



AMICI PARK TERMS & CONDITIONS OF USE

BACKGROUND

- A. Amici Park, located adjacent to Washington Elementary School and along the north side of West Date Street, between State Street to the West and Union Street to the East, in the Little Italy District of San Diego, California (the "**Premises**") is owned by San Diego Unified School District (the "**District**") and managed by the Little Italy Association of San Diego (the "**Licensors**") pursuant to a long-term lease agreement with the District. Licensors are duly authorized to enter this Agreement granting User the rights and privileges set forth herein as limited by the terms and conditions laid out in detail below.
- B. The Premises are divided into two distinct areas, namely the "**Hardscape**," and the "**Softscape**." The Hardscape consists of an Amphitheatre, two Bocce Ball courts, Amici Park restrooms and the surrounding concrete area up to, but not including, the City sidewalk along the east side of W. Date Street or the City sidewalk along the North side of W. Date Street. The Softscape consists of the grassy area known as the Little Italy Dog Park. A map of the Premises identifying the boundaries of the areas described above is attached at the end of these Terms and Conditions.
- C. Licensors are willing to extend to User the use of the Hardscape on the terms and conditions herein.
- D. User may only use the Hardscape for approved private parties or gatherings. Openly promoted public gatherings or events are not permitted.

RENTAL TERMS AND CONDITIONS

Licensors and User agree as follows:

1. Grant.

- 1.1 Upon written approval of User's Application for Use of Amici Park (such written approval is referred to herein as "**Permit**"), and conditioned upon User's signed acceptance and agreement to these Terms and Conditions as well as compliance with any special requirements Licensors sets forth in writing to User as a condition of User's Permit, Licensors grant permission to User to use all or a portion of the Hardscape on the date(s) and times specified on the Permit and User agrees to use the Hardscape or portion of the Hardscape for the sole purpose specified on the Permit.
- 1.2 User's use of the Premises is pursuant to the Permit and is limited to that portion of the Hardscape or the entire Hardscape as approved by Licensors in User's Permit.
- 1.3 User's use of all or portion of the Hardscape, as specified in paragraph 1.2 above, is expressly limited to the hours approved on the Permit.
- 1.4 User is not permitted to use the parking lot adjacent to Hardscape, unless otherwise requested and permitted by Licensors in writing.

2. Term.

- 2.1 User may only use the Hardscape, or portion of the Hardscape, on the date(s) and time(s) specified on the Permit.

3. Reservation, Fees and Deposit.

- 3.1 Rental Fee. User's base fee for use of the Hardscape are based on four categories;
 - A. Little Italy Resident/Property Owner;
 - B. Little Italy Business Owner;
 - C. Non-Profit; and
 - D. Non-Resident/Owner
- 3.2 Rates. The current Rental Fee rates are posted on the Little Italy Association website at www.AmiciParkSD.com, a copy of which are provided to User along with these Terms and Conditions.. These fees are subject to change at any time.
- 3.3 Other Costs. Additional costs may be charged for damage to the Premises or to Licensor's property and for additional services provided by Licensor. User agrees to pay any additional costs within ten (10) days following the date of the Event.
- 3.4 Advance Payment. Fifty percent (50%) of the Rental Fee shall be paid by User at the time User submits a Permit application. The balance of said Rental Fee shall be paid by User no later than ten (10) days prior to the holding of the Event. All additional charges and other amounts, if any, shall be paid within ten (10) days after the holding of the Event.
- 3.5 Deposit. In addition to the Rental Fee, a security deposit and restroom deposit ("**Deposit**") may be required for User's reservation of the Hardscape or portion of the Hardscape and must be paid to Licensor with User's Permit application. The Deposit shall be held by Licensor as security for User's performance of its obligations under these Terms and Conditions, including but not limited to its obligation to pay the Rental Fee, additional fees and costs incurred by User and to reimburse or compensate Licensor for any expense, loss or damage arising out of the use of the Premises by User. Within ten (10) days after User's Event, Licensor shall return that portion of the Deposit not so used or applied by Licensor. The Deposit shall not be considered to be held in trust, shall not bear interest, shall not be used to prepay any amount payable by User nor limit User's obligations under these Terms and Conditions.
- 3.6 Payment Methods. User agrees to pay all amounts due to Licensor by cash, money order, cashier's check, or check made payable to "Little Italy Association."

