

Caras Park Pavilion Lease Agreement

(Updated April 2019)

This agreement, made this _____ day of _____, 2019, is by and between the MISSOULA DOWNTOWN ASSOCIATION, a Montana non-profit corporation (herein Lessor) and _____ (herein, Lessee).

WITNESSETH:

Agreement to Lease: Lessor agrees to lease to Lessee, and Lessee agrees to lease from Lessor the property managed by Lessor and described as follows: The property located in Caras Park, Missoula, Montana described as:

() A permanent Pavilion measuring approximately sixty (60) feet by one hundred fifty (150) feet, erected in Caras Park, Missoula, Montana consisting of twelve (12) helical piers, a floating-mast infrastructure, fabric roof, and adjustable side curtains and () eight foot tables and chairs, () eight foot (8') by four foot (4') stage sections, () a permanent concrete band stage and overhead canopy, concrete amphitheater seating and sun shades, grass-covered hill adjacent to the pavilion, and () the Brennan's Wave deck overlooking the river, herein "Pavilion". (check sections that apply)

Term of Lease: The term of this lease shall be for _____. During the term of the lease, the Lessee shall have the right to exclusive use of the Pavilion, subject to the terms of this Agreement.

Rent: Lessee shall pay Lessor \$_____ for the use of the Pavilion. Rent shall be paid to the Lessor at 218 E. Main, Suite C, on or before _____.

Damage / Security Deposit: Lessee shall submit a damage / security deposit of \$350.00 to secure compliance with all the conditions of the lease agreement. The damage / security deposit shall cover cleaning expenses attributable to Lessee's failure to maintain the Pavilion and its walls, tables, chairs, stage sections, etc. Lessee will lose security deposit if noise levels exceed the city noise ordinance and/or if the noise goes past 10 p.m. on Sunday – Thursday and 10:30 p.m. on Friday - Saturday. Lessor shall return the damage / security deposit within 30 working days of the termination of the lease agreement. If necessary, fees for damages and cleaning expenses shall be deducted from the damage deposit. If the deposit is insufficient to satisfy Lessor's claims for obligations under the lease agreement, Lessor may collect the deficiency from Lessee.

Nature of the use of the Pavilion: Lessee shall use the Pavilion for _____ and no other purposes. Lessee shall use the Pavilion in a careful and proper manner and shall comply with all laws, ordinances and regulations relating to the possession, use and maintenance of the Pavilion, including, but not limited to all Missoula Parks Department rules and regulations.

Alteration of the Pavilion: Lessee shall make no alternations of the Pavilion or its location. Lessee shall use eye bolts on structure to hang and secure banners or any other promotional material. Lessee shall not, including but not limited to: hang, tape, pin, attach, or fasten any banners or promotional materials from walls, wall cables, canopy or band shell.

Maintenance: Lessee shall keep the Pavilion in good repair during the time Lessee has the use of the Pavilion.

Right of Inspection: Lessor shall have the right to enter the Pavilion, inspecting it during the time Lessee is using the facility.

Liens and Encumbrances: Lessee shall in no way lien, mortgage or encumber the Pavilion during the term of the lease.

Permits and Licenses: Lessee shall obtain all permits and licenses necessary for engaging in all activities connected with Lessee's use of the Pavilion and submit copies of all permits and licenses to the Lessor at least 30 days prior to the event

Utilities: Utilities available include numerous 110 volt outlets, four (4) two hundred twenty (220) volt outlets and cold, potable water on site. Restrooms are available from Mid-April to Mid-October.

Operation of Concessions: Lessee may operate or permit a concessionaire or licensee to operate concessions during its use of the Pavilion provided Lessee or concessionaire obtains all licenses and permits necessary for the operation of the concessions.

Fire & Heating Devices: Lessee shall agree to keep all open flames or devices emitting flame, fire or heat or any flammable or combustible liquids, gas, charcoal or other cooking device at least 20 feet away from the Pavilion. This includes propane heaters of any kind, burn barrels, bonfires, and similar heating devices. Lessee agrees to obtain special permits needed for bonfires, burn barrels, and similar heating devices through the City of Missoula. Lessee agrees to keep any outdoor cooking that produces sparks or grease-laden vapors at least 20 feet away from the Pavilion.

