

NORTH CAROLINA)
)
FORSYTH COUNTY)

WINSTON SQUARE LIMITED ACCESS AGREEMENT

THIS LIMITED ACCESS AGREEMENT (hereinafter, this "Agreement"), entered into this ____ day of _____, 20____, by and between the **CITY OF WINSTON-SALEM**, a North Carolina municipal corporation (hereinafter, the "City") and _____, (hereinafter "Licensee").

WITNESSETH:

WHEREAS, the City and Licensee desire to enter into an agreement whereby Licensee shall have access to and be allowed to enter upon the City owned land at Winston Square (hereinafter "Park") for the sole purpose of the following Event:

_____;

and

WHEREAS, Licensee acknowledges that access to the Park is a limited license and subject to the terms contained herein.

NOW, THEREFORE, in consideration of the mutual promises and obligations herein set forth, the sufficiency and adequacy of which is hereby acknowledged, the parties agree as follows:

I. Scope.

The Licensee's access to Park shall be limited to the purpose stated above.

II. Term.

The term of this limited access shall be the _____ day of _____, 20__ from _____, am/pm until _____, am/pm – the Event Date. Licensee must set up and vacate the Park within this stated time period. Pursuant to the City's Ordinance, use of the park shall not be before 7:00 a.m. or after 10:30 p.m.

III. Consideration.

Licensee shall pay the City the fee of _____ for use of the Park. The rate is \$150 per four hour period, with \$150 charged for each additional hour.

IV. Independent Licensee.

The Licensee, its agents, assigns, employees and guests shall not be considered employees, agents, or representatives of the City and shall not be entitled to employee benefits of any kind, including but not limited to unemployment, workers' compensation or retirement benefits. The Licensee further understands and agrees that he is responsible for the payment of his agents, contractors and employees.

V. Indemnity.

To the extent permitted by law, the Licensee shall indemnify, defend and hold harmless the City, its agents and employees from and against any and all liabilities, penalties, fines, forfeitures, demands, claims, causes of action, suits, costs and expenses incidental thereto, (including, but not limited to reasonable attorney's fees) of any kind or nature, directly or indirectly caused by, arising out of, or related to the intentional or negligent acts or omissions of the Licensee, his agents, contractors, employees, guests and any third party present at the Park during the Licensee's Event.

VI. Insurance.

During the performance of the work under this Agreement, Licensee shall maintain the following insurance:

- 1) Commercial General Liability Insurance, including but not limited to coverage for all premises and non-premises operations, independent Contractors, broad form property damage coverage, personal injury liability protection including coverage relating to employment of persons, contractual liability protection, and products and completed operations coverage. This insurance shall also provide coverage for explosion, collapse and underground hazards, where required. This policy limits for bodily injury shall be equal to or more than \$1,000,000 for each occurrence and for property damage equal to or more than \$1,000,000 for each occurrence.
- 2) Automobile Liability Insurance, covering owned, non-owned, hired vehicles and trailers used in connection with this Event and to be driven upon the Park. In addition, all mobile equipment used by the Licensee in connection with its use of the Park shall be insured under either the Automobile or Commercial General Liability Insurance policies. This insurance shall provide bodily injury and property damages limits of not less than \$1,000,000 combined single limit/aggregate.
- 3) If applicable, Worker's Compensation Insurance in accordance with statutory requirements and Employer's Liability Insurance with limits of not less than \$100,000 for each occurrence. In case any service is subcontracted, Licensee shall require the Contractor similarly to provide Worker's Compensation OR Employer's Liability Insurance, as appropriate, for all of the Contractor's employees to be engaged in such work. This Agreement shall be void and of no effect unless Licensee shall secure and keep in effect during the term of this Agreement the Licensee's compliance with the provisions of the Worker's Compensation laws of the State of North Carolina.
- 4) If Beer and/or Wine is to be served by the Licensee or by Licensee's Contractor, a Caterer for example, Liquor Liability Insurance, including but not limited to coverage for all premises and non-premises operations, independent contractors, personal injury liability protection including coverage relating to serving alcoholic beverages, social host liability, employment of persons, contractual liability protection, and products and completed operations coverage. This insurance shall provide bodily injury limits of not less than \$1,000,000 for each occurrence and with property damage limits of not less than \$1,000,000 for each occurrence.
- 5) Prior to occupying the Park, Licensee shall furnish the City's Risk Administrator, Department of Risk Management, original, signed certificates of insurance for all of the insurance coverages described herein and certified copies of any amendments and/or renewals to the policies which occur thereafter. The Licensee shall attach to each liability insurance policy, with the exception of Worker's Compensation, the following endorsement:

"The Licensee hereby agrees to indemnify and hold harmless the City of Winston-Salem and its officers, agents, and all employees and volunteers, from any and all claims from bodily injuries and personal injuries to the public, and for all damages to the property of others, including cost of investigation, all expenses of litigation, including reasonable attorneys' fees and the cost of appeals arising out of any such claims or suits because, of any and all acts of omission, or commission of the Licensee, including its agents, servants,

employees, or volunteers.

