluded from participation in, be denied the benefits of, or otherwise be subject to discrimination.
3. That **CHARITIES** shall use the premises in compliance with all other requirements imposed or pursuant to Title 45, Code of Federal Regulations, Article 80, Non-discrimination under programs receiving Federal Assistance through the Department of Health, Education and Welfare - Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

B. That in the event of a proven breach of any of the above non-discrimination covenants, the **CITY** shall have the right to terminate the license and to take possession of said facilities and hold the same as if said license had never been made or issued. This provision shall not be effective until the procedures of Title 45, Code of Federal Regulations, Part 80, are followed and completed including exercise or expiration of appeal rights.

C. **CHARITIES** shall not discriminate against any employee or applicant for employment to be employed in the performance of the contract with respect to hiring, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment because of age, sex, physical handicap (except where based on a bona fide occupational qualification); or because of marital status, race, color, religion, national origin or ancestry.



26. **CHANGE IN LAW.**

During the term, the **CITY** reserves the right to restate and/or renegotiate with **CHARITIES** such additions, deletions or changes to the license as may be necessitated by changes in county, state or federal laws relating to the operation of the downtown site. In the event that the **CITY** and **CHARITIES** are unable to reach a mutual agreement on any such addition, deletion or change, that portion of the contract concerning the services involved in the addition, deletion or change shall be terminated or eliminated.

27. **CANCELLATION BY CITY.**

The occurrence of any of the following cause this Agreement to be automatically terminated:

- A. Institution of proceedings in voluntary bankruptcy by **CHARITIES**.
- B. Institution of proceedings in involuntary bankruptcy against **CHARITIES** if such proceedings lead to adjudication of bankruptcy and the **CHARITIES** fails within ninety (90) days to have such adjudication reversed.

The **CITY** shall have the right, after fourteen (14) calendar days written notice sent by registered or certified mail to **CHARITIES** specifying the amount of payment(s) in default, to terminate this Agreement whenever the non-payment of any sum or sums due hereunder continues for a period of ten (10) calendar days after the due date for such payments; provided, however, that such termination shall not be effective if **CHARITIES** makes the required payment(s) during the fourteen (14) calendar day period following receipt of the written notice.

The CITY shall also have the right to cancel the Event for a particular year if the CITY, or another entity acting on behalf of the CITY, conducting major renovations to the the Tennis Center, and the CITY determines, in its sole discretion that the Event will not be able to be held that year.

28. **DEFAULT BY CHARITIES.**

The **CITY** may terminate this Agreement for cause upon **CHARITIES'** failure to perform any of the terms and conditions of this Agreement and such failure in performance not remedied by **CHARITIES** within thirty (30) days after receiving notice in writing of such

default or in cases where remedial measures may take longer than thirty (30) days, satisfactory remedial action must begin and be consistently undertaken within thirty (30) days after receiving notice in writing stating the nature of the failure of performance and the **CITY'S** intention to terminate if not corrected and which remedial measures must be completed within a reasonable time set forth in the notice from the **CITY**.

**29. DEFAULT BY CITY.**

**CHARITIES** may terminate this Agreement for cause upon **CITY'S** failure to perform any of the terms and conditions of this Agreement if such failure in performance was not remedied by **CITY** within thirty (30) days after receiving notice in writing of such default, or in cases where remedial measures may take longer than thirty (30) days, satisfactory remedial action must begin and be consistently undertaken within thirty (30) days after receiving notice in writing stating the nature of the failure of performance and **CHARITIES'** intention to terminate if not corrected and which remedial measures must be completed within a reasonable time set forth in the notice from **CHARITIES**.

**30. NOTICES.**

Any notices submitted or required by this Agreement shall be sent by registered or certified mail and addressed to the parties as follows:

To the City: Douglas E. Smith, Interim City Manager  
City of Delray Beach  
100 N.W. 1st Avenue  
Delray Beach, Florida 33444

To CHARITIES: Chris Evert Charities  
7200 W. Camino Real, Suite 310  
Boca Raton, FL 33433  
Attn: Tami Starr

or to such other addresses as either party may designate in writing.

