City of North Tonawanda

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March 14, 2012

Hon. Mayor and Common Council
City Hall, 216 Payne Avenue
North Tonawanda, New York 14120

RE: Agreement between City of North Tonawanda and Special Vending, Inc. for Use of Gratwick Park as a Concert Venue – 2012

Dear Honorable Body:

Attached is a proposed agreement between the City of North Tonawanda and Special Vending, Inc. for the use of Gratwick Park as a concert venue for one concert to be held on Sunday, July 15, 2012.

Should your Honorable Body concur, please pass a resolution to permit the Special Vending, Inc. to use Gratwick Park as a concert venue for one concert on July 15, 2012, subject to any further review by the City Attorney.

If you have any questions, please do not hesitate to contact me.

Very truly yours,

Shawn P. Nickerson/lk

Shawn P. Nickerson
City Attorney

SPN/lk
Att.

LEASE

Made and entered into this th day of March 2012, by and between the **CITY OF NORTH TONAWANDA,** a municipal corporation, 216 Payne Avenue, North Tonawanda, NY 14120 (hereinafter "LESSOR") and **SPECIAL VENDING, INC.**, a corporation, 4521 East Lake Road, Wilson, NY 14172 (hereinafter "LESSEE").

WHEREAS, the City owns, operates and maintains property commonly known as "Gratwick Park". Said property is located on the easterly side of the Niagara River in the City of North Tonawanda, lying east of River Road, and

WHEREAS, the City desires to lease a portion of the aforementioned land (described more fully in the highlighted portion of attached Exhibit "A) for the purpose of making the property available to the general public as a concert venue, and

WHEREAS, leasing a portion of "Gratwick Park" for this concert venue fulfills the City's obligation to operate its parks and facilities for the use and benefit of the general public, and

WHEREAS, the City has negotiated this agreement, in "good faith", to allow lessee the right to utilize a portion of "Gratwick Park" for a series of concerts, and the city has determined that through negotiations, the parties have reached a satisfactory and advantageous agreement,

NOW, THEREFORE, in consideration of the covenants and conditions set forth, lessor hereby agrees to lease said premises and lessee hereby accepts said premises herein set forth and upon the terms, conditions and provisions set forth and stated in this agreement.

WITNESSETH:

WHEREAS, lessor has declared its intention to lease a parcel of City-owned property, known as a portion of "Gratwick Park" and being located on the Niagara River front lying on the easterly side of the Niagara River in the City of North Tonawanda, lying east of River Road in said City of North Tonawanda (See attached Exhibit "A") for the purpose of utilizing said parcel as a concert venue; and

WHEREAS, the lease shall only be for scheduled concert dates by lessee and lessee hereby agrees to schedule at least one (1) concert date this year. Any concerts scheduled in addition to the minimum of one (1) this year must be approved by the Common Council; and

WHEREAS, the lease for the operation of a concert venue was granted to the lessee by resolution of the Common Council duly passed at a regular meeting. (See attached Exhibit "B")

NOW, THEREFORE, for good and valuable consideration as hereinafter set forth, the parties agree and contract as follows:

1. The lessor hereby leases to the lessee a portion of the parcel of land known as "Gratwick Park," for at least one (1) concert, which is scheduled for Sunday, July 15, 2012 from 4:00 PM – 8:00 PM. It is lessee's intention to schedule 2-3 opening bands that date, in addition to the headline band.

The lessee shall have an option to renew this lease for an additional three (3) year term or period subsequent to July 15, 2012, by directing written notice to the lessor no later than November 1, 2012. Exercise and acceptance of lessee's option shall only be upon express consent of lessor as evidenced by Common Council resolution. Consideration and all terms of such renewal shall be subject to renegotiation of this agreement as indicated.

2. As partial consideration for the rental of the premises, the lessee agrees to keep the leasehold premises in at least its present condition.

3. Consideration for the lease of said premises shall be as follows:

(a) Lessee agrees to pay lessor $350.00 rent per the scheduled concert for the term of this agreement.

(b) In the event lessee exercises its option to renew pursuant to paragraph 1, (with consent of lessor as evidenced by Common Council resolution), lessor shall have the right to renegotiate all terms of this agreement, including but not limited to consideration for the same.

Lessor shall not be required to provide lessee with the electricity other than that which is currently available at "Gratwick Park". In the event lessee requires additional electricity, lessee will be permitted to supply its own generators. Lessor shall be responsible for the cost of the stage which is necessary for this event.

