



**TOWN OF SUNDERLAND
NON-EXCLUSIVE USE OF TOWN PARK**

The Trustees of the Chester Warner Park, so-called, Sunderland, Franklin County, Massachusetts, hereinafter referred to as "the TRUSTEES", do hereby grant non-exclusive use to the Town of Sunderland Fire Department, hereinafter referred to as the "FIRE DEPARTMENT", of the Chester Warner Park, so-called.

WHEREAS, the Town of Sunderland FIRE DEPARTMENT is willing to renovate and take over the maintenance of the Chester Warner Park, so-called, *through donations to the FIRE DEPARTMENT from the Sunderland Volunteer Firemen's Association, Inc., hereinafter referred to as the "SVFA"*; and,

WHEREAS, the TRUSTEES of the Chester Warner Park, so-called, are desirous of having the FIRE DEPARTMENT renovate and take over the maintenance of the park; and,

WHEREAS, the TRUSTEES are not giving up jurisdiction or control of the park, but rather allowing the FIRE DEPARTMENT to assist in the renovation and maintenance of the park, and in exchange for said assistance, allowing the FIRE DEPARTMENT non-exclusive use of the Park and the right to schedule events for the Park,

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

1. PREMISES. The FIRE DEPARTMENT hereby gains use of the following described premises:

See Exhibit 'A' attached hereto and incorporated herein by reference.

2. TERM. The term of this Agreement shall be for Twenty (20) years, commencing on April 17, 1998 and ending on April 16, 2018.

3. RENT. The FIRE DEPARTMENT shall pay to the TRUSTEES rent as follows:

The FIRE DEPARTMENT agrees to renovate and maintain the Park in exchange for use of the Park and the pavilion as a vehicle for *SVFA* fundraising. The FIRE DEPARTMENT will become custodians of the Park and all ~~large-functions (20 people or more)~~ will be scheduled through the FIRE DEPARTMENT.

4. USE OF LEASED PREMISES. The FIRE DEPARTMENT shall use the premises for Fire Department functions *and SVFA fundraising* functions in compliance with all local, state and federal laws only. The FIRE DEPARTMENT will continue to allow the use of

the Park by citizens of the Town of Sunderland by scheduling through the FIRE DEPARTMENT.

5. COMPLIANCE WITH LAWS. The FIRE DEPARTMENT acknowledges that no trade or occupation shall be conducted in the premises or use made thereof which will be unlawful, improper, noisy or offensive, or contrary to any law or any municipal by-law or ordinance in force in the Town of Sunderland, Massachusetts.

6. MAINTENANCE OF PREMISES. The FIRE DEPARTMENT covenants to keep the premises in such repair, order and condition as the same are at the commencement of this Agreement, or as the same may be put in by reason of alterations or improvements made during the term thereof, reasonable and ordinary use and wear thereof and fire or unavoidable casualty excepted, and the FIRE DEPARTMENT hereby acknowledges that the premises are or will be put in good order.

7. ALTERATIONS/ADDITIONS. The FIRE DEPARTMENT shall have the right to make structural alterations or additions to the premises with the written consent of the TRUSTEES, which consent shall not be unreasonably withheld or delayed. All such allowed alterations shall be at FIRE DEPARTMENT'S expense and shall be in quality at least equal to the present construction. The FIRE DEPARTMENT shall not permit any mechanics' liens or similar liens to remain upon the premises for labor and material furnished to FIRE DEPARTMENT or claimed to have been furnished to FIRE DEPARTMENT in connection with work of any character performed or claimed to have been performed at the direction of FIRE DEPARTMENT, and shall cause any such lien to be released of record forthwith without cost to TRUSTEES. Any alterations or improvements made by the FIRE DEPARTMENT prior to or during the term of this Agreement shall become the property of the TRUSTEES at the termination of occupancy as provided herein.

8. ASSIGNMENT/SUBLEASING. The FIRE DEPARTMENT shall not assign or sublet the whole or any part of the premises without TRUSTEES' prior written consent.

9. TRUSTEES' ACCESS. The TRUSTEES and any and all employees of TRUSTEES and members of the public or agents of the TRUSTEES may enter the premises at all times and occasions.

10. INDEMNIFICATION AND LIABILITY. The FIRE DEPARTMENT shall indemnify and hold harmless the TRUSTEES from and against any and all claims arising out of the FIRE DEPARTMENT'S use and OCCUPATION of the premises and exercise of FIRE DEPARTMENT'S rights hereunder.

11. FIRE AND CASUALTY. Should a substantial portion of the premises be substantially damaged by fire or other casualty, the TRUSTEES may elect to terminate this Agreement. When such fire or casualty renders the premises substantially unsuitable for their intended use, and if such fire or casualty was not a result of the intentional, willful, or grossly

negligent acts of the FIRE DEPARTMENT or of those employed by or acting for the FIRE DEPARTMENT, the FIRE DEPARTMENT may elect to terminate the Agreement.

12. CONDITION OF PREMISES. The TRUSTEES are allowing use of the premises "AