

PREMISES INTERIM USE AGREEMENT

1. Ms. Finochiarro will provide the City a list of all current reservations/bookings for events at 1451 E. Pythian (hereinafter "premises"). Said list shall be delivered to the City Attorney's office either by hand delivery or facsimile transmission no later than 3:00 pm Friday, November 2, 2007. The list shall include the dates, times, kind or type of each event reserved, and the name and telephone number of each party making the reservation.
2. No more public tours, public access, or new bookings/reservations other than what is previously reserved/booked in the documentation submitted in response to Section 1 above, and such to be conducted within the guidelines set out herein, until the phase one final development plan has been approved by the Administrative Review Committee (ARC), building permits are issued for designated improvements and construction of such improvements has been completed, and a certificate of occupancy and a business license are issued.
3. Except as otherwise stated within this Section 3, Ms. Finochiarro shall cease all nonresidential business activities at 1451 E. Pythian until the items set out in this Section 3.D. are complied with. Following this compliance, which may be subject to verification by subsequent inspection by the City, the City will allow Ms. Finochiarro to proceed with the previously reserved/booked events as referenced in Section 1 above ("interim use of the premises") at 1451 E. Pythian through January 1, 2008. Further interim use of the premises beyond that date and until April 30, 2008, will be contingent upon Ms. Finochiarro's compliance with the terms of this agreement. Also, any interim use of the premises will be contingent upon compliance with the following:
 - A. Events must be limited to public areas on first floor and the 60 person posted occupancy.
 - B. During the interim use of the premises, no smoking shall be allowed in the public areas of the premises, and no alcoholic beverages may be served or consumed within the public areas of the premises.
 - C. Ms. Finochiarro will arrange to have Springfield Fire Marshals present at all such events to verify occupancy or use of the premises, with the cost of such coverage to be paid by Ms. Finochiarro. The cost of the Fire Marshal is \$56.72 per hour. All such costs must be paid by Ms. Finochiarro by making payment in full within 10 days of her receipt of a statement or invoice for such costs incurred from the City. If an invoice or payment is mailed, delivery shall be deemed to have occurred on the third day after mailing by first class United States mail. If personally delivered, delivery shall be deemed to have occurred upon the date of such delivery. Failure to make any such payment in full when due shall be considered, at the City's option, to constitute a material breach of this agreement, and cause for the institution of action enjoining further interim use of the premises.

- D. Pursuant to the contemplation of this agreement for the interim use of the premises, Ms. Finochiarro was to allow an inspection of the premises to determine items deemed necessary for public health and safety. Said inspection was to determine what items are immediately required to be addressed as part of any continued limited use, and until final plans and development has occurred. On October 30, 2007, Ms. Finochiarro's agent allowed a first floor only inspection of the premises. Said inspection resulted in the attached list of items ("Exhibit A" herein), each of which constitute immediate actual or potential problems involving the life, safety and health of members of the public accessing the premises. As such, all of the items stated within the Exhibit A, unless otherwise directed therein, must be completed immediately for the continued interim use of the premises. Ms. Finochiarro must address each requirement, and have them completed no later than 5:00 pm Monday, November 5, 2007, or the interim use of the premises will be immediately ceased until all items are completed and inspected. Upon completion of the items identified in Exhibit A, Ms. Finochiarro will be required to notify Ms. Cecelia Copeland of the City Building Development Services Department and arrange an inspection to confirm compliance. Ms. Copeland may be reached at 864-1043.
 - E. Ms. Finochiarro may request a building permit and proceed in advance of the phase one final development plan approval to install the water line and fire hydrant called for in the phase one final development plan, and for the performance of any item contained upon Exhibit A which requires the issuance of a building permit. The City agrees, in response to a proper application for each such permit, to issue a separate permit or permits for the construction of these items.
 - F. The existing fire hydrant on the premises will be upgraded as deemed necessary by the City for current usage, and the hydrant and water flow rate and pressure shall be upgraded to comply with current applicable codes, and with the terms and conditions of Planned Development No. 277.
4. Ms. Finochiarro must obtain administrative approval of phase 1 final development plan by December 31, 2007. Ms. Finochiarro and her architect have the obligation and shall take the lead in providing information as reasonably required by City for the completion of the ARC approval process. City staff will reasonably assist Ms. Finochiarro and her architect and/or attorney in defining what information and items remain uncompleted with respect to the ARC approval process. It is understood that these items include, but may not be limited to, clarifying ownership of or easement granting rights to the strip of property shown on the eastern boundary of the premises, and clarifying any outstanding issues regarding the flowage and direction of stormwater off the premises.

5. Following approval of the final development plan, Ms. Finochiarro will diligently proceed to take all necessary steps to obtain the necessary building construction permits, complete all improvements called for, and obtain certificates of occupancy and business licenses necessary to legally continue her interim use of the premises as described in Sections 1 through 3 above.
 - A. Ms. Finochiarro shall not be allowed to grant any public access or additional event reservations to the 1451 E. Pythian beyond the prior November 2, 2007 booked/reserved events until all conditions outlined in this agreement are met.
 - B. Ms. Finochiarro must have her certificate of occupancy and business license for use of the premises in place by April 30, 2008, or further interim use of the premises will terminate until such items are granted, which will not occur until all items prerequisite to the granting of such certificate and license are complied with.
6. Upon the completion of construction of improvements, issuance of the certificate of occupancy, and issuance of the business license, the interim use of the premises will cease, and Ms. Finochiarro may use the premises to the full extent consistent with the approved phase one final development plan, the certificate of occupancy and business license, and applicable laws, ordinances and codes.
7. Ms. Finochiarro consents to the inspection by the City of the entire premises at any time during her interim use of the premises without prior notice. Ms. Finochiarro further agrees to make any necessary repairs or alterations to the premises deemed necessary by the City for the purposes of the preservation of the life, safety or health of the members of the public to other areas of the premises not previously inspected during the October 30, 2007 inspection referenced in the preceding Section 3.D. above, or found in any portion of the premises to constitute such a public life, safety or health problem upon any subsequent inspection or reinspection of the premises.
8. Ms. Finochiarro agrees to consent to judgment in a form and content satisfactory to the City Attorney or his assistant that in the event of a single violation or noncompliance with the terms of this agreement, with any provisions of the building code, zoning code, fire code or health code other than the limited interim activities specifically allowed by the terms of this agreement, or with the conditions of the Planned Development No. 277 or the phase one final development plans, that Ms. Finochiarro will consent and not object to the entry of an injunctive order against her prohibiting any further activities or uses to take place at 1451 E. Pythian other than Ms. Finochiarro's own residential use, until subsequent approvals of the necessary plans, permits, certificates and licenses are first obtained. Ms. Finochiarro will execute any and all needed documents to carry out the terms of this Section 8 within 5 days following the date of their delivery to her attorney.

9. Any sale, lease, assignment, encumbrance or transfer of any ownership or possessory interest in any part or all of the 1451 E. Pythian premises without the prior written consent of the City shall constitute a constructive termination of this agreement, and shall constitute grounds for action enjoining any further use of the 1451 E. Pythian premises as described in Section 7 above. This agreement is personal to Ms. Finochiarro and not transferable, assignable or delegable by her.

Approved as to form:

1451 E. Pythian

Randy Reichard, Attorney

Tamara Finochiarro, Owner