In the event of event cancellation or inclement weather on the scheduled show date, lessee may exercise an option to rescind its park use upon due notice to lessor. Such cancellation notice must be provided to lessor no later than twenty-four hours prior to the start time of the scheduled show.

4. **Garbage:** Lessee shall clean up all garbage, litter and refuse left in the park after the scheduled show and deposit it in designated location(s) in "Gratwick Park". Lessor shall provide a minimum of thirty (30) garbage totes for utilization by Lessee.

5. **Security/ Traffic Control:** In addition to the aforementioned rent set forth in paragraph 3 above, lessee shall provide at least fifteen (15) security guards/ parking attendants for each scheduled show. Said security guards/ parking attendants shall be provided at no cost

to lessor. At least one (1) of the aforementioned security guards/ parking attendants shall be a Niagara County Sheriff.

Lessor shall provide police presence to control traffic along River Road, adjacent to the concert venue. The amount and location of the police presence shall be at the sole discretion of lessor. In addition to the aforementioned police presence, lessor shall provide at least one (1) EMT for this event.

Lessee has the right to restrict any items entering the leased portion of "Gratwick Park" from one (1) hour before the start of the concert until the end of the show. Such items include, but are not limited to containers, backpacks, food and beverages.

Lessor shall provide lessee with wooden barricades and cones necessary to block off the street prior to and during each show. Lessor shall remove all of its wooden barricades and cones after the show.

6. **Restrooms:** In addition to the aforementioned rent set forth in paragraph 3 above, lessee shall provide at least twenty-five (25) portable restrooms for the scheduled show. Said portable restrooms shall be provided at no cost to lessor. As partial consideration for use of Gratwick Park, Lessor shall be allowed to use six (6) of the aforementioned restrooms during the summer at all times when the scheduled concert is not in progress. Lessor shall be responsible for cleaning said portable restrooms provided by lessee.

7. **Vendors:** Lessee shall be granted exclusive license to sell alcohol and food products on the leased premises during the scheduled show. Alcohol sales shall be made solely by lessee's **chosen** vendor. Any food or alcohol vendors utilized by lessee shall possess all necessary and valid permits and licenses for the sale of alcohol and food at the scheduled show,

including but not limited to City of North Tonawanda vending permits. Vendors shall be exempt from all park permit fees during shows which are the subject of this lease.

8. **Insurance:** No later than one week prior to the scheduled show, the lessee shall furnish the lessor a certificate of liability insurance in the amount of $1,000,000.00 (each occurrence) /$2,000,000.00 (per event aggregate), under which certificate the lessor shall be designated as an insured, together with the lessee.

9. Subsequent to the scheduled show, the lessee shall, without notice, quit and deliver said premises to the lessor, or its assigns, peacefully, quietly and in as good order and condition, reasonable use and wear thereof excepted, as the same is now or may hereafter be placed by the lessor or lessee.

10. The lessee hereby covenants and agrees to indemnify and save harmless the lessor from all fines, suits, claims, demands and actions resulting from its intentional, reckless or negligent acts of any kind and nature due to its operations pursuant to this lease. Lessee further agrees to assume all the risk in the operation of its business and shall be solely responsible and answerable in damages for any and all accidents or injuries to persons or property resulting from its intentional, reckless or negligent acts in the operation of its business under this lease. It is understood and agreed that the specified amounts of insurance set forth in paragraph 8 herein in no way limit the liability of the lessee. The lessee shall carry insurance in such amounts as to indemnify and save harmless the lessor from all claims, suits, demands and actions resulting from lessee's intentional, reckless and negligent acts in the operation of its business under the terms of this lease.

11. The lessee shall allow the lessor's authorized representative access to the premises at all reasonable hours for the purpose of examining and inspecting said premises for purposes

necessary, incidental to, or connected with the performance of its obligations hereunder or in the exercise of its governmental functions. Lessor's representative shall be available at "Gratwick Park" at least one (1) hour prior to and during the show.

12. The lessee shall not assign, transfer, sublease, pledge, surrender or otherwise encumber or dispose of this lease or any estate created by this lease, or any interest in any portion of it, or permit any other person or persons, company or corporation to occupy the premises without the written consent of the lessor. Written consent by lessor to assign, transfer or sublease shall not be unreasonably withheld, but shall be subject to scrutiny and approval of lessor. Any consent by lessor to assign, transfer or sublease shall be further subject to renegotiation of this lease with the proposed assignee, transferee or sublessee.

