WHEATON PARK DISTRICT PERFORMANCE AGREEMENT

THIS ENTERTAINMENT AGREEMENT (this "*Agreement*") by and between Wheaton Park District (hereinafter referred to as the "*Buyer*") and One of These Nights (the "*Band*") is made this 21st day of January, 2022 ("*Effective Date*"). Buyer and Band are hereinafter sometimes individually referred to as a "Party" and collectively as "Parties."

WHEREAS, Buyer desires to hire Band, as an independent contractor, to provide the entertainment generally described below (the *"Performance"*) at Memorial Park in Wheaton, IL;

WHEREAS, Band desires to provide such Performance pursuant to the terms listed below;

NOW, THEREFORE, in consideration of the foregoing and the mutual promises hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **Date and Time of Performance**. The date of the Performance shall be Friday, August12 and the time of the Performance shall be 8P – 9:30P. The Performance will have a duration of approximately 1.50 hours.

2. **Performance Description.** The entertainment to be provided by Band is generally described as family friendly, Eagles Tribute music. Additional details regarding the Performance are listed on Appendix A.

3. **Agreement to Perform**. Band agrees to provide the Performance in accordance with the terms of this Agreement and any addendums or riders hereto.

4. **Price of Performance**. Buyer agrees to pay Band for the Performance, an aggregate sum of five thousand five hundred dollars ($5,500) with a deposit check of one thousand three hundred seventy five ($1,375) due 30 days before the Performance date and the remainder by check immediately following the Performance.

5. **Suitability.** The Band agrees not to perform music that would generally be considered offensive, vulgar, obscene, or inappropriate for an all-ages audience. The Band and any of its entertainers shall at all times conduct themselves professionally, courteously, and appropriately at this all-age venue.

6. **Equipment.** Band is responsible for properly setting up and removing its equipment. Buyer is not responsible for Band's personal property and shall not be liable for any damages, lost or stolen property. All cords, cables, equipment, etc. must be properly and safely positioned so as not to create any hazards, tripping or otherwise, for patrons or staff.

7. **Adherence to Sound Restrictions.**

a. Band must strictly adhere to a maximum decibel level of 80 at the Sound tent located in Memorial Park (208 W. Union Ave.). All sound must cease at 9:30pm per our local sound ordinance with the City of Wheaton.

	Decibel Level	Recorded Measurement Locations
7 am to 9:30pm	80 dB(A)	- Hale & Seminary, within park fence (east side) - Hale & Union, within park fence (northeast corner) - Wheaton & Union, within park fence (northwest corner) - Wheaton & Karlskoga, within park fence (southwest corner)

8. **Marketing.** Performances must be marketed and listed on Band's website, social media, and/or any email marketing that lists upcoming performances. It is the responsibility of the Band to submit timely to the Buyer promotional pictures, logo, approved video or sound bites for the purpose of advertising, as well as quickly review and approve any and all media requests from the Buyer for the purpose of promoting the event, its activities, and any associated ticket sales.

9. **Cancellation of Performance by Band.** In the event that Band or Band member is unable to perform its obligations under this Agreement due to proven sickness, accident, or any other legitimate condition beyond Band's control, Band shall make every effort to find a suitable replacement to perform in Band or Band member's place (a "Replacement Act") at no additional fee to the Buyer. Approval for any Replacement Act shall be subject to Buyer's approval. Band shall provide Buyer with as much advance notice as reasonably practicable under the circumstances regarding the potential need to cancel the Performance. If Band is no longer able to perform a refund of any deposit(s) paid by the Buyer is due back to the Buyer within in seven (7) business days.

See Addendum

10. **Cancellation of Performance by Buyer.** In the event the performance is cancelled by the Buyer due to riot, epidemic, inclement weather or other acts of God, an incident that renders the venue unsafe for occupancy or use such as a loss of utilities or physical damage to the venue, a local or national security threat, or any other legitimate occurrence beyond Buyer's control, the Band hereby agrees to reschedule the Performance to another mutually agreed upon date. In the event that Performance is rescheduled, the full amount of payment due to the Band under this Agreement shall be paid upon Band's completion of Performance on rescheduled date. If a rescheduled Performance date cannot be mutually agreed upon by the parties, 25% of the agreed upon price of Performance will be paid to the Band within **twenty (20)** business days.

