

**USER'S AGREEMENT
PAGODA VISITORS CENTER**

THIS AGREEMENT ("Agreement") entered as of _____, by and between:

User's Name	Caterer's Name	<u>Evansville Convention and Visitors Bureau</u>
Street Address	Street Address	<u>401 Southeast Riverside Drive</u> Street Address
City, State, Zip Code	City, State, Zip	<u>Evansville, Indiana 47713</u> City, State, Zip
Contact Person	Contact Person	_____ Contact Person
Telephone Number	Telephone Number	<u>(812) 425-5402</u> Telephone Number
("User")	("Caterer")	("Visitors Center")

1. License Date and Fees. The Caterer and Visitors Center hereby agree to license to User on _____, ("License Date") the License Space described hereinbelow. The User shall, subject to the further terms hereof, have the exclusive use of the License Space from 5:00 p.m. to 12:00 a.m. midnight on the License Date ("Event"). The User shall pay, in advance, a license fee in the amount of Five Hundred Dollars (\$500.00), receipt of which is hereby acknowledged ("License Fee"). The License Fee covers the full license fee for the License Areas. In addition to said License Fee, the User shall pay, in advance, a damage deposit in the amount of Two Hundred Fifty and 00/100ths Dollars (\$250.00), receipt of which is hereby acknowledged ("Damage Deposit").

2. Cancellation and Refund Schedule. The User shall have the right to cancel the Event at any time. If such cancellation is made within ninety (90) days prior to the Event, the User shall receive a full refund of the License Fee and the Damage Deposit. Refunds of said License Fee and Damage Deposit for cancellations made within lesser periods of time shall be made in accordance with the following:

<u>Days Prior to Event</u>	<u>Fractional Refund</u>
60—89 days	½
30—59 days	¼

If cancellation is made at any time within a period of less than thirty (30) days prior to the Event, the full amount of the License Fee and Damage Deposit shall be forfeited by the User and retained by the Visitors Center as its liquidated damages. If said License Fee, Damage Deposit, insurance certificate and other security deposits as required herein are not fully paid and delivered to Caterer on or before thirty (30) days before the License Date, this Agreement shall terminate and all funds paid shall be forfeited in full. The Caterer or Visitors Center may cancel the Event and this Agreement if this Agreement is breached by the User, or if the Pagoda Visitors Center building is damaged or otherwise rendered, in the Visitors Center's sole judgment, unsuitable for said Event.

3. License Space. The Visitors Center and Caterer hereby grant to the User solely for the purpose of _____, use of the public areas of the first floor and roof terrace of the Pagoda Visitors Center building located at 401 Southeast Riverside Drive, Evansville, Indiana on the License Date ("License Space"). Except as provided below, the User has no right to use of the Pagoda Visitors Center building or its grounds other than the first floor and roof terrace. Tables, chairs, dishes, tableware, linens, service equipment, sound equipment and any other item of personal property (collectively the "Equipment") required by User in connection with its use of the Pagoda Visitors Center are the sole responsibility of the User at its sole cost. The Equipment may not be delivered or placed anywhere within Pagoda Visitors Center building prior to 5:00 p.m. on the date of the Event, and shall be removed prior to 1:30 a.m. the following day. The Pagoda Visitors Center building, License Space and surrounding grounds (collectively the "Pagoda Property") shall, upon completion of the Event, be cleaned and restored by User to the same condition as immediately prior to the commencement of the Event. All trash and debris shall be removed by User from the Pagoda Property.

4. Catering and Alcoholic Beverage Services. All food and beverages served upon the License Space shall be furnished or dispensed by such caterers as may be approved in writing by the Caterer prior to the Event. All Caterers must furnish proof of comprehensive general liability insurance with limits of not less than \$300,000 per person and \$2,000,000 per occurrence and \$500,000 per occurrence for damage to property from an insurer, naming not only the Caterer but also the Vanderburgh Convention and Visitors Commission, Visitors Center, City of Evansville, Evansville Parks Board, Evansville Museum of Arts and Sciences, Vanderburgh County, Indiana and their respective officers, directors and employees (Interested Entities") as additional insureds. Said Caterer and the User are subject to the following additional terms and conditions:

- (a) User may not subcontract or assign any rights or uses of the Pagoda Property herein granted to any other person, business or organization without the express written consent of the Visitors Center.

- (b) Caterer and User shall not alter or decorate the facilities and premises of the Pagoda Property without the written consent of Visitors Center.
- (c) **Only licensed and insured Caterers and their licensed employees may dispense alcoholic beverages.** Visitors Center does not assume any responsibility or liability connected with the consumption of alcohol by User or User's guests. Caterers and purveyors' liquor liability insurance must be in amounts identical with the comprehensive liability insurance described above and also name the Interested Entities as additional insureds.
- (d) Certificates of Insurance and a copy of the current Indiana Alcohol Beverage Commission license from the Caterer must be on file with Visitors Center prior to any function.
- (e) In order to assure health and safety, and compliance with alcoholic beverage laws, no donated food or beverage nor any food or beverage from a User or its guests may be brought onto the License Space.
- (f) User or its guests are not permitted to bring any alcoholic beverages outside of the License Space.
- (g) All permits, taxes or other costs imposed or incurred in connection with the Event, including applicable permits and licenses, shall be borne exclusively by the Caterer and User, and the Caterer and User shall indemnify and hold the Caterer and Visitors Center harmless from any liability arising therefrom.