13. Any waiver or any breach of covenants herein contained to be kept and performed by the lessee shall not be deemed or considered as a continuing waiver and shall not operate to bar or prevent the lessor from declaring a forfeiture for any succeeding breach of either the same condition or covenant or otherwise.

14. The lessee will make no unlawful or offensive use of the premises. Lessor shall maintain "Gratwick Park" before and after the show. Such maintenance by lessor shall include, but not be limited to disposal of garbage and providing garbage totes.

15. **Term and Option to Renew:** This agreement shall be effective upon signature of both parties and shall expire on July 16, 2012, unless sooner terminated as otherwise provided. The lessee shall be granted an option to renew for a three-year term under terms and conditions, including any increase in the lease fee, to be negotiated between the lessee and the lessor and upon mutual agreement of both parties. In order to exercise this option, the lessee must give the lessor written notice prior to November 1, 2012. Exercise and acceptance of lessee's option shall

only be upon express consent of lessor as evidenced by Common Council resolution. All terms of such renewal shall be subject to renegotiation between the parties. At the expiration or earlier termination of this agreement, the lessee shall promptly surrender the possession of the premises to the lessor.

16. The lessor shall have the right to and shall adopt and enforce reasonable rules and regulations with respect to the use of the park and related facilities which the lessee agrees to observe and obey. The lessee shall observe and obey all the laws, ordinances, regulations and rules of the federal, state, county and lessor which may be applicable to its scheduled show at the park. Likewise, it shall obtain and maintain all permits and licenses necessary for its operation of the concert series and unless otherwise stated in this agreement, lessee agrees to pay all taxes, fees or licenses imposed by law as relates to its operation of the park as a concert venue and as relates to its vending of alcohol and/or food items.

17. It is understood and agreed that nothing contained herein is intended or should be construed as any way creating or establishing the relationship of co-partners between the parties hereto, or as constituting the lessee as the agent, representative or employee of the lessor for any purpose or in any manner whatsoever.

18. Notwithstanding anything to the contrary, the City or the lessee reserves the right to cancel this lease.

Should the City exercise its right to cancel this lease, it shall be communicate this intention in writing. Said written intention shall be communicated to lessee no later than May 1, 2012. In exercising its right to cancel, the lessor must take and use the premises for public purpose within the reasonable judgment of the Common Council of the City of North Tonawanda.

Should the lessee exercise its right to cancel this lease, it shall be communicate this intention in writing. Said written intention shall be communicated to the City, no later than May 1, 2012. Once said written notice to terminate is given to the City by lessee, it shall immediately vacate the leased premises. Should lessee fail to give written notice to terminate as provided herein, it must continue to pay rent set forth in Paragraph 3 above, until lessor can utilize any unused dates for other events. Lessor shall make a good faith effort to reserve lessee's unused dates for other events.

19. This lease shall supersede and rescind as null and void any present lease in existence at the present time.

WHEREFORE, the parties hereto have set their hands and seals the day and year first above written.

CITY OF NORTH TONAWANDA	SPECIAL VENDING, INC.
By	By
_____	_____
Robert G. Ortt , Mayor	Kathy Paradowski, President

STATE OF NEW YORK)
COUNTY OF NIAGARA) SS:

On this ___ day of March, 2012 before me personally came ROBERT G. ORTT, to be personally known, who, being by me duly sworn, did depose and say that he is the Mayor of the City of North Tonawanda, NY, the municipal corporation described in and which executed this agreement; that he knows the seal of said corporation; that the seal affixed hereto is such corporate seal; that it was so affixed by order of the Common Council of the City of North Tonawanda, NY and that he signed his name thereto by like order.

_____

Notary Public

STATE OF NEW YORK)
COUNTY OF NIAGARA) SS:

On this _____ day of March, 2012 before me personally came KATHY. PARADOWSKI, president of SPECIAL VENDING, INC. to be personally known, who, being by me duly sworn, did depose and say that his corporate office is located at 4521 East Lake Road, Wilson, NY; that she is the president of the corporation described in and which executed this agreement; that she knows the seal of said corporation; that the seal affixed hereto is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that he signed his name thereto by like order.

_____

Notary Public

NIAGARA RIVER ROCKS