_____ Lessee's initial to indicate that the above change to this document has been read and understood

Alcohol: If Lessee intends to serve alcohol during Lessee's use of the Pavilion, Lessee acknowledges being aware that there are strict rules and potential liability. Regarding permits and licenses, Lessee must obtain all permits and a license, ensuring that all criminal laws are complied with including that underage consumption of alcoholic beverages does not take place and open container laws are complied with. Lessor has agreed with the City of Missoula that all events at which alcohol is served would comply with that agreement. This is a minimum requirement and does not ensure open container laws being complied with. Additional questions should be addressed to local law enforcement. Regarding civil liability, Lessee acknowledges being aware that there are a number of scenarios where liability may be incurred. Lessee acknowledges that under other provision of the lease, Lessee had agreed to indemnify Lessor for those situations.

Sanitation: Lessee shall obtain and maintain all toilets, including the public restrooms, and other sanitation facilities required by law and reasonably necessary for the use of the Pavilion during the time the Lessee has the use of the Pavilion.

Clean Up & Waste Removal: The Lessee, or caterer/party planner in Lessee's stead, is required to remove all trash and place it into the trash bags. Trash bags are then placed in garbage dumpsters that are located under the bridge on the east side of the Pavilion and marked MDA. The dumpsters are provided by the Lessor during the time Lessee has the use of the Pavilion. If there has been excessive spillage or trash left on the Pavilion floor, the Lessee is responsible for cleaning this up and should consult with the Pavilion Facilities staff if in doubt. The Lessee or caterer/party planner is also responsible for removing any trash/mess left by their event in Caras Park. The trash must be emptied into the appropriate Republic Services Dumpsters. If the tables are used for projects that use paint or liquid (i.e. beverages), they should be wrapped in plastic. Lessor is responsible for clean up during and immediately after the event. Following an event, the Lessor Facilities Staff is only responsible for putting the Pavilion sides and furniture away, unless hired to perform bathroom maintenance and trash removal during the event. If the clean up

is not done satisfactorily and has to be completed by the Lessor facilities staff, funds to cover clean up may be deducted from the Lessee's Pavilion Security Deposit.

Advertising: Lessee shall conduct and be responsible for any advertising it chooses to do in connection with its use of the Pavilion. The City of Missoula's Bill Posting Ordinance (9.38.010) says it is unlawful for any person to paint, print, post, paste, attach or in any way affix any bill, poster, dodger, card or other advertising matter of any kind upon any post, hydrant, curb, sidewalk or other public improvement in any public ground or street; upon any bridge, public building, structure or erection of any kind belonging to the city; upon any mast or pole in any street avenue or alley; or upon any lamppost in the city, whether permission therefore has been granted by the owner or otherwise.

Use of Tables and Chairs: At the time of execution of this agreement, Lessee shall indicate if Lessee intends to use the chairs, tables or stage sections available with the Pavilion by providing the appropriate information on the Pavilion layout form.

Lessor shall make the chairs, tables, stage sections and side sections requested available at the Pavilion. If the Lessee will be using the chairs, tables, walls or stage sections, Lessee shall indicate on the Pavilion layout provided with this lease agreement, the desired location of the chairs, tables and stage sections and return the drawing to Lessor at the MDA office at least seven (7) days prior to the Pavilion rental date. Lessor shall make chairs, tables and stage sections available for use by the Lessee in the configuration designed by Lessee. Certain configurations may be prohibited due to fire code regulations and the Lessor Facilities Staff retains the right to change the wall configuration in response to weather conditions and fire code regulations. Lessee shall use the chairs, tables, stage sections and equipment in a reasonable, prudent and safe manner and shall not remove them from the Pavilion area.

Bounce Houses Prohibited in Parks: It has been determined by the Montana Municipal Interlocal Authority (MMIA) that there is considerable risk associated with allowing inflatable bounce houses to operate on public property. City Parks and Recreation no longer allows bounce houses to be permitted for use in public parks, including Caras Park. **Inflatables** used for obstacle courses will continue to be permitted, event organizers will be required to provide manufacturer's engineers specifications for construction and anchoring for each proposed unit, in conjunction with insurance required by the City of Missoula.

_____ Lessee's initial to indicate that the above has been read and understood

Return on Expiration: On Expiration of the term of this lease, Lessee shall deliver the Pavilion to Lessor.

Condition of Property: Lessee acknowledges having inspected the Pavilion, the Pavilion area and the chairs and tables prior to taking possession of the property. Lessee accepts the property "As Is" and agrees to return the property to Lessor in as good a condition as it now is on the expiration of the term of this lease.

Events Constituting Default: The following events shall constitute default on this lease.