4. Terms of Use and Control.

- 4.1 Suitability. Subject to Licensor's approval, User is responsible for determining the suitability of the Hardscape and services for the Event. User accepts the Hardscape in "as is" condition. User will be responsible for identifying, obtaining and paying for all permits, licenses and approvals of any kind required in connection with its Event or its use or occupancy of the Hardscape. All required permits or copies thereof must be received by Licensor at least ten (10) days in advance of the Event.
- 4.2 Limited Use. The Hardscape shall be used for no purpose other than that described on the Permit. User will comply with all rules, regulations and policies delivered to User by Licensor from time to time, all of which are incorporated in and made a part of these Terms and Conditions. User will not use any portion of the Premises for any illegal or unlawful purpose, nor violate any law, ordinance or governmental regulation, nor commit waste or nuisance on or about the Premises or any portion thereof. User

will not make any installations, alterations or improvements to the Premises. User will not permit to be enforced against the Premises any mechanics lien or any claim based on any work or activity performed by or on behalf of User. User is not permitted to charge any cover charges or fee for attendees of the Event.

- 4.3 Reservation. Licensor reserves the right to control or shut down User's Event due to breach of this Agreement by User. Licensor shall have free access at all times to any and all portions of the Premises including, but not limited to space occupied by User.
- 4.4 Equipment. To the extent Licensor has such equipment available, popups, crowd control rails, chairs, 6 foot tables, and other items may be made available by Licensor to User upon User's request. There is no fee for use of equipment supplied by Licensor other than the hourly rate for Licensor's onsite staff (\$22.50 per hour), if such staff is utilized for the set-up, removal and other handling of Licensor's equipment. If Licensor is unable to provide the equipment required for the Event, User may rent the necessary equipment at User's sole expense. Any vendors entering the Premises for purposes of renting equipment to User for the Event must be pre-approved by Licensor prior to such vendors entering the Premises. Absolutely no equipment that requires propane, gas, or any other combustible fuel or material is permitted on the Premises. User shall be solely responsible for the set-up, removal and other handling of any equipment provided by User for the Event, unless Licensor expressly assumes such responsibility in a written attachment to this Agreement and Licensor's onsite staff is utilized for the set-up, removal and other handling of such equipment provided by User. User shall be solely responsible for any damage, destruction, theft, or loss with respect to equipment, whether provided by User or Licensor, to the extent such damage, destruction, theft or loss was not caused by the willful or reckless act of Licensor or Licensor's onsite staff. At least ten (10) days prior to the Event, User shall notify Licensor of the time that User, User's authorized representatives, and any equipment for the Event are expected to arrive on the Premises.
- 4.5 Insurance. Depending upon the nature and size of the Event, Licensor may require Licensee to obtain general liability insurance for the Event. Licensor will notify User on or before the effective date of the Permit if insurance is required. If insurance is required, User agrees to provide to Licensor proof of general liability insurance in the minimum amount of \$1,000,000 no later than ten (10) days prior to the date of the Event. The insurance policy shall name Licensor as an additional insured and shall provide coverage to Licensee for indemnification of Licensor consistent with the terms of Paragraph 6 herein.
- 4.7 Other Uses. User agrees that during the Term of their Permit other events may be held in other parts of the Premises and User shall conduct its activities so as not to interfere with such other events. Licensor may schedule other events in the Premises, or portions of the Premises not occupied by User pursuant to these Terms and Conditions, as long as such events do not materially interfere with User's Event.
- 4.8 Staff. User must obtain written permission from Licensor before using volunteer or paid service staff other than Licensor personnel, and such individuals shall be subject to all rules and regulations applicable to Licensor personnel and employees. User shall remove from service upon the request of Licensor any individuals not adhering to the applicable rules and regulations relating to their conduct. User is responsible for the actions of those volunteer and paid service staff and hereby indemnifies, releases, and discharges Licensor from any and all liability for loss, injury or damage to person or property that may be sustained by said actions.