TC 2-8-22

11. **Best Efforts.** In the event of potential inclement weather in the area on Performance date, the Band and Buyer [and their officials] agree to make every effort to ensure that the Performance occurs. The Band understands that changes in weather may result in an adjustment of performance times (forward or back) and/or shorter set lengths in order to accommodate any unforeseen weather-related circumstances.

12. **Designated Representatives**. The Buyer hereby designates Margie Wilhelmi as the Buyer's representative ("Buyer Representative") for all matters for the Buyer under this Agreement and with respect to the administration of this Agreement. The Buyer's Representative shall be available to the Band at all reasonable times for consultation with the Band. The Band shall confirm to the Buyer in writing any decision made by the Buyer's Representative. The Band hereby designates Dave Calzaretta as the Band's Representative ("Band Representative") for all matters for the Band under this Agreement and with respect to the Services to be performed by the Band for the Buyer. The Band Representative shall be available to the Buyer at all reasonable times for consultation with the Buyer Representative. The Buyer may conclusively rely on the decisions made by the Band Representative, including those which modify this Agreement. Either Party may change its Representative under this Agreement by giving notice to the other Party as provided hereunder.

13. **Indemnification.** Each party (the "Indemnitor") agrees to indemnify and hold harmless the other party (the "Indemnitee") from and against any and all costs, losses, demands, claims or expenses (including court costs and reasonable attorneys' fees) whatsoever brought by a third party against, or incurred by, the Indemnitee arising from: a) the negligence, intentional or willful misconduct of the Indemnitor; b) Indemnitor's performance or failure to perform pursuant to this Agreement; or c) any claim arising out of, or in connection with, any service or obligations hereunder provided by the Indemnitor in connection with the Performance. In no event shall either party be liable to the other party for any indirect, special, or consequential damages (including, without limitation, damages for loss of profits or expected savings or other economic losses) arising out of or in connection with this Agreement or its subject matter, regardless of whether such party knows or should know of the possibility of such damages. The foregoing exclusions and limitations shall apply to all claims and actions of any kind, whether based on contract, tort (including, but not limited to, negligence), or any other grounds, regardless of the form of action.

14. **Indemnity for Copyright Infringement.** The Band represents and warrants that it is knowledgeable about the copyright laws of the United States as applicable to the Performance and that the Band shall not perform any copyrighted materials of others during the Performance without full compliance with such applicable copyright laws. In the event that the Band breaches his representation, warranty and covenant, Band hereby agrees to INDEMNIFY AND HOLD HARMLESS Buyer and its employees, guests, agents and assigns from and against any and all liability, loss, damages, claims and expenses (including attorney's fees) arising out of such breach.

See Addendum DL 2-8-22

15. **Assignment.** Neither party may assign, directly or indirectly, by operation of law, change of control or otherwise, this Agreement or any rights or obligations hereunder, without the prior written consent of the other party, which shall not be unreasonably withheld. Any attempt to assign this Agreement in contravention of this Section 14 shall be void and of no force and effect.

16. **No Liability**. The Buyer shall not be responsible or liable for any injury, damages, loss or costs sustained or incurred by any person including, without limitation the Band's employees, volunteers or agents, or for any damage to, destruction, theft or misappropriation of any property, relating to the Band's services outlined in this Agreement. The Buyer shall not be liable for acts or omissions of the Band or any of the Band's employees, volunteers or agents or other persons purporting to act at the direction or request, on behalf, or with the implied or actual consent of the Band.

17. **Independent Contractor.** The relationship between the Buyer and the Band is that of an independent contractor. The Band shall supply all personnel, equipment, materials and supplies at its own expense, except as specifically set forth herein. The Band shall not be deemed to be, nor shall it represent itself as, employees, partners, or joint venturers of the Buyer.

18. **No Third-Party Beneficiary.** This Agreement is entered into solely for the benefit of the contracting parties, and nothing in this Agreement is intended, either expressly or impliedly, to provide any right or benefit of any kind whatsoever to any person and/or entity who is not a party to this Agreement or to acknowledge, establish or impose any legal duty to any third party.