**31. INTERPRETATION.**

This Agreement constitutes the entire Agreement between the parties with respect to subject matter hereof and supersedes all prior verbal or written agreements between the parties with respect thereto. This Agreement may be amended only by written document, properly

authorized, executed and delivered by both parties hereto. This Agreement shall be interpreted as a whole unit and section headings are for convenience only. All interpretations shall be governed by laws of the State of Florida. Waiver of any breach shall not constitute waiver of any other breach. Invalidation of any portion of this Agreement shall not automatically invalidate the entire Agreement.

**32. INDEMNIFICATION.**

(a) To the fullest extent permitted by laws and regulations, **CHARITIES** agrees to indemnify, defend, save and hold **CITY**, its officers, agents, employees and assigns and Dubin & Associates, Inc., harmless from any and all claims, damages, liabilities, losses, causes of action, liens or judgments of any kind or nature whatsoever which may arise out of, in connection with, or because of the use, maintenance, or operation of the licensed facilities, including but not limited, to the exterior facilities and grounds, parking areas, pedestrian walkways, vehicular paths and grassy areas, by **CHARITIES** or its officers, agents, employees, or independent contractors, and invitees including but not limited to those resulting from or arising out of (a) by any act done or words spoken by **CHARITIES**, its players, agents or employees; (b) any damage done to the premises or any part thereof caused by the act or omission of either **CHARITIES** or any player, agent or employee of **CHARITIES**; (c) the breach by **CHARITIES** of any term of this Agreement; or (d) any breach or alleged breach of any warranty or obligation undertaken by **CHARITIES** in this Agreement. **CHARITIES** shall pay all claims, losses, liens, settlements or judgments of any nature whatsoever in connection therewith, including but not limited to reasonable attorney's fees and costs to defend all claims or suits, in the name of **CITY** when applicable.

(b) **CHARITIES** agrees to defend all actions to which this Paragraph 30 applies, in the name of **CITY** provided, however, that **CITY** reserves the right to select its own legal counsel to conduct any defense in any such proceeding which selection shall be reasonable under the circumstances. All costs and fees associated therewith shall be the responsibility of **CHARITIES** under this indemnification agreement.

(c) Such indemnification shall be limited to the amount of commercial general liability insurance which **CHARITIES** is required to obtain under this License Agreement.

(d) Nothing contained herein is intended nor shall be construed to waive CITY'S rights and immunities under the common law or Section 768.28, Florida Statutes, as amended from time to time. The provisions of this Paragraph 32 shall survive the execution, delivery and performance of this Agreement.

**33. PERSONAL PROPERTY.**

CITY assumes no responsibility whatsoever for any property placed on the Site by CHARITIES, its agents, employees, representatives, independent contractors or invitees. CITY is hereby expressly released and discharged from any and all liabilities for any loss, injury or damage to such property that may be sustained by reason of the use and occupancy of the Site under this Agreement, unless such damage, loss or liability is caused by CITY'S (including employees and agents) negligent, reckless or intentional act(s). If any claim or cause of action is brought against the CITY relating to personal property as contemplated by this paragraph, and where such claim or cause of action is not founded on the negligent, reckless or intentional action of the CITY (including employees and agents), then CHARITIES shall defend any such action in the name of CITY provided, however, that CITY reserves the right to select its own legal counsel to conduct any defense in any such proceeding which selection shall be reasonable under the circumstances. All costs and fees associated therewith shall be the responsibility of CHARITIES under this agreement.

**34. INDEPENDENT CONTRACTOR STATUS.**

CHARITIES and its employees, volunteers and agents shall be and remain independent contractors and not agents or employees of CITY with respect to all of the acts and services performed by and under the terms of this Agreement or for any other reason whatsoever. This Agreement shall not in any way be construed to create a partnership, association or any other kind of joint undertaking or venture between the parties hereto.

**35. WARRANTY.**

Except as otherwise provided for herein, the CITY and CHARITIES represent that they have, to the best of their knowledge and belief, all rights and authority necessary to fulfill the obligations hereunder without breaching the terms of any other agreement to which either CHARITIES or CITY is a party.

36. **ASSIGNMENT.**

This Agreement shall bind and inure to the benefit of **CHARITIES** and the successors and assigns of **CHARITIES**. The rights granted **CHARITIES** hereunder shall be exclusive to it and shall not, without the prior written consent of **CITY**, be transferred or assigned to any other.

