

**GENERAL DANIEL “CHAPPIE” JAMES, JR. MEMORIAL
PLAZA LICENSE AGREEMENT**

THIS AGREEMENT is made and entered into this ____ day of _____, 2022, by and between the **CITY OF PENSACOLA**, a municipal corporation of the State of Florida, hereinafter referred to as the "City," whose address is 222 W. Main Street, Pensacola, FL 32501, and the **GENERAL DANIEL “CHAPPIE” JAMES, JR. MEMORIAL FOUNDATION, INC.**, a Florida Not-For-Profit Corporation, whose current address is 1725 Whaley Avenue, Pensacola FL 32503, hereinafter referred to as the "CHAPPIE JAMES Licensee."

WHEREAS, the City is the owner of a large parcel, which includes the Visitor Information Center at 1401 East Gregory Street and Wayside Park and located adjacent to the northwest entry-exit to the Gen. Daniel “Chappie” James, Jr. Bridge (Pensacola side of the Escambia Bay), of which a section nearest the Bridge will be known as the Gen. Daniel “Chappie” James, Jr. Plaza, and on which will be placed significant memorials in honor of Gen. James, including a static display of a demilitarized F-4C/D Phantom II fighter jet, a statue of the General, a memorial plaque on stone, and a flagpole with the Flag of the United States, hereinafter referred to as the “Improvements”; and

WHEREAS, the “CHAPPIE JAMES Licensee” has been incorporated as a non-profit corporation for the following purposes:

- A. Develop a vision and theme for the Gen. Daniel “Chappie” James, Jr. Plaza, located near the Wayside Park at the Pensacola foot of the Gen. Daniel “Chappie” James, Jr. Bridge, hereinafter referred to as the “Plaza,” and utilize and incorporate this theme in decisions and recommendations concerning future growth, expansion, and use of the Plaza.
- B. Develop approval standards for Plaza events, subject to City approval, which will readily and without hindrance allow and encourage the citizens to use and enjoy the Plaza.
- C. Prepare and submit an annual State of the Plaza report to the City of Pensacola so that its citizens may be periodically and formally apprised of issues affecting the Plaza. This report shall include, but not be limited to, the most recent outside audit of the CHAPPIE

JAMES Licensee's finances, as required annually by the Corporation's Bylaws, as well as any and all reports submitted to the IRS and the State of Florida.

D. Operate with full transparency, as required by and in accordance with its corporate Bylaws; and

WHEREAS, the City and the CHAPPIE JAMES Licensee recognize the significance of the Gen. Daniel "Chappie" James, Jr. Plaza to honor the service and sacrifice of Gen. Daniel "Chappie" James, Jr., who served the Nation through three wars, and to serve as a special place for such reflection and remembrance of this Pensacola native; and

WHEREAS, the City and CHAPPIE JAMES Licensee recognize that the grant of a license by the City to the CHAPPIE JAMES Licensee will facilitate and ensure the means to fulfill its incorporation purpose regarding the Gen. Daniel "Chappie" James, Jr. Plaza, and

WHEREAS, the City Council approved this license on the ___ of _____, 2022,

WITNESSETH:

FOR AND IN CONSIDERATION of the mutual benefits and obligations hereinafter set forth, to be kept and performed by the parties hereto, and other good and valuable consideration, the sufficiency of which is hereby expressly acknowledged, the City and the CHAPPIE JAMES Licensee agree as follows:

1. City grants to CHAPPIE JAMES Licensee an exclusive license to use the Gen. Daniel "Chappie" James, Jr. Plaza, a parcel of real property located at the foot of the Gen. Daniel "Chappie" James, Jr. Bridge on the Pensacola side of Escambia Bay, adjacent to the City property known as Wayside Park (hereinafter called the "Subject Property"), owned by the City of Pensacola and more particularly described on Exhibit "A", attached hereto, in furtherance of the intentions and purposes stated above. Nothing herein shall preclude the public from ordinary use and enjoyment of the Gen. Daniel "Chappie" James, Jr. Plaza in accordance with City, County, and State law, ordinances, and regulations.