19. **Dispute Resolution.** In the event of any dispute arising out of this Agreement or the relationship of the parties, the parties shall use good faith efforts to resolve their differences amicably. In the event they are unsuccessful, the parties agree not to commence litigation until attempting to resolve their dispute through mediation. Either party may initiate the mediation process with thirty (30) days prior written notice to the other party. The dispute shall be submitted to

mediation in Wheaton, Illinois. Costs of mediation shall be borne equally by the parties. Mediation of the dispute shall be completed within fifteen (15) days of commencement, unless the parties extend the time by mutual agreement or unless the mediator declares the parties to be at an impasse. Any statements made by any person during the mediation are not admissible in any subsequent litigation proceeding. Nothing shall preclude the Parties from pursuing litigation as addressed in Paragraph 21, should the use of mediation not adequately resolve the dispute.

20. **Governing Law and Venue**. This Agreement shall be governed by the laws of the State Illinois without regard to conflict of laws principles that may require the application of the laws of any other jurisdiction. With respect to any suit arising out of or in connection with this Agreement that is not resolved under Section 20 of this Agreement, each party consents and submits to the exclusive jurisdiction of competent state and federal courts in the State of Illinois for any litigation or dispute arising under this Agreement and to the venue of such litigation or dispute in the city or county in which Buyer is located.

21. **No Waiver**. Waiver of any terms of this agreement shall not be valid unless it is in writing and signed by all Parties. The failure of either Party to enforce the provisions of this Agreement or require performance by the other Party of any of the provisions, shall not be construed as a waiver of such provisions or affect the right of that Party to thereafter enforce the provisions of this Agreement. Waiver of any breach of this Agreement shall not be held to be a waiver of any other or subsequent breach of the Agreement.

22. **No Waiver of Tort Immunity**. Nothing contained in this Agreement shall be construed or deemed to diminish or constitute a waiver or relinquishment by the Buyer of the rights, privileges, defenses, and immunities available or afforded to it under the Illinois Local Governmental and Governmental Employee's Tort Immunity Act or under other State statutes affording similar protections.

23. **Notice.** Any notice shall be in writing and shall be effective (i) when personally delivered or transmitted via electronic mail with receipt confirmed; (ii) the next business day following deposit with a reputable courier service for overnight delivery; or (iii) five (5) business days following deposit in the United States mail, postage prepaid, registered, or certified. All notices shall be forwarded to the address of each party listed in Appendix A of this Agreement.

24. **Entire Agreement.** This Agreement shall constitute the entire agreement of the parties as of the Effective Date. There are no agreements, understandings, representations, or warranties between the parties other than those set forth in this Agreement. Should any section, or portion thereof, of this Agreement be held invalid by reason of any law, statute or regulation existing now or in the future in any jurisdiction by any court of competent authority or by a legally enforceable directive of any governmental body, such section or portion thereof shall be validly reformed so as to approximate the intent of the parties as nearly as possible and, if unenforceable, shall be deemed divisible and deleted with respect to such jurisdiction; and this Agreement shall not otherwise be affected. No amendment or modification shall be made to this Agreement unless it is in writing and signed by both Parties.

25. **Headings.** The heading of each paragraph of this Agreement are for convenience and reference purposes only and in no way define, limit or describe the scope or intent of said paragraphs or of this Agreement nor in any way affect this Agreement.

26. **Counterparts.** This Agreement may be simultaneously executed in two (2) or more counterparts, each of which shall be considered an original instrument. Each counterpart will be considered a valid and binding original. Once signed, any reproduction of this Agreement made by reliable means (e.g., photocopy, facsimile) is considered an original

27. The Buyer reserves the right to cancel this agreement immediately due to Band's material breach of this Agreement, or for any reason other than a material breach of this Agreement upon 7 days' notice provided to the Band.

28. Band must review and agree to the attached to Buyer's Venue Provisional Rider and Radius Clause, if applicable.

IN WITNESS WHEREOF, this Agreement is executed on the date first above written.

