

STATE OF NORTH CAROLINA)
)
COUNTY OF FORSYTH)

**WINSTON SQUARE PARK
LIMITED ACCESS AGREEMENT**

THIS WINSTON SQUARE PARK LIMITED ACCESS AGREEMENT (the “Agreement”) made and entered into as of the _____ day of _____, 20____, between the **CITY OF WINSTON-SALEM**, a North Carolina municipal corporation (the “City” or “Licensor”), and _____, (the “Licensee,” whether one or more persons).

WITNESSETH:

WHEREAS, the City and Licensee desire to enter into an agreement whereby Licensee shall have access to and be allowed to enter upon City-owned land located at 310 North Marshall Street and more commonly known as Winston Square Park (the “Property”); and

WHEREAS, the Licensee’s use of the Property shall be limited and solely for the following use:

_____ (the “Event”).

WHEREAS, the Licensee acknowledges that its access to the Property is a limited license and shall be subject to the terms and conditions herein, including the rules and restrictions attached hereto as **Exhibit A** and incorporated by reference herein.

NOW, THEREFORE, in consideration of the mutual promises, covenants, and conditions set forth herein, the sufficiency and adequacy of which is hereby acknowledged, the parties hereto, and their respective successors, assigns, executors, administrators, and legal representatives, hereby agree as follows:

1. **Incorporation of Recitals.** The foregoing recitals to this Agreement are incorporated herein and made a part of this Agreement to the same extent and the same effect as if fully set forth herein.
2. **Term.**
 - A. The term of this Agreement shall begin at: _____.
 - B. The term of Agreement shall end at: _____.
 - C. Licensee must set up and vacate the Property with the stated time period above.
 - D. Under no circumstances may Licensee’s use of the Property begin before 7:00 a.m. or end after 10:30 p.m.
3. **Scope.**
 - A. The Licensee’s access to the Property and the Spaces during the Term shall be limited to Licensee and its employees, contractors, guests, and invitees only.
 - B. Licensee may not assign any responsibility described herein.
4. **Payment.**

- A. The rental rate is \$150.00 per four-hour period, with \$150.00 charged for each additional hour or any part thereof.
 - B. Licensee shall pay the City a fee of \$_____ for its use of the Property.
5. Forms and Documents.
- A. Licensee acknowledges that the following permits may be required in order to have the Event at the Property (note – such list is non-exclusive and may not include all possible required permits): sound permit, food service permit, and ABC permit.
 - B. All required rental fees, insurance certificates, sound permits, or other forms and permits are due at least thirty (30) days prior to the start of the Event. If the reservation for the Event is made less than thirty (30) days prior to the start of the Event, then all required rental fees, insurance certificates, sound permits, or other forms and permits are due immediately.
 - C. If Licensee does not provide all required rental fees, insurance certificates, sound permits, or other forms and permits in a timely manner, the City will terminate this Agreement and Licensee’s access to the Property. In the event of such a termination, Licensee must complete this Agreement and provide the required rental fees, insurance certificates, sound permits, or other forms and permits in order to re-book the Property for the Event at a later date.
6. Warranties. Licensee warrants that it and its agents, officers, employees, contractors, subcontractors, guests, and invitees:
- A. Will exercise due care such that its use of the Property will not interfere with the City’s or any other permitted party’s activities on the Property; and
 - B. Shall promptly repair, at its cost, any damage to the Property caused by its acts or omissions.
7. Release and Indemnity. Licensee shall indemnify, defend, and hold harmless the City and its agents, officers, 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 and its agents, officers, employees, contractors, subcontractors, permittees, guests, invitees, and any third party present at the Property during the Event.
8. Termination.
- A. This Agreement may be terminated by either party upon written notice to the other party, for convenience.
 - B. If the City determines, in its sole and absolute discretion, that Licensee has withheld from the City material information regarding the Event and use of the Property, the City may terminate this Agreement for cause and without any liability whatsoever to Licensee.

- C. Termination by the City at any time prior to the end of the Term shall result in a full refund of any payment made by Licensee hereunder unless such termination by the City was for cause.
- D. Other than the refund of any payment by Licensee, Licensee hereby waives any claim whatsoever that it may have against the City resulting directly or indirectly from the City's termination of this Agreement.