5. Cancellation, Termination and Remedies.

- 5.1 Termination by Licensor. Licensor may terminate User's Permit and/or cancel the Event upon the happening of any one or more of the following events, each of which shall constitute an event of default under these Terms and Conditions: (a) failure of User to pay the Deposit, the Rental Fee or any other sums or charges required to be paid by User hereunder when the same is due, (b) if User shall fail to observe or perform any of the other covenants, agreements or conditions of these Terms and Conditions on the part of User to be kept and performed, including without limitation User's failure to observe and comply with all rules, regulations and policies delivered to User by Licensor from time to time, (c) User fails to arrive for the Event, (d) User arrives at the Event under the influence of drugs or alcohol or (e) User or its attendees commit any illegal or unlawful activity on or about the Premises or fail to obtain the requisite licenses or permits for the Event as required by User's Permit or any applicable state or federal law. Upon the occurrence of an event of default, Licensor shall have, in addition to any other remedies available to it at law or in equity or under these Terms and Conditions, the right, with or without notice, to immediately terminate User's Permit, cancel the Event and remove User and any other person or persons in occupancy of the Premises, together with their goods, equipment and property, using such reasonable methods as may be necessary in the judgment of Licensor or its agents, without resort to legal process or becoming liable for any loss or damage which may be occasioned thereby, and repossess the Premises, and may recover from User all damages Licensor may incur by reason of such event of default by User. Licensor shall have no obligation to refund any sums of money paid by User to Licensor for the Event in the event that Licensor terminates User's Permit as a direct result of an event of default.
- 5.2 Termination by User. User may terminate its Permit and cancel the Event by giving written notice to Licensor at least thirty (30) days in advance of the Event, and upon such termination Licensor will refund in full the Deposit, any portion of the Rental Fee or other charges paid by User to Licensor prior to cancelation. In the event that User cancels the Event less than thirty (30) days prior to the date of the Event, but at least ten (10) days prior to the Event, Licensor will refund in full the deposit, however, User will remain responsible for fifty percent (50%) of the Rental Fee and other charges otherwise to be paid by User to Licensor prior to cancelation. In the event that User cancels the Event less than ten (10) days prior to the Event, User shall be responsible to forthwith pay Licensor the unpaid balance of said rental Fee as well as all additional amounts of money for charges incurred by Licensor on behalf of User in connection with the Event. In no event, however, shall Licensor be responsible for any amounts owed by User to third parties in connection with User's cancelation of the Event and any such amounts owed to third parties are the sole and exclusive responsibility of User.
- 5.3 Casualty. Either party may terminate User's Permit and cancel the Event if the Hardscape, or the portion of the Hardscape specified in paragraph 1.2 above, is materially damaged or destroyed by fire, earthquake, or other casualty prior to the date of the Event and such damage or destruction makes it impossible to provide the Hardscape, or portion of the Hardscape specific in paragraph 1.2 above, to User for the purpose of the Event specified in paragraph 1.1 above. Licensor shall refund any sums paid by User to Licensor for the Event if the Event is canceled pursuant to this paragraph 5.3. In no event shall inclement weather be grounds for termination of

User's Permit pursuant to this paragraph 5.3 unless such weather results in actual and material damage or destruction of the Hardscape as discussed herein.

- 5.4 License and Remedies. User acknowledges that the right to use and occupy the Hardscape as described herein is solely in the nature of a license and that User has no rights as an owner, purchaser, tenant or subtenant with regard to the Hardscape by virtue of User's Permit. Upon the occurrence of an event of default, Licensor may re-enter and take exclusive possession of the Premises and remove all persons, property or things therefrom by self-help or by such legal process as Licensor may deem appropriate. Licensor may also seek any other remedy available at law or in equity, including but not limited to a suit for damages or an action for specific performance, injunction or other equitable relief. All remedies provided herein or by law or equity shall be cumulative and not exclusive. No termination or expiration of User's Permit shall relieve User of its obligations to perform those acts required to be performed either prior to or after termination.