WHEATON PARK DISTRICT (BUYER)

By _____

Title: Executive Director

BAND: David Calzarette

By _____

Title: President

Address all correspondence and return signed contracts to:

Margie Wilhelmi, Director of Marketing & Special Events
(630) 510-4984 | mwilhelmi@wheatonparks.org

WHEATON PARK DISTRICT
102 E. Wesley St.
Wheaton, IL 60187

BUYER
Wheaton Park District
Michael J. Benard, Executive Director
Contact: Margie Wilhelmi
Director of Marketing & Special Events
102 E. Wesley St., Wheaton, IL 60187
(630) 510-4984 office (630) 414-0027 cell
mwilhelmi@wheatonparks.org

BAND
Band Name One of These Nights
Contact(s)
Agency (If applicable)
Title / Position
Address
Phone (office and cell)
Email

David Calzaretta
President

Magnificent Events & Entertainment
1440 W TAYLOR ST - SUITE 340
CHICAGO, IL
60607

O: 815-230-3770 ext 700
C: 312-909-9910
e: dave@mageevents.com

For Internal Use Only:
W-9 Form
Received
COI Required n/a
VENDOR #

Address all correspondence and return signed contracts to:

Margie Wilhelmi, Director of Marketing & Special Events
(630) 510-4984 | mwilhelmi@wheatonparks.org

WHEATON PARK DISTRICT
102 E. Wesley St.
Wheaton, IL 60187

WHEATON PARK DISTRICT'S MEMORIAL PARK BANDSHELL

PROVISIONAL RIDER & RADIUS CLAUSE

A) BAND is authorized to sell merchandise at the performance. (YES) NO

Merchandise proceeds will be maintained 100 % by the Band. The Buyer will not provide any labor or staffing to facilitate the sale of merchandise on behalf of the band. Merchandise may be sold no more than 30 minutes prior to a performance and no longer than 30 minutes after a performance.

B) BUYER agrees to provide the Band with up to five (5) parking spots within one block of the venue. Cold bottled water in dressing rooms and on stage upon request. Brand and size of product is at the discretion of the Buyer.

C) ~~BAND agrees~~ to not accept or book any public performances within a fifteen (15) mile radius of ~~Memorial Park~~ (208 W. Union Ave., Wheaton, IL) thirty (30) days prior to and after ~~performance~~ date listed in this contract. See Addendum DC 2-8-22

D) BUYER agrees to the attached hospitality request for BAND. YES NO

E) BAND agrees to provide the following Media & Communication Request information timeline and accurately for use in promotional marketing and performance pre-planning.

Media & Communication Request Magnificent Events will send all marketing assets subsequently DC 2-8-22

Band Name as to appear in promotional marketing:

Social Media Page(s) for promotional purposes:

INSTAGRAM _____

FACEBOOK _____

TWITTER _____

YOUTUBE _____

Website to be used for promotional purposes

Approved band bio (limited to 200 words)

Approved Band Logo

Approved Band Image(s) for promotional use

Media Contact Information

NAME _____

Address all correspondence and return signed contracts to:

Margie Wilhelmi, Director of Marketing & Special Events
(630) 510-4984 | mwilhelmi@wheatonparks.org

WHEATON PARK DISTRICT
102 E. Wesley St.
Wheaton, IL 60187

PHONE

EMAIL

Sound & Light Coordinator / Tech Contact Information

NAME
COMPANY

PHONE

EMAIL

Appendix A – *Details of Performance*

Name and Address of Performance Venue: Memorial Park, Wheaton, IL

1) Date of Performance: Friday, August 12, 2022
2) Performance Time: 8-9:30P
3) Type of Engagement: Family Friendly Evening Concert
4) Show Detail: Eagles Tribute
5) Contract Price and Payment: $5,500.00
   a. Deposit: $1,375.00
   b. Deposit Due By: July 12, 2022
   c. Business Check Payable To: Magnificent Events, Ltd.
   d. Final Payment due at time of performance: $4,125.00
6) Sound System with qualified operator to be supplied by: Buyer
7) Light System with qualified operator to be supplied by: Buyer
8) Additional Provisions:

9) Additional Attached Rider from BAND? (YES) NO

BUYER
Initial _____

BAND
Initial DC

Address all correspondence and return signed contracts to:

Margie Wilhelmi, Director of Marketing & Special Events
(630) 510-4984 | mwilhelmi@wheatonparks.org

WHEATON PARK DISTRICT
102 E. Wesley St.
Wheaton, IL 60187

Magnificent Events & Entertainment
1440 W Taylor Street
Suite 340
Chicago, IL 60607
(815) 230-3770 ext. 700
www.magevents.com