37. **RESERVATION OF RIGHTS.**

All rights not herein specifically granted to **CHARITIES** with respect to the Classic shall be and remain the property of **CITY**.

38. **ENTIRE AGREEMENT.**

This Agreement constitutes the entire Agreement between **CITY** and **CHARITIES** in respect to the subject matter of this Agreement and supersedes all prior agreements.

39. **EXECUTION AND DELIVERY REQUIRED.**

This instrument shall not be considered to be an agreement or contract, nor shall it create any obligation, whatsoever, on the part of **CHARITIES** or **CITY**, or either of them, unless and until it has been signed by representatives of **CHARITIES** and **CITY** and delivery has been made of a fully-signed original.

40. **CHARITIES' TAX-EXEMPT STATUS.**

All activities and operations of **CHARITIES** will be consistent with an organization which is exempt from federal income tax under Section 501(a) of the Internal Revenue Code, by virtue of being an organization described in Section 501(c)(3) of the Internal Revenue Code. To conflict with **CHARITIES'** tax-exempt organization, such obligation is hereby waived by **CITY** and shall not be binding upon **CHARITIES**. In the event any obligation to **CITY** is waived on account of the foregoing sentence, suitable alternative arrangements, consistent with **CHARITIES'** tax-exempt status, will be made so as to avoid any inequity to **CITY**.

41. **THIRD PARTIES.**

Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement upon any person other than the parties hereto and their respective heirs, successors, legal representatives, and permitted assigns, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third persons to

any party to this Agreement, nor shall any provision thereof give any third person any right of subrogation or action over or against any party to this Agreement.

**42. VENUE.**

Any action brought to enforce the provisions of this Agreement shall be brought in a court of competent jurisdiction in Palm Beach County, Florida.

**43. TICKETMASTER.**

(a) **CITY** or its designee shall provide the services of its facility and box office through Ticketmaster only for those tickets elected by **CHARITIES** to utilize such services in connection with the Classic. These services will be provided in a timely, professional and diligent manner and in accordance with **CHARITIES** reasonable ticket specifications. **CHARITIES** agrees that it will provide facility and box office services for those tickets for which **CHARITIES** does not elect to utilize the services through Ticketmaster.

(b) In full payment for the ticket services, **CHARITIES** agrees to **CITY** imposing a two and one half percent (2.5%) charge against ticket proceeds where such proceeds are generated through credit card sales and five cents (\$.05) per ticket for ticket stock. **CITY** acknowledges that no other amounts will be charged to **CHARITIES** (other than payment of state sales tax) for ticketing for the Classic.

(c) **CITY** shall pay ninety percent (90%) of all amounts due to **CHARITIES** within 15 days of the **CITY** receiving the funds from Ticketmaster. **CITY** shall pay the balance of the remaining ten percent (10%) to **CHARITIES** within 60 days after the completion of the event, less amounts for which refunds have been issued. If **CHARITIES** fails to hold the event as scheduled, **CHARITIES** shall be responsible to Ticketmaster-Florida, Inc. for all refunds incurred as a result of the cancellation or rescheduling, up to the face amount of the ticket price per ticket purchased and refunded plus any additional credit card fees that may be imposed.

**44. APPROVALS.** All approvals to be given by a party under this Agreement shall not be unreasonably withheld or delayed.

**IN WITNESS WHEREOF**, the parties have caused this agreement and one counterpart, both of which shall constitute originals, to be executed by its proper officers hereto duly authorized on the year and date first above written.

ATTEST:

Donald D. Nelson  
City Clerk

CITY OF DELRAY BEACH, FLORIDA

By: [Signature]

Approved as to Form:

[Signature]  
City Attorney

WITNESSES:

Sharon Painter

Sharon Painter  
(print or type name)

CHRIS EVERT CHARITIES, INC.

By: Tami Starr

Name Printed: Tami Starr

Title: Director, Chris Evert Charities

SEAL

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by \_\_\_\_\_, \_\_\_\_\_ of CHRIS EVERT CHARITIES, INC., a \_\_\_\_\_ corporation, on behalf of the corporation. He/She is personally known to me/or has produced \_\_\_\_\_ (as identification).

\_\_\_\_\_  
Signature of Notary Public