9. Insurance.

- A. Throughout the Term of this Agreement, Licensee and its agents, officers, employees, contractors, and subcontractors and its agents, designees, assigns, contractors, or subcontractors shall obtain and its own expense and keep in full force and effect the following insurance:
 - i. Commercial General Liability to protect Licensee and its agents, officers, employees, contractors, and subcontractors against any and all claims, demands, expenses, costs, and liabilities to the extent proximately caused by the negligent acts or omissions of Licensee and its agents, officers, employees, contractors, and subcontractors and its agents or employees, in the performance of these services. The insurance shall also include coverage for explosion, collapse, and underground hazards where required. This insurance shall provide bodily injury and property damage limits of not less than \$1,000,000 for each occurrence, respectively, \$2,000,000.00 aggregate.
 - ii. If applicable, Automobile Liability Insurance, covering all owned, non-owned, borrowed, leased, or rented vehicles and trailers used in connection with this Event and to be driven upon the Property. In addition, all mobile equipment used by the Licensee in connection with the Event 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/each accident and shall provide at least \$5,000 in Medical Expenses (Med Pay) coverage.
 - iii. If applicable, Workers' Compensation and Employer Liability insurance if required by North Carolina law.
 - iv. If alcoholic beverages are to be served at the Property by the Licensee or by Licensee's catering, Licensee shall provide 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.
- B. Licensee shall return with this Agreement a certificate of insurance evidencing such insurance, indicating that the policy has been endorsed to include the City as an additional insured, but only with respect to liability arising out of operations of Licensee and its

agents, officers, employees, contractors, and subcontractors or in connection with the services described herein and excluding Professional Liability and Workers Compensation insurance, and stating that the coverage is primary to any other coverage the City may possess. Licensee and its agents, officers, employees, contractors, and subcontractors shall furnish the City thirty (30) days prior written notice of any cancellation, non-renewal (without replacement), or material reduction of coverage or limits of any policy referred to herein. The failure of Licensee and its agents, officers, employees, contractors, and subcontractors to deliver a new and valid certificate will result in suspension of all payments until the new certificate is furnished to the City's Risk Manager. Insurance coverage required in these specifications shall be in force throughout the Term. Municipal Exclusions, if any, for General Liability coverage shall be deleted. Should the Licensee fail to immediately provide acceptable evidence of current insurance in the form of a Certificate of Insurance at any time during the Term, the City shall have the absolute right to terminate the Agreement without any further obligation to Licensee, and Licensee shall be liable to the City for all available remedies – in equity and at law.

10. Notices. Any notice or submission required or permitted under this Agreement shall be in writing and shall be deemed to be received three (3) days after being sent by prepaid registered or certified mail addressed to the Parties hereto as follows:

If to the City:
City of Winston-Salem
Attn.: William Royston, Recreation and Parks Director
P.O. Box 2511
Winston-Salem, NC 27101

If to Licensee:

Phone: _____
Email: _____

11. Independent Contractor. Licensee and its agents, employees, guests, and invitees 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. Licensee further understands and agrees that it is responsible for the payment of its agents, employees, and contractors.

12. E-Verify. Licensee and its agents, officers, employees, contractors, and subcontractors shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes.