6. Waiver and Indemnity. As a material part of the consideration of these Terms and Conditions, User hereby waives all claims against and releases Licensor from responsibility for any injuries or damages User may suffer as a result of the use of the Premises. User hereby assumes all risks and agrees to protect, defend, indemnify and hold Licensor, District and the City of San Diego entirely harmless from and against any and all loss, damage, injury, accident, casualty, liability, claim, cost or expense (including but not limited to reasonable attorneys' fees) of any kind or character to any person or property arising from or caused directly or indirectly by any use of the Premises by User or any of User's agents, representatives, employees, independent contractors, guests, invitees or attendees (collectively, "**Representatives**"), any act or omission of User or its Representatives, any violation or alleged violation by User or its Representatives of these Terms and Conditions or any law, ordinance or regulation, any failure of User to maintain and return the Premises in a safe, sanitary and unaltered condition, any loss or theft whatsoever of any property or anything placed or stored by User or its Representatives in, on or about the Premises, and any enforcement by Licensor of any provision of the Permit or these Terms and Conditions. User stores property at its own risk and Licensor will not be liable or responsible for injury to any person, including User, or for theft of or loss or damage to the property of any person, including User's property and the property of User's Representatives. User's duty to defend Licensor shall be separate and distinct from and may arise prior to User's duty to indemnify Licensor.

7. Catering, Food, Alcohol and Security.

- 7.1 Catering. All concessions and catering services, whether provided by User, User's Representatives or otherwise, for the Event must be preapproved by Licensor at least ten (10) days prior to the Event. Catering services may use chafing dishes only with the express permission of Licensor; however, the use of charcoal and/or propane grills or other means of onsite cooking is strictly prohibited on the Premises. User is responsible for removal of any catering equipment, food and food waste from the Premises prior to the Tear-Down Time approved on User's Permit application in accordance with paragraph 2.1 above.
- 7.2 Alcohol. Alcoholic beverages are permitted on the Hardscape only when served by a pre-approved caterer holding a current ABC license Type 47, 48, 51, 52, 57, 75 or 78 with ABC Catering Authorization (Form ABC-218) for User's Event.

- 7.3 Security. User is obligated to follow both the written policies as promulgated, from time to time, by Licensor, as well as the laws of the State of California, County of San Diego and City of San Diego as those laws apply to obtaining the necessary permits or licensing to hold the particular Event. Licensor's current policies require that all events that will be serving alcohol are required to have a minimum of one (1) security officer per 50 guests. A licensed, bonded security provider pre-approved by Licensor must be present on the Premises at all times when alcohol will be served at the Event and at User's sole expense.
- 7.4 General Use. User shall not sell or cause to be sold merchandise, food or beverages on or about the Premises, except on terms and conditions established by Licensor and with the express permission of Licensor prior to the Event. User and User's Representatives are, however, authorized and permitted to bring food and/or non-alcoholic beverages onto the Premises, individually for personal consumption and not for the purpose of catering or sale, provided that User complies with all other applicable terms and conditions in this Section 7. Glass containers are not permitted anywhere on the Premises for any reason, for any event, irrespective of whether the event is catered.

8. Permits and Licensing. User must comply with all permitting and licensing laws, rules and regulations promulgated by the State of California, County of San Diego and City of San Diego. Licensor's internal policies and procedures are not intended in any manner whatsoever to modify User's obligation to obtain the required permits and licenses from the appropriate governmental regulating agency for User's Event or any activities taking place at User's Event. Prior to the commencement of the Event, User shall provide Licensor with copies of all such permits and licenses issued to it by the appropriate governmental regulatory agency.

9. Non-Discrimination. User agrees not to discriminate in any manner on the basis of sex, race, creed, age, color, national origin, religious belief, disability, or any other manner proscribed by the laws of the State of California or the United States, and to comply with all non-discriminatory laws and policies to which Licensor is subject or which Licensor promulgates.

10. General Provisions.

- 10.1 Attorneys' Fees. In any action or proceeding arising out of or relating to these terms and conditions or to the subject matter, enforcement or breach hereof, the prevailing party shall be entitled to reasonable attorneys' fees, costs and expenses.
- 10.2 Integration. These Terms and Conditions along with the User's Permit are intended to be and constitutes the final, complete and exclusive agreement between the parties regarding the subject matter of the Permit and these Terms and Conditions and all prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged into and superseded by User's Permit and these Terms and Conditions ("**Agreement**"). No parol or extrinsic evidence of any kind shall be used to vary, contradict, supplement or add to the terms of this Agreement. .
- 10.3 Amendment. No amendment, modification, termination or waiver of the Agreement shall be valid unless the same is in writing and signed by the party against which such amendment, modification, termination or waiver is sought to be enforced on a date subsequent to the effective date of the Permit.