5. User's Insurance Coverage and Indemnity. **The User shall defend, indemnify and hold harmless the Interested Entities from and against any and all claims and demands against any and all loss, damage, expense, liabilities and causes of action, and all costs of litigation (including attorney's fees) in any way arising out of the use and occupancy by User of the Pagoda Property or resulting from injury or death of persons or damage to property, including, without limitation, the person and property of the User, its agents, employees and invitees, whether occurring on the Pagoda Property or on the adjoining sidewalks, streets, alleys or public ways.** The User shall keep in effect, at its sole expense, comprehensive general liability insurance with an Insurer approved by the Caterer, with limits of not less than \$300,000 per person and \$1,000,000 per occurrence and \$500,000 per occurrence for damage to property from an insurer acceptable to the Visitors Center and Caterer, naming the Interested Entities as additional insured. Proof of such insurance shall be furnished to the Visitors Center and Caterer prior to the Event, as provided herein.

6. Limitation of Liability. **The User agrees that Caterer and Visitors Center shall not be liable, whether in contract, warranty, tort or otherwise to User, through or under the User, or by a claim directly from the User, for any damage or expense, whether consequential, incidental, direct or indirect, punitive, special or general arising from a loss or damages resulting from an act or omission by the Caterer or Visitors Center, it being understood that the Caterer's and Visitors Center sole and only liability, and User's sole remedy, shall be a refund of any amounts paid to the Caterer and Visitors Center pursuant to this Agreement.**

7. Damage to Pagoda Property. It is understood User shall be **responsible** for any damage it causes to the Pagoda Property, including damages caused by the User's invitees and contractors. The User shall reimburse the Visitors Center for its out-of-pocket costs, incurred to repair such damages, including the right to recover reasonable attorneys fees, and the costs to collect the same.

8. Security for the Event. The Caterer shall provide and pay for the Event at least **one, or more security personnel**, as Caterer and Visitors Center may in their sole discretion deem necessary or appropriate, and **User shall bear the expense for payment to Caterer** of any fees incurred by Caterer to compensate said security personnel. In the event the User's payment for security is in the form of a check, the check shall be made payable to said security personnel and not the Caterer.

9. Additional Conditions and Rules. The User's license of the Pagoda Property is subject to the following additional conditions and rules:

- (a) Smoking of cigarettes, cigars and pipes is prohibited anywhere upon or within the Pagoda Property, including the roof terrace as such can cause extensive damage to the roof, and User shall be responsible for enforcement of the same.
- (b) Maximum capacity of the Lease Areas is 165 people standing and 100 people sitting. User's invitees shall in no event exceed that number.
- (c) Neither pets nor any other animal is permitted anywhere within or upon the Pagoda Property.
- (d) Vehicular parking for invitees of the User is restricted to those parking spaces clearly identified on the Pagoda Visitor Center building's parking lot. Additional parking areas are available to the east of the Museum, provided the User has the Museum's advance written consent to use such parking areas. Any vehicles associated with the Event left parked after the Event or the License Date in either the Museum's parking lot or the Levee Authority service lot will be towed at the User's expense.

10. Miscellaneous. Neither this Agreement nor any of the rights of the User hereunder shall be assignable, whether in whole or in part. The one or more persons executing this Agreement for and on behalf of any partnership, corporation or other limited liability entity respectively represented certify that he or she is a duly elected officer, manager or otherwise authorized person fully empowered by such entity to make, execute and deliver this Agreement, and that all necessary action for the making of this Agreement, for and on behalf of such entity has been taken and done. **This Agreement shall inure to the benefit of, and shall be binding upon, the respective legal representatives, successors, and assigns of each of the parties. In the event that any of the provisions of this Agreement shall be**

held by a Court or other tribunal of competent jurisdiction to be unenforceable, such provision shall be enforced to the fullest extent permissible and the remaining portion of this Agreement shall remain in full force and effect. This Agreement represents a compromise between the parties and is a product of arms-length negotiations. The parties have read this Agreement completely and have had the opportunity to seek the advice and assistance of competent legal counsel. In the event that ambiguity exists or is deemed to exist in any provisions of this Agreement, said ambiguity is not to be construed by reference to any doctrine calling for such ambiguity to be construed against the drafter of this Agreement. This Agreement shall be governed by and construed in accordance with the laws of the State of Indiana, not including the choice of law rules thereof, and each party hereto by execution of this Agreement, consents to the exercise of jurisdiction over any matter arising in connection with this Agreement in the Superior Court of Vanderburgh County, State of Indiana. This Agreement may be executed simultaneously in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. All headings set forth herein are included for the convenience of reference only and shall not affect the interpretation hereof, nor shall any weight or value be given to the relative position of any part or provision hereof in relation to any other provision in determining such construction. As used in this Agreement, the plural shall be substituted for the singular, and the singular for the plural, where appropriate; and words and pronouns of any gender shall include any other gender. This instrument is the final agreement, contains the entire, complete and exclusive agreement between the parties concerning the license of the Pagoda Property, and supersedes all prior oral or written understandings, agreements or contracts, formal or informal, between the parties. **THIS PROVISION, AND EACH AND EVERY OTHER PROVISION OF THIS AGREEMENT MAY NOT UNDER ANY CIRCUMSTANCES BE MODIFIED, CHANGED, AMENDED OR PROVISIONS HEREUNDER WAIVED VERBALLY, BUT MAY ONLY BE MODIFIED, CHANGED, AMENDED OR WAIVED BY AN AGREEMENT IN WRITING EXECUTED BY ALL PARTIES HERETO.**

IN WITNESS WHEREOF, the parties have duly executed this instrument as of the day and year first above written.

Name of User	Name of Caterer	<u>Evansville Convention and Visitor's Bureau</u>
By: _____	By: _____	By: _____
Printed Name: _____	Printed Name: _____	Printed Name: _____
Title: _____	Title: _____	Title: _____
"User"	"Caterer"	"Visitors Center"