

Wimberley Players User Agreement Contract

This Use Agreement is entered into between the Wimberley Players, Inc. hereinafter referred to as "WP," and _____, hereinafter referred to as "USER."

Principal Parties

A. WP operates the Wimberley Playhouse located at 450 Old Kyle Road, Wimberley, TX 78676, hereinafter referred to as the "Facility."

B. USER represents that its legal name, authorized representative, corporate address and contact information are as follows:

Legal Name: _____

Authorized Representative: _____

Address: _____

Phone: _____

Email: _____

Federal Tax ID #: _____

C. USER represents that its corporate status is that of a ___ For Profit ___ Non-Profit (check one).

If USER is a non-profit organization for purposes of this Agreement, USER certifies that it is tax-exempt under Section 501(c)(3) of the United States Internal Revenue Code. If USER's use of Facility is for the first time, USER must provide WP a copy of its IRS tax-exempt determination letter. WP may, at its sole discretion, treat USER as a non-profit if USER's application for required tax-exempt status is pending with the IRS and proof of such application is provided to WP. If USER's application for tax-exempt status is subsequently denied by the IRS and WP has treated USER as a non-profit user, USER will immediately pay an amount equal to the difference between non-profit and for-profit user fees. If USER has previously provided WP with its IRS tax-exempt determination letter, USER represents that such letter continues in full force and effect and has not been revoked.

D. The parties desire to enter into a Use Agreement, hereinafter referred to as the "Agreement," of the Facility upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

A. Use Provisions

- 1) WP hereby grants to USER access to and use of those portions of the Facility, and for the estimated cost of use and dates and times of use as have been described in **Wimberley Playhouse User Information Form** (hereinafter referred to as "*Exhibit A*"), attached hereto and made a part hereof for the purpose of the event(s), performance(s), or other use (hereinafter referred to as "Event") described in *Exhibit A* and made part hereof. For purposes such as payment of fees or notice of cancellation as described in this Agreement, the Event shall be considered to occur on the first day of such event, performance or use.
- 2) Rental of the Facility's Eastwood Theatre entitles USER to the use of the Facility's Green Room, dressing rooms, lobby and deck and basic light and sound package. USER may incur additional costs for any equipment USER requires to supplement these house systems.
- 3) If the Eastwood Theatre is not rented, the use of any other area rented as described in *Exhibit A* is limited to that area only and appropriate access thereto.

- 4) The cost of use as estimated in *Exhibit A* is for budgetary purposes only. User's final obligations under this Agreement will be based upon actual time and conditions of the use and the services, labor hours, supplies and other support required to service the USER's occupancy.
- 5) WP makes no warranty, either express or implied, as to the condition, fitness, merchantability or suitability of the Facility for USER's purposes or needs. Prior to executing this Agreement, USER acknowledges that USER's authorized representative has had the opportunity to inspect the Facility and to become thoroughly acquainted with the condition of the Facility, and has in fact done so. USER agrees to accept and use the facility "as is."
- 6) USER may not make any permanent attachments or alterations to the Facility. No temporary attachments or alterations to Facility may be made until WP management has given advance approval. Attachments by means of nails, screws, or adhesives are prohibited. USER will be charged for any modifications or damage to the house systems or the Facility resulting from USER's occupancy. Said charges will be equal to the actual cost necessary to restore the house systems and the Facility to their original condition, plus any gross revenue lost by WP attributable to the modifications or damage caused or permitted by USER.
- 7) USER will not permit or allow the accumulation of litter or flammable material within or around the Facility and will refrain from any other activity which would interfere with WP's ability to insure the Facility against fire and other casualty
- 8) USER will not make any unlawful or offensive use of the Facility. USER will at all times during USER's use or possession of the Facility comply with all local, state and federal laws, rules and regulations.
- 9) USER shall not store in or around or discharge from or onto the Facility any hazardous waste or materials or toxic substances as defined by any applicable federal, state or local law, ordinance or regulation.