CONTRACT ADDENDUM

- Addendum to clause 10: Inclement weather should not be considered a force majeure event. However, in good faith the Artist agrees that should weather become a threat to making the concert unsafe for performance, the Artist will make their best effort to find a mutually agreeable date with the Purchaser within the 2022 season on an open Sunday – Thursday evening to reschedule the rained out date. The Artist must be notified by 8:00 PM CST the day prior to the performance if the Purchaser intends to cancel the show due to predicted inclement weather. The Artist and the Purchaser will make their best efforts to find a mutually agreeable date to reschedule the performance. In the event that the Purchaser and the Artist are not able to find a mutually agreeable date to reschedule, the Artist shall be paid in full for the cancelled event immediately as they have obligations to their musicians who rely on this income for their livelihood. Additionally, in the event of inclement weather on the day of or during the performance, the Artist will do whatever is in their power to ensure that the performance can take place on that evening as long as it is deemed safe to do so, even if it results in delaying the performance time or changing the length of the set to accommodate the situation.
- Addendum to clause 14: The Artist is a cover band and performs the music of other Artists. The Artist is working under the assumption that the Buyer and/or the Performance Venue is current and compliant with any required organizations such as BMI, ASCAP and SESAC, known as Performance Rights Organizations ("PROs"). We have found this article to be helpful in determining what licenses a venue presenting live entertainment where cover material is played should maintain.

13 COMMON QUESTIONS ABOUT MUSIC LICENSING FOR BUSINESSES

BUYER:	**ARTIST REPRSENTATIVE:**
NAME: Michael Benard	**NAME:** David Calzaretta
SIGNATURE:	**SIGNATURE:**
TITLE: Executive Director	**TITLE:** President
DATE: 2/18/22	**DATE:** 2/9/22

Magnificent Events & Entertainment
1440 W Taylor Street
Suite 340
Chicago, IL 60607
(815) 230-3770 ext. 700
www.magevents.com

BAND HOSPITALITY RIDER

- Please provide some sort of complimentary meal or food tickets for all performing members of the band and authorized crew personnel. During the advance process please determine the number personnel with the band leader.
- Please provide bottled water, juice and soft beverages for the Artist.

Band Name:	One of These Nights
Performance Date:	8/12/22

Form **W-9**
(Rev. October 2018)
Department of the Treasury
Internal Revenue Service

Request for Taxpayer Identification Number and Certification

▶ Go to *www.irs.gov/FormW9* for instructions and the latest information.

Give Form to the requester. Do not send to the IRS.

Print or type. See Specific Instructions on page 3.

1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.
Magnificent Events, Ltd

2 Business name/disregarded entity name, if different from above

3 Check appropriate box for federal tax classification of the person whose name is entered on line 1. Check only one of the following seven boxes.

☐ Individual/sole proprietor or single-member LLC ☐ C Corporation ☑ S Corporation ☐ Partnership ☐ Trust/estate

☐ Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=Partnership) ▶ _____

Note: Check the appropriate box in the line above for the tax classification of the single-member owner. Do not check LLC if the LLC is classified as a single-member LLC that is disregarded from the owner unless the owner of the LLC is another LLC that is not disregarded from the owner for U.S. federal tax purposes. Otherwise, a single-member LLC that is disregarded from the owner should check the appropriate box for the tax classification of its owner.

☐ Other (see instructions) ▶

4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3):

Exempt payee code (if any) _____

Exemption from FATCA reporting code (if any) _____

(Applies to accounts maintained outside the U.S.)

5 Address (number, street, and apt. or suite no.) See instructions.
1440 W Taylor Street, Suite 340

Requester's name and address (optional)

6 City, state, and ZIP code
Chicago, IL 60607

7 List account number(s) here (optional)

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN*, later.

Note: If the account is in more than one name, see the instructions for line 1. Also see *What Name and Number To Give the Requester* for guidelines on whose number to enter.

Social security number
			–			–				

or

Employer identification number
2	6	–	4	4	9	1	3	2	3

Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
3. I am a U.S. citizen or other U.S. person (defined below); and
4. The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions for Part II, later.

Sign Here Signature of U.S. person ▶ _____ Date ▶ 1.13.21

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to *www.irs.gov/FormW9*.

Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following.

- Form 1099-INT (interest earned or paid)
- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)
- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See What is backup withholding, *later.*