

NORTH CAROLINA)
)
FORSYTH COUNTY)

**CORPENING PLAZA
LIMITED ACCESS AGREEMENT**

THIS CORPENING PLAZA LIMITED ACCESS AGREEMENT (hereinafter, this “Agreement”), entered into this the _____ day of _____, 20____, by and between the **CITY OF WINSTON-SALEM**, a North Carolina municipal corporation (hereinafter, the “City”) and _____(hereinafter, 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 the City-owned land at Corpening Plaza (hereinafter, the “Plaza”) for the sole purpose of the following event:

_____ (hereinafter, the “Event”); and

WHEREAS, Licensee acknowledges that his access to the Plaza 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 hereby agree as follows:

I. Scope.

The Licensee’s access to Plaza shall be limited to the purpose stated above.

II. Term.

The term of Licensee’s limited access to Corpening Plaza shall be from _____ a.m./p.m. to _____ a.m./p.m. on the _____ day of _____, 20____ (hereinafter, the “Event Date”). Licensee must set up and vacate the Plaza within this stated time period. Pursuant to the City’s Ordinances, Licensee’s use of the Plaza shall not begin before 7:00 a.m. or end after 10:30 p.m.

III. Consideration.

Licensee shall pay the City the fee of _____ Dollars (\$_____.00) for his use of the Plaza. The rate is Fifty Dollars (\$50.00) per 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 Plaza during the Licensee's Event.

VI. Insurance.

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

A. 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.

B. 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.

C. 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.

D. If Beer and/or Wine is to be served by the Licensee or by Licensee's Contractor, a Caterer for example, 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.

2. 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 City shall be named as an additional insured in the Automobile and General Liability policies and it shall be stated on the Insurance Certificate with the provision that this coverage is primary to all other coverage the City of Winston-Salem may possess.

3. The insurance coverage described above shall be in full force and effect throughout the Licensee's occupancy of the Plaza. 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.

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, unless such termination by the City was for cause.

3. Other than the refund of the Licensee's payment, as set out in Subparagraphs 1 and 2 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. 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.

XII. 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.

XIII. 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.

XIV. 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.

XV. 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.

XVI. 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, nor will Licensee utilize on this Agreement any subcontractor on such list.

XVII. Plaza Restrictions.

1. For any after-hour issue relating to the park (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, a Sound Permit must be obtained. 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).
3. Nothing shall 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 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 Plaza in any way.
5. Stay clear of trees and shrubs to avoid damaging them. Do not let children play in, on, or around trees or shrubs.
6. Provide a list of 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 Plaza.

8. Do NOT drive or park any vehicle(s) on the green areas.
9. Do NOT allow any commercial vendors on the Plaza.
10. 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.
11. Licensee must abide by all procedures regarding event activity, the City of Winston-Salem Fire Codes, and the rules and regulations governing proper food handling and sanitation practices as outlined by the Forsyth County Health Department (336-727-2760 x 3805).
12. If you plan on serving beer or wine 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. 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 to be broken or left in the plaza area. **Beer and Wine are the only alcoholic beverages allowed to be served at the Plaza. Fortified Wine and Liquor are PROHIBITED. Possession of any Fortified Wine or Liquor in the Plaza by Licensee or any of Licensee's guests or invitees shall be punishable pursuant to the City's Code of Ordinances.**

[SIGNATURE PAGE FOLLOWS]

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

ATTEST (Witness):

CITY OF WINSTON-SALEM:

Maya Dubose
Recreation Technician

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

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.

ATTEST (Witness):

LICENSEE

(SEAL)

Signature

Signature

Printed Name: _____

[SEAL]
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 EXECUTING CONTRACTS WITH THE CITY OF WINSTON-
SALEM

- (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 Manager'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 Licensee. The originals should be executed and returned to the City for execution, after which one original will be returned to the Licensee. The Licensee should return with the executed contract the Licensee's business license and, if the Licensee is an individual doing business as another name, the "DBA" registration with the Forsyth County of Register of Deeds.
- (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 Finance Department and approved by the City Attorney's Office.
- (6) Please be sure to review the insurance provisions with the Licensee. Our standard policy limits are high and may not be applicable to the Licensee or the job that the Licensee is to perform. If any heavy machinery or driving is involved, we generally stick to these insurance limits.