- a.) Nonpayment by the Lessee of any sum required to be paid by the Lessee under the terms of the lease;
- b.) Nonperformance by the Lessee or Lessor of any covenant or condition of the lease.

Right to Prevent Default: Should Lessee fail to make any payment or do any act required by this lease, the lessor shall have the right, at its option, without notice or demand on the Lessee, to make such payment or do such act. All expenses incurred by Lessor in preventing the default of Lessee shall be due and payable from Lessee to Lessor on the date the expenses are incurred without demand and shall bear interest at the rate of twelve (12) percent per annum from the date incurred until paid by Lessee.

Rights on Default: On default of the Lessee under the terms of the lease Lessor may immediately exercise any or all of the following options:

- a.) Declaring all rent hereunder for the entire term of the lease immediately due and owing;
- b.) Take possession of the Pavilion.

The remedies herein afforded to the parties are non-exclusive and are to be considered in addition to all rights, remedies and actions Lessor might have under the laws of the State of Montana.

Ownership of Equipment: Title to the Pavilion shall at all times remain with the Lessor.

Assignment: Lessee shall not assign this lease or sublet the property without the written consent of Lessor.

Notice: Notice given hereunder shall be served upon the parties by registered or certified mail sent return receipt requested. Such mail shall be directed to the parties at the following address:

Missoula Downtown Association
218 E. Main, Suite C
Missoula, MT 59802

Notice served by mail shall be deemed received when deposited in the United States Post Office. In the event the parties change their address, they shall so advise the other parties. Any notice mailed to a previous address before notice of a change of address shall be fully effective.

Successors: This agreement shall extend to and be binding upon the heirs, personal representatives, successors and assigns of the parties hereto.

Modification: This Agreement may be modified by the parties in writing only, which writing must be signed by all parties hereto.

Cost and Attorney's Fees: In the event either party may institute legal action for enforcement of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees in addition to costs of the suit.

Destruction of Lease Property: If the property is damaged or destroyed by fire, the elements, unavoidable accident, vandalism or other casualty prior to or during the term of the lease, and if by reason of such occurrence the property shall be rendered unusable only in part, the rent during the time the Pavilion is partially unusable shall be abated proportionately as the portion of the premises rendered unusable. If the Pavilion shall be rendered wholly unusable by reason of such occurrence, the Lessor shall cause the damage to be repaired, and the rent meanwhile shall abate until the leased premises have been restored and rendered tenable, or Lessor may, at its election, terminate this lease and the tenancy hereby created by giving Lessee within thirty (30) days following the date of the occurrence, written notice of Lessor's election to terminate the lease. In the event of such termination, rent shall be adjusted as of the date of the occurrence.

Indemnity for Pavilion Use: Lessee shall indemnify and hold Lessor harmless for any penalties, fines or other costs incurred by Lessor as a result of Lessee's use of the Pavilion.

Liability for Property Damage: Lessee assumes the risk of loss or damage to the Pavilion or any personal or real property damaged as a result of the use of the Pavilion from any cause, specifically including any actions of Lessor, that occurs during the term of this lease. The Lessee shall indemnify and hold Lessor harmless against all such liability. Lessee shall reimburse Lessor for any expenses, including but not limited to reasonable attorney's fees and court costs, incurred as a result of any liability allegedly caused in any fashion related to the Pavilion or any personal or real property damaged in connection with Lessee's use of the Pavilion.

Liability for Personal Injury: Lessee assumes liability for injury, disability, death or any other damages suffered by a person in connection with Lessee's use of the Pavilion, caused in any fashion related to the Pavilion specifically including conduct of the Lessor. The Lessee shall indemnify and hold Lessor harmless against all such liability. The Lessee shall reimburse Lessor for any expenses, including but not limited to reasonable attorney's fees and court costs, incurred as a result of any liability allegedly caused in any fashion related to the use of the Pavilion during the term of the lease.

Insurance: Lessee shall maintain body injury and personal injury insurance and property damage insurance associated with use of the Pavilion in the amount of at least two million and no/100 dollars (\$2,000,000.00) per occurrence and in the aggregate. Lessee must list the Missoula Downtown Association as an additional insured for the event. Lessee agrees to submit a copy of the insurance form stating the above to the MDA at least 30 days prior to the event.

IN WITNESS WHEREOF, the parties hereto have executed this instrument the day and year first above written. Lessee has read and understands all information provided in this document and other information pertaining to this rental and agrees to abide by all rules and regulations outlined therein.

Missoula Downtown Association, LESSOR

Date

LESSEE

Date