B. Fees.

- 1) A Reservation Deposit as described in *Exhibit A* "Rental Rates" shall be paid upon submission of this Agreement to WP in order to reserve use of the Facility. This Agreement shall be signed by an authorized representative or agent of User. Full payment of the Rental Fees will be payable thirty (30) days prior to the scheduled (Performance) Event, and fifteen (15) days prior to other Events unless extended by WP at its sole discretion. If Event is booked within 30 days for performance, or 15 days for other Events, deposit and full payment will be due at time of booking.
- 2) If plans for an Event are revised, the parties shall prepare a revised Exhibit A and USER shall pay promptly a revised Reservation Deposit.
- 3) Notice of cancellation of the scheduled Event must be made in writing and received by WP management no later than sixty (60) days prior to the (Performance) Event or thirty (30) days prior to a lobby Event to obtain a full refund of the Reservation Deposit. Fifty percent (50%) of the Reservation Deposit shall be returned to USER if notice of cancellation is received less than thirty (30) days but more than fourteen (14) days prior to any scheduled Event. Upon return of the net portion of the Reservation Deposit as described above, WP shall have no further liability to USER. In the event that any reservation of the facility is canceled less than two (2) weeks prior to any Event, WP shall retain the entire deposit.
- 4) USER agrees to, and accepts full responsibility for, securing any and all performance rights from ASCAP, BMI or similar licensing entities and agrees to separately pay all costs associated with securing such performance rights.

C. Technical Personnel.

1. Designated WP technical personnel must be present at all times during USER's occupancy of the Facility.
2. All equipment appurtenant to the Facility including lighting, sound, projection and fly systems must be operated by tech personnel approved by WP.
3. USER shall at its sole expense, provide its own personnel for the loading and unloading of trucks, and the installation, operation and removal of its own equipment, including lighting, sound, staging and scenic

elements. Such personnel shall not be considered, under any circumstance, to be employees, agents or contractors of WP.

4. USER's employees, agents, contractors, invitees and all other personnel must at all times abide by the rules and regulations governing the use of the Facility as administered by WP management and staff.

D. Security Services.

WP reserves the right, at its sole discretion, to require security services at USER expense.

E. Insurance.

At least thirty (30) days prior to occupancy USER must provide to WP management a certificate of liability insurance in which the following parties are named as additional insureds for the duration of USER'S occupancy:

- (1) Wimberly Players, Inc., and its directors, officers, agents, employees and volunteers**

The combined limits of said policy shall not be less than One Million Dollars (\$1,000,000) for injury to persons and/or damage to property. WP reserves the right to cancel Event and retain full amount of Reservation Deposit if certificate of liability insurance is not provided consistent with this provision.

F. Liability.

- 1) USER agrees to provide a legal defense and to indemnify and hold harmless and free from liability WP, and WP's directors, officers, agents, employees and volunteers, while acting as such, from and against any and all claims for damages, demands, costs or expenses which USER shall become obligated to pay by reason of any liability claimed or imposed by law because of injury to property or injury to or death of persons suffered by reason of any act, omission or negligence of USER or arising from any accident or injury in connection with or attributable to the use or occupation of the Facility by USER.
- 2) USER, or persons representing USER, agrees to pay within thirty (30) days costs incurred in repairing or replacing of damaged Facility equipment resulting from USER's occupancy and/or the conduct of its persons on the premises in connection with USER's Event, whether caused by misuse, neglect or accident.

G. Disruption.

In case the Facility or any part thereof shall be destroyed or damaged by fire or any other cause or is unusable for any reason outside the reasonable control of WP, or if any other casualty or unforeseen occurrence shall render the fulfillment of this Agreement by WP impossible, including without limitation thereto, the requesting of the premises by the United States Government or any arm or instrumentality thereof or local government, or by any reason of labor disputes, then and thereupon this Agreement shall terminate and USER hereby waives any claim for damages or compensation, should this Agreement so terminate. A Reservation Deposit shall be returned pursuant to this Agreement less expenses as provided in this Agreement.