2. CHAPPIE JAMES Licensee may not make any improvements to the subject property unless expressly authorized by the City, and any authorized improvement shall not obstruct the view or impede the passage of motorists on adjacent streets, the nearby roundabout, or exit/entry to the Bridge. It is the responsibility of the CHAPPIE JAMES Licensee to obtain

any approvals, from the City and/or State and/or Federal agencies, regarding any improvements that may potentially affect any roadways.

3. CHAPPIE JAMES Licensee shall not be required to pay an annual license fee to the City. In lieu of a license fee, the CHAPPIE JAMES Licensee shall pay for the Improvements to the Subject Property, including but not limited to the costs associated with the oversight and transportation, dismantling, configuration, painting, and installation of the F-4C Phantom II aircraft to static display. The CHAPPIE JAMES Licensee shall also display and maintain the aircraft specifically as required in accordance with the terms of the National Museum of the United States Air Force Loan Agreement with the City (#SDA0443), attached as Exhibit B.

4. CHAPPIE JAMES Licensee shall maintain the subject property and all improvements upon the subject property in good order and repair and shall ensure that the subject property is safe and attractive for the visiting public. During the full term of this license, CHAPPIE JAMES Licensee shall keep the subject property open for public enjoyment without charge, except for any period when construction or repair of the Improvements are in progress, during which period the public shall be prohibited from entering the site by the CHAPPIE JAMES Licensee.

5. CHAPPIE JAMES Licensee shall retain control over its employees, agents, servants, contractors, and invitees and their activities on or about the subject property and the manner in which said activities shall be undertaken, and to that end CHAPPIE JAMES Licensee shall not be deemed to be an agent of the City. Reasonable precautions shall be exercised at all times by CHAPPIE JAMES Licensee for the protection of all persons, including employees, and property. CHAPPIE JAMES Licensee shall make regular and periodic effort to detect hazards and shall take prompt action where loss control/safety measures should reasonably be expected. CHAPPIE JAMES Licensee shall ensure that all contractors or vendors hired by the Licensee in connection with any activities at the Subject Property carry minimum general liability insurance limits of \$1,000,000, auto liability insurance limits of \$300,000, and Workers Compensation as required by Florida law, with both the City and the CHAPPIE JAMES Licensee as additional insured on the contractor/vendor policies.

6. CHAPPIE JAMES Licensee shall indemnify and hold harmless the City from any and all liability, claims, demands, damages, expenses, fees, fines, penalties, expenses (including

reasonable attorney's fees,) suits, proceedings, actions or causes of action, or every kind and nature whatsoever, arising out of or occurring in connection with subject property by CHAPPIE JAMES Licensee, its successors, assigns, officers, employees, servants, agents, contractors, or invitees, of whatsoever description, or resulting from any breach, default, non-performance, or violation of any of CHAPPIE JAMES Licensee's obligations under this agreement. CHAPPIE JAMES Licensee shall at its own expense defend any and all actions, suits, or proceedings which may be brought against the City or in which the City may be impleaded with others in any such action or proceeding arising out of the use or occupancy of the subject property. This paragraph shall survive the termination of this agreement.

7. It is understood and agreed that CHAPPIE JAMES Licensee accepts the subject property and the ground under it in its present condition, and no representation as to any portion, part, or section of said property is hereby made by the City, nor does the City warrant or represent that the property is safe or suitable for the purpose for which it is permitted to be used by CHAPPIE JAMES Licensee.

8. Until the termination of this license is acknowledged in writing by the City, CHAPPIE JAMES Licensee agrees to purchase and maintain in full force and effect liability insurance coverage, including contractual liability coverage on the subject property, of the type and in the amount as determined by the City as reasonable. Initially, the limits of liability of such coverage shall be at least \$1,000,000.00 combined single limits of liability per occurrence for bodily injury, including death and property damage. The City will give CHAPPIE JAMES Licensee at least ninety (90) days prior written notice of any increase in the required limits of liability. CHAPPIE JAMES Licensee will agree to have in force, by the end of such ninety (90) day period, the newly required limits of liability. Prior to undertaking such activity upon the subject property, CHAPPIE JAMES Licensee shall provide the City with a certificate of insurance, satisfactory to the City, evidencing the existence of such insurance. Required insurance shall be documented in the Certificate of Insurance which provide that the City of Pensacola shall be notified at least thirty (30) days in advance of cancellation, non-removal, adverse change, or restriction in coverage. The City of Pensacola shall be named on each Certificate as an Additional Insured, and this License Agreement shall be listed. If required by the City, the CHAPPIE JAMES Licensee shall furnish copies of the CHAPPIE JAMES Licensee's insurance