13. OSHA. 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.

14. Divestment from Companies that Boycott Israel. Licensee hereby certifies that it is not on the North Carolina State Treasurer's list of companies engaged in a boycott of Israel in violation of N.C.G.S. § 147-86.80 et seq. and that it will not utilize any entity on said list.
15. Iran Divestment Act. Licensee hereby certifies that it is not on the North Carolina State Treasurer's list of persons engaging in business activities in Iran prepared pursuant to N.C.G.S. § 147-86.58 and that it will not utilize any entity on said list.
16. Confidentiality. Licensee understands and acknowledges that the City is subject to the public records statute (N.C.G.S. § 132-1 et seq.) and is required, upon request, to disclose information unless such information is protected from disclosure. To the extent Licensee provides the City with information that is confidential under N.C.G.S. § 132-1.2, the City will maintain the confidentiality of that information and not disclose the same unless authorized by Licensee or required by a court of law.
17. Gender; Singular and Plural. As used herein, the neuter gender includes the feminine and masculine, the masculine includes the feminine and neuter, and the feminine includes the masculine and neuter, and each includes a corporation, partnership, or other legal entity when the context so requires. The singular number includes the plural, and vice versa, whenever the context so requires.
18. Nature and Extent of Agreement. This instrument constitutes the complete agreement of the parties regarding the terms and conditions of this Agreement, and there are no oral or written conditions, terms, understandings, or other agreements pertaining thereto which have not been incorporated herein. The laws of the State of North Carolina shall govern the validity, interpretation, performance, and enforcement of this Agreement. Each party hereto acknowledges that in executing this Agreement, it has carefully reviewed and had the opportunity to review the terms of this Agreement with counsel of its choice and is fully aware of the extent of its rights and obligations under this Agreement, without any duress or undue influence being imposed on such party. The text of this Agreement is the product of negotiation among the parties hereto and is not to be construed as having been prepared by one party against the other but shall be construed as if all parties hereto jointly prepared this Agreement. The language of this Agreement shall not be construed presumptively against any of the parties to this Agreement.
19. Binding Effect. Subject to express provisions hereof to the contrary, this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, successors, and assigns during the Term.
20. Public Health and Safety. Licensee and its agents, officers, employees, contractors, subcontractors, permittees, guests, and invitees shall, at all times, follow all rules and regulations applicable to the City including, but not limited to, those related to COVID-19 or the coronavirus pandemic. Such rules and regulations may include, but are not limited to, executive orders issued by Governor Roy Cooper or Mayor Allen Joines and guidance promulgated by the North Carolina Department of Health and Human Services and the Centers for Disease Control and Prevention.
21. Non-Discrimination Ordinance.
 - A. As a condition of entering into this Agreement, Licensee represents and warrants that it will fully comply with the City's Non-Discrimination Policy, as set forth in Chapter 2, Section 2-8 Entitled "Policy of Nondiscrimination" of the Winston-Salem City Code. As part of such compliance, Licensee shall not discriminate on the basis of race, ethnicity, color, creed, religion, sex, sexual orientation, gender identity, gender expression,

pregnancy, veteran status, disability, age, marital status, familial status, protected hairstyle, political affiliation, or national origin in the screening of applicants, the hiring and treatment of its employees, the provision of the services set forth herein, and the solicitation, selection, hiring, or treatment of its sub-grantees/subcontractors, vendors, or suppliers (collectively “subcontractors”), if any, in connection with this Agreement or contract solicitation process if applicable, nor shall Licensee retaliate against any person or entity for reporting instances of such discrimination. Licensee shall enact employment policies consistent with this obligation to refrain from such discrimination and shall provide evidence of such to the City within 90 calendar days of the first receipt of City funds. Licensee shall provide equal opportunity for subcontractors to participate in all of its subcontracting and supply opportunities, if any, under this Agreement, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that has occurred or is occurring in the marketplace. Licensee understands and agrees that a violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of Licensee from participating in City contracts, or other sanctions.

- B. As a condition of entering into this Agreement, Licensee agrees to: (a) promptly provide to the City in a format specified by the City all information and documentation that may be requested by the City from time to time regarding the screening of applicants, the hiring and treatment of its employees particularly if City funds were used for such, and the solicitation, selection, treatment, and payment of subcontractors, if any, in connection with this Agreement; and (b) if requested, provide to the City within sixty days after the request a truthful and complete list of the names of all subcontractors that Licensee has used under this Agreement, including the total dollar amount paid by Licensee on each subcontract or supply contract. Licensee further agrees to fully cooperate in any investigation conducted by the City pursuant to the City’s Non-Discrimination Policy and to provide any documents relevant to such investigation that are requested by the City. Licensee agrees to provide to the City, from time to time on the City’s request, payment affidavits detailing the amounts paid by Licensee to subcontractors and suppliers in connection with this Agreement within a certain period of time. Such affidavits shall be in the format specified by the City from time to time. Nothing in this Agreement shall infringe upon the rights of Licensee afforded by state or federal law.
22. Miscellaneous. If any term of this Agreement or any application thereof shall be invalid or unenforceable, the remainder of this Agreement and any other application of such term shall not be affected thereby. Whenever in this Agreement it is provided that any document or matter is to be satisfactory to a party or may be required by a party, it shall be deemed to mean reasonably satisfactory or reasonably required, as the case may be. Unless expressly provided for in this Agreement, any approval or consent of a party required hereunder shall not be unreasonably (in an ordinary business sense) withheld. This Agreement may be changed, waived, discharged, or terminated only by an instrument in writing signed by the party against which enforcement of such change, waiver, discharge, or termination is sought. The headings in this Agreement are for purposes of reference only and shall not limit or define the meaning hereof. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which shall together constitute one and the same instrument.