- 10.4 Waiver. No waiver of any breach of any provision or condition of this document shall be deemed a waiver of a breach of a similar or dissimilar provision or condition at the same time or any prior or subsequent time or of the provision or condition itself.
- 10.5 Time of Essence. Time is of the essence of terms and conditions and each of its provisions in which a time for performance is specified.
- 10.6 No Assignment. The rights to use any portion of the Premises provided herein are personal to User. User shall have neither the right nor power to assign or transfer or sublicense their Permit or any of its rights under their Permit, whether voluntarily, involuntarily or by operation of law, without the prior written consent of Licensor in Licensor's sole and absolute discretion, and any attempted assignment, transfer or sublicense without Licensor's prior written consent shall be void and shall constitute a material breach by User.
- 10.7 Binding Effect. Subject to the provisions of Section 10.6 above, the Agreement shall bind and inure to the benefit of the parties hereto and their respective successors, assigns and legal representatives. No other party shall have any rights under or be deemed a beneficiary of the Agreement. .
- 10.8 Cooperation. Each party shall execute and deliver or cause to be executed and delivered such further instruments and documents and shall take such further action as may be reasonably required to effectuate the Agreement. .
- 10.9 Notices. All notices, demands or other communications given hereunder shall be in writing and shall be deemed to have been duly given (a) upon receipt if delivered personally or by messenger, private courier, telecopier or electronic transmission or (b) as of the third business day after mailing by United States registered or certified mail, postage prepaid, addressed as follows:

To Licensor: Little Italy Association
2210 Columbia Street
San Diego, California 92101
Attn: Christopher Gomez
Phone: (619) 233-3898
Fax: (619) 233-4866
Email: mail@amiciparksd.com

The Licensor will use the contact information given on the Permit application for initial communications or responses. If any notice is refused, the notice shall be deemed to have been delivered upon such refusal.

- 10.10 Governing Law. This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of California without reference to the choice of law provisions thereof.
- 10.11 Jurisdiction and Venue. The parties hereby irrevocably consent and submit to the exclusive jurisdiction of the state and federal courts located in San Diego County, California in connection with any action or proceeding arising out of or relating to this Agreement, and also consent to service of process by any means authorized by California or federal law.
- 10.12 Warranty of Authority. The persons signing the Application represent and warrant that they have the requisite authority to bind the parties on whose behalf they are signing.
- 10.13 Rules of Construction. The section headings in this document are for reference purposes only and shall not affect the meaning or interpretation of these Terms and

Conditions. References to a section without further attribution shall refer to the sections of this document.

- 10.14 Severability. If any one or more of the provisions of these Terms and Conditions shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision and the Agreement shall be construed as if such invalid, illegal or unenforceable provisions had never been contained herein.
- 10.15 Counterparts. These Terms and Conditions may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument.
- 10.16 Interpretation of Terms and Conditions. The Agreement has been negotiated at arm's length. Accordingly, any rule of law (including, but not limited to, California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this document against the party that has drafted it is not applicable and is hereby waived.
- 10.17 Force Majeure. Neither party shall be liable for any failure of or delay in performance of its obligations under the Agreement to the extent such failure or delay is due to circumstances beyond its control, including, without limitation, acts of God or acts of a public enemy, fires, floods, wars, civil disturbances, blockades, embargos, labor disputes or acts of any governmental body. Each party shall use its best efforts to minimize the duration and consequences of any failure of or delay in performance resulting from a force majeure event.
- 10.18 Effectiveness of the Agreement. User's Permit and the Agreement shall become effective immediately upon Licensor's written approval of User's Permit application and User's execution and acceptance of these Terms and Conditions. Facsimile signatures and delivery by facsimile transmission shall be valid and effective.

I, User, have read, understand and agree to the AMICI PARK TERMS & CONDITIONS OF USE.

Signature

Date

Printed Name