6) The insurance coverage described above shall be in full force and effect throughout the Licensee's occupancy of Winston Square Park. All contractors hired by Licensee shall be required to include the City and Licensee as additional insureds on their respective Automobile, Worker's Compensation and General Liability insurance policies.

7) If an "ACORD" form is used, the words, "endeavor to" shall be deleted. The Certificate shall specifically indicate that the Certificate has been endorsed to the policy.

VII. Termination.

This Agreement may be terminated by either party as follows:

1) Upon written notice to the other party, for convenience. Except that termination by the Licensee within 30 days of the Event Date shall result in the forfeiture of the Licensee's payment. Termination prior to 30 days of the event date will result in a full refund of the Licensee's payment.

2) Termination by the City at any time prior to the Event Date shall result in a full refund of the Licensee's payment made hereunder.

3) Other than the refund of the Licensee's payment, as set out in Paragraphs A and B above, Licensee hereby waives any claim whatsoever that it may have against the City resulting directly or indirectly from the City's termination of this License.

VIII. Notices.

Any notice or other communication herein shall be in writing and shall be sent via U.S. mail or a similar service, such as Federal Express. All notices shall be deemed given when deposited, postage prepaid, in the United States mail or to the overnight courier service, addressed as set forth below, or to such other address as any one party shall advise the other in writing:

If to the City:

Name: Maya Dubose
Position: Recreation Technician
Address: 100 East First Street
Suite 407
Winston-Salem, NC 27101

If to the Licensee:

Name: _____
Position: _____
Address: _____

IX. Assignment.

Except as otherwise provided herein, Licensee may not assign any responsibility described herein without the City's written approval.

X. Governing Law.

This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina.

XI. Severability.

If any provision of this Agreement is held to be void, invalid, illegal or unenforceable under any law or regulation, such void, invalid, illegal or unenforceable provision shall be deemed stricken, and all

remaining provisions shall continue to be valid and binding upon the City and the Licensee.

XII. Entire Agreement.

This Agreement represents the entire understanding and agreement between the parties. This Agreement cannot be amended or modified except by another written document duly signed and executed by the City and the Licensee.

XIII. Waiver.

Failure or delay on the part of the City to exercise any right, remedy, power or privilege hereunder shall not operate as a waiver of any default.

XIV. OSHA Compliance

The Licensee shall comply with the State of North Carolina Occupational/Safety and Health Act and the Occupational Safety and Health Act of 1970, Public Law 91-956, as it may apply to this Agreement, and shall defend, indemnify and hold the City harmless from and against all claims, suits, damages, costs, losses and expenses (including reasonable attorney's fees) in any manner arising out of or connected with the failure of the Licensee, its agents, successors, assigns, officers or employees to comply with the provisions of OSHA or the rules and regulations promulgated thereunder.

XV. Park Restrictions

- If any type of amplification/music will be used, a Sound Permit must be completed. This form is available online at www.cityofws.org/recreation or from the Recreation & Parks Administrative Office, 100 E. First Street, Suite 407 (Bryce A. Stuart Municipal Building).
- Nothing should be driven into the ground (there is a sprinkler system). Any tape, signs, etc. must be removed, and the area is to be cleaned after the event. The user will be responsible for leaving the premises and all equipment in like condition as found. Failure to do so will result in a clean-up fee of \$25.00 per hour per personnel needed.
- Do not deface the Park in any way.
- Stay clear of trees and shrubs to avoid damaging them – Do not let Children play in or around Trees or Shrubs.
- Provide a list of apparatuses, equipment, etc. that will require electricity.
- No use of flammable liquids or open flames. Certain propane fueled appliances are permitted – please confirm with Recreation and Parks Administration before igniting any flame in the Park.
- Do NOT drive or park any vehicle(s) on the green areas.
- Do NOT allow any commercial vendors on the Park.
- Any signs used for the event are subject to the approval of the Recreation & Parks Department prior to the event. ALL signs must be removed immediately after the event.
- The user must abide by all procedures regarding event activity, the City of W-S Fire Codes, as well as the rules and regulations governing proper food handling and sanitation practices as outlined by the Forsyth County Health Department (727-2760 x 3805).
- If you plan on serving Beer or Wine at your event, service must be provided by an ABC licensed caterer and must meet all applicable Health and Safety Laws. All caterers must provide us with a copy of their food service permit, certificate of insurance, and ABC permit. Beer and wine must be poured into appropriate cups or glasses; and ALL empty containers must be handled and stored in such a manner as not be broken or left in the park area. **Beer and Wine are the only alcoholic beverages allowed to be served at the Park. Fortified Wine and Liquor and PROHIBITED. Possession of Fortified Wine or Liquor in the Park shall be punishable pursuant to the City's Code of Ordinances.**