[remainder of page left blank intentionally, separate signature pages follow]

SEPARATE SIGNATURE PAGE TO WINSTON SQUARE PARK LIMITED ACCESS AGREEMENT

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

LICENSEE:

Signature: _____ [SEAL]

Printed Name: _____

Title (if applicable): _____

STATE OF NORTH CAROLINA)

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COUNTY OF _____)

I, _____, a Notary Public of the State and County aforesaid, do hereby certify that _____ personally came before me this day and executed the foregoing agreement in that capacity.

WITNESS my hand and official seal, this the ____ day of _____, 20__.

[SEAL]

Notary Public

My commission expires: _____

SEPARATE SIGNATURE PAGE TO WINSTON SQUARE PARK LIMITED ACCESS AGREEMENT

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

CITY OF WINSTON-SALEM, a North Carolina municipal corporation

SIGNATURE: _____ [SEAL]

PRINTED NAME: Lee Garrity

TITLE: City Manager

ATTEST:

SIGNATURE: _____

PRINTED NAME: Sandra Keeney

TITLE: City Clerk

STATE OF NORTH CAROLINA)

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COUNTY OF FORSYTH)

I, _____, a notary public of the County and State aforesaid, do hereby certify that Sandra Keeney personally came before me this day and acknowledged that she is the City Clerk of the City of Winston-Salem, a North Carolina municipal corporation, and that by authority duly given and as the act of the municipal corporation, the foregoing instrument was signed in its name by its City Manager, sealed with its corporate seal, and attested by her as its City Clerk.

Witness my hand and notarial seal or stamp, this the ____ day of _____, 20____.

Notary Public

(Notarial Seal)

My commission expires: _____

Approved as to form and legality.

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

This the ____ day of _____, 20____.

This the ____ day of _____, 20____.

Angela Carmon, City Attorney

Not required

Lisa Saunders, Chief Financial Officer

EXHIBIT A

Rules and Restrictions For Winston Square Park

1. For any after-hour issue relating to the Property (i.e., lighting, electrical, water, broken equipment, safety, or gate/bollard) please contact City Link at 336-727-8000.
2. If any type of amplification/music will be used, the Licensee must apply for and obtain a Sound Permit. This form is available online at www.cityofws.org and from the Recreation & Parks Administrative Office, 100 E. First Street, Suite 407 (Bryce A. Stuart Municipal Building).
3. Nothing shall be driven into the ground because there is a sprinkler system. Any tape, signs, etc. must be removed, and the area is to be cleaned after the Event. The Licensee will be responsible for leaving the premises and all equipment in like condition as found. Failure to do so will result in the City assessing a clean-up fee of Twenty-Five Dollars (\$25.00) per hour per personnel needed.
4. Do NOT deface the Property in any way.
5. Stay clear of trees and shrubs to avoid damaging them. No one is allowed to play in, on, or around trees or shrubs.
6. Provide a list of any and all apparatuses, equipment, etc. that will require electricity.
7. The use of flammable liquids or open flames is not permitted. Certain propane-fueled appliances are permitted with advance notice to and permission from the Recreation and Parks Department. Please confirm with Recreation and Parks Administration before igniting any flame in the Property.
8. Do NOT drive or park any vehicle(s) on the green areas.
9. Do NOT allow any commercial vendors on the Property.
10. All advertising, signs, or flyers 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.
11. Licensee must abide by all procedures regarding event activity, the City of Winston-Salem Fire Codes, and the rules and regulations the proper food handling and sanitation practices as outlined by the Forsyth County Health Department.
12. If you plan to serve alcoholic beverages at your Event, such service must be provided by an ABC-licensed caterer and must meet all applicable health and safety laws. All caterers must provide the City with a copy of their food service permit, certificate of insurance, and ABC permit. All alcoholic beverages must be poured into appropriate cups or glasses, and ALL empty containers must be handled and stored in such a manner as not to be broken or left in the Property. Possession of any alcoholic beverages without appropriate permitting by the Licensee or any of Licensee's employees, agents, guests, or invitees shall be punishable pursuant to the City's Code of Ordinances.