policies, forms, endorsements, jackets and other items forming a part of, or relating to such policies. Certificates shall be on the "Certificates of Insurance" form equal to, as determined by the City, an ACORD 25. Any wording in a Certificate which would make notification of cancellation, adverse change, or restriction in coverage to the City an option shall be deleted or crossed out by the insurance carrier or the insurance carrier's agent or employee. The User shall replace any canceled, adversely changed, restricted, or non-renewed policies with new policies acceptable to the City and shall file with the City Certificates of Insurance under the new policies prior to the effective date of such cancellation, adverse change, or restriction. If any policy is not timely replaced in a manner acceptable to the City, the User shall, upon instructions of the City, cease all operations under the Use Agreement until directed by the City, in writing, to resume operations. The Certificate Holder shall be listed as follows: City of Pensacola, Department of Risk Management, P.O. Box 12910, Pensacola, FL 32521-0063. Failure of CHAPPIE JAMES licensee to provide and maintain the requisite insurance shall be cause for the City to terminate this License Agreement and to retake exclusive possession of the subject property immediately upon giving notice of its intention to do so to CHAPPIE JAMES Licensee.9. This agreement, and the license granted hereby, may be terminated by the City Council or the CHAPPIE JAMES Licensee, with or without cause, by giving written notice to the other party. This license shall be for the sole use and benefit of CHAPPIE JAMES Licensee. In the event that CHAPPIE JAMES Licensee receives notice from the City of termination of this license agreement, the City shall not be liable for any claim from CHAPPIE JAMES Licensee, its legal representatives, successors, or assigns arising out of the termination. CHAPPIE JAMES Licensee may relinquish its interest in the subject property and may be relieved of its obligations under this agreement by giving notice of his intention to do so to the City. Inasmuch as the property is a memorial park with erected statutes and monuments, the property shall be delivered back by CHAPPIE JAMES Licensee in the condition it exist at the time of notice of termination, reasonable wear and tear excepted. When the City has acknowledged in writing its satisfaction therewith, this agreement shall be terminated, and the City and CHAPPIE JAMES Licensee shall have no further obligation arising hereunder. Provided, however, CHAPPIE JAMES Licensee shall in no event be excused from its obligations with respect to acts or occurrences prior to the termination of this agreement.

10. Without the previous written consent of the City Council, CHAPPIE JAMES Licensee shall not be permitted to assign this agreement or any estate or interest therein, sublet, or permit the occupancy of the subject property, or any part thereof, by anyone other than the CHAPPIE JAMES Licensee. Any consent by the City to any act of assignment, subletting, or occupancy shall be held to apply only to the specific transaction thereby authorized. Such consent shall not be construed as a waiver of the duty of the CHAPPIE JAMES Licensee, or its legal representatives or assigns, to obtain from the City its consent to any other or subsequent assignment, subletting, or occupancy or as modifying or limiting the rights of the City under the foregoing covenants by the CHAPPIE JAMES Licensee not to assign or sublet without such consent. In any event, no such assignment, subletting, or occupancy shall relieve the Licensee of its obligations hereunder.

11. Venue for any claim, action, or proceeding arising out of this License Agreement shall be Escambia County, Florida.

12. This agreement shall be governed by and construed in accordance with the laws of the State of Florida.

IN WITNESS WHEREOF, this agreement is executed by the authorized representatives of the City and CHAPPIE JAMES Licensee on the day and year first written herein.

CITY OF PENSACOLA
A municipal corporation

By: _____
Grover C. Robinson, IV, Mayor

ATTEST:

Ericka L. Burnett, City Clerk

WITNESSES:

Legal in form and valid as drawn:

Signature

Charlie V. Peppler, City Attorney

Print

Signature

Print

GENERAL DANIEL "CHAPPIE" JAMES, JR.
MEMORIAL FOUNDATION, INC.
A Florida not-for-profit corporation

By: _____
Cristov Dosev, President

ATTEST:

Ken Pyle, Corporate Secretary

WITNESSES:

Signature

Print

Signature

Print