IN WITNESS WHEREOF, the parties have caused this to be executed by their duly authorized representatives on the day and the year first above written.

IN WITNESS WHEREOF, the parties have caused this Winston Square Limited Access Agreement to be executed by their duly authorized representatives on the day and the year first above written.

WITNESS:

CITY OF WINSTON-SALEM:

Maya Dubose
Recreation Technician

_____ [SEAL]
William L. Royston
Director, Recreation and Parks Dept.

If the Licensee has a corporate seal, please affix the seal below. If not, please complete the paragraph below:

I, _____ (Print Name) certify that I am the _____ (Print Position Title) for the Licensee and that I am authorized to execute contracts on behalf of the Licensee, which entity does not have a corporate seal; however, for purposes of the statute of limitations (N.C.G.S. § 1-47), the Parties will treat this Limited Access Agreement as if a corporate seal has been affixed hereto.

WITNESS:

LICENSEE

(SEAL)

Signature

_____ [SEAL]
Signature

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

In the event that the person executing this Agreement on behalf of the Licensee is the only officer of the company or is an individual doing business individually or as a trade name, please have the person's signature notarized below.

Sworn to or subscribed before me this the ____ day of _____, 20____.

SEAL Notary Public _____

_____/_____/_____
Date Commission Expires

INSTRUCTIONS FOR CITY OF WINSTON-SALEM CONTRACTS

- (1) The City may contract with three types of legal entities.
 - a. If the agreement is with an Individual, that individual should sign the agreement exactly as his/her name is set out. If the agreement is with an individually-owned business, the Contract should be signed by the individual owner, and not the named business. The individual's signature must be notarized.
 - b. Execution on behalf of a Corporation should be by the president or a vice president and attested by the corporate secretary, with the corporate seal affixed. An official other than the president or vice president should attach documentation of his/her authority to execute and bind the company.
 - c. If the agreement is with a Partnership, all members of the Partnership should execute unless an authorized partner is designated to execute. Documentation of the authorization should be attached. The Partner's signature must be notarized.
 - d. If the agreement is with a Limited Liability Company (LLC), have the LLC provide a copy of the Articles of Organization and Operating Agreement or other documentation that indicates that the person to sign the contract has the authority to bind the LLC. Generally, the Articles of Organization will state if the LLC is a member managed or manager managed and will state the name of the person who has the authority to bind the LLC. The Manger's signature should be attested to by the LLC Secretary.
- (2) The instrument should not be dated, except by the last person executing the Contract, normally the City Clerk.
- (3) Two originals of the contract are sent to the Contractor. The originals should be executed and returned to the City for execution, after which one original will be returned to the Contractor.
- (4) If the contract amount is for less than \$5,000, it may be signed on behalf of the City by a Department Head. If the contract amount is over \$5,000 and less than \$20,000, it may be signed on behalf of the City by an Assistant City Manager. If the contract amount is more than \$20,000 and less than \$100,000, it may be signed on behalf of the City by the City Manager. The signature line for the City should be changed accordingly. In either case, the signature should be attested to by the City Secretary.
- (5) All contracts must be pre-audited by the Budget Department and approved by the City Attorney's Office.
- (6) Please be sure to review the insurance provisions with the Contractor. Our standard policy limits are high and may not be applicable to the Contractor or the job that the Contractor is to perform. If any heavy machinery or driving is involved, we generally stick to these insurance limits.

Should you have any questions please do not hesitate to contact me. I will be happy to review the contract with you, with the Contractor or with the Contractor's legal counsel.