H. Custodial.

- 1) Unless otherwise approved in writing by WP, all equipment and materials, including but not limited to staging, scenery, lighting and sound equipment, musical instruments, costumes, storage containers, lobby displays, souvenirs, catering equipment and supplies, not owned by WP shall be removed from Facility immediately following the final Event.
- 2) Stage and dressing room trash shall be deposited in receptacles provided by WP. All stage and dressing room floors shall be left broom clean and all counters shall be wiped clean. All areas of the Facility shall be left in the same condition in which they were found.
- 3) In case of damage or need for extra custodial services, WP will retain all or portion of Reservation Deposit, plus costs exceeding Deposit amount. (see *Exhibit A*).

I. Time of the Essence.

Time of payment and performance by USER is of the essence of this Agreement and delay by WP in enforcing any of the terms and conditions hereof shall not constitute a waiver of WP's rights to insist upon strict compliance with such terms and conditions in the future.

J. Assignment.

USER shall not enter into an assignment or sublease of this Agreement without first obtaining the written consent of WP, which WP shall be free to withhold at its sole discretion. Any attempted assignment or hypothecation hereof by USER shall be null and void.

K. Succession.

Subject to the above-stated limitations on transfers of USER's interest, this Agreement shall be binding upon and inure to the benefit of the parties, their respective successors and assigns.

L. Applicable Law.

This Agreement shall be construed in accordance with the laws of the State of Texas. The parties consent that jurisdiction for any litigation in connection with this Agreement or use of the Facility shall occur in Hays County, Texas.

M. Amendments.

This Agreement may not be amended or modified except in writing signed by all parties.

N. Arbitration.

If the parties are unable to agree upon any matter relating to the interpretation or application of this Agreement or upon any other issues arising out of USER's use of the Facility, such matters shall be determined by arbitration to be conducted in accordance with the statutes of the State of Texas relating to arbitration. Either party may request arbitration by written notice to the other. The parties shall have ten (10) days to agree on a single arbitrator, and if they do not, WP shall select one arbitrator, USER shall select a second arbitrator, and the two arbitrators so selected shall select a third arbitrator. The decision of the single arbitrator or of the majority of three arbitrators as to such matters shall be final and binding upon the parties hereto. Any arbitration under this paragraph and any trial court proceeding with respect to the arbitration or otherwise shall take place in Hays County, Texas.

O. Attorney's Fees.

If it is necessary for WP to employ an attorney to construe, interpret, or enforce any of the provisions of this Agreement due to a breach of this agreement by USER, then WP shall be entitled to recover from USER reasonable attorney fees and other costs incurred, irrespective of whether any legal proceeding is commenced. If any legal action is commenced, including, without limitation, any arbitration, mediation, or action in any court, including the prosecution or defense of any motion or proceeding in Bankruptcy Court, the prevailing party shall be entitled to recover from the other party costs, disbursements, and attorney fees incurred both at a trial and on appeal. If the legal proceeding results in a monetary judgment, injunction or other equitable relief, the prevailing party shall also be entitled to recover in addition to pre-judgment attorney fees, an amount or amounts sufficient to defray the expense of attorney fees and other costs and disbursements necessary for enforcement or collection of the judgment. As used herein, the term "costs" includes expenses for experts fees, pre-trial and post-judgment discovery, and any other necessary expenses, whether or not they would otherwise be known as "costs and disbursements."

P. Authorization.

Person signing this Agreement on behalf of USER represents and warrants that he or she, without exception or conditions, has all the requisite power and is duly authorized to sign this Agreement on behalf of USER and to legally bind and obligate USER thereof.

Q. Counterparts.

More than one counterpart of this Agreement may be executed by the parties and each fully executed counterpart shall be deemed an original of this Agreement.

IN WITNESS WHEREOF, the parties hereby execute this Agreement. Date: _____

For WIMBERLEY PLAYERS, INC.

Signature: _____

Typed or Printed Name: _____

Title: _____

Date: _____

For USER

Signature: _____

Typed or Printed Name: _____

Title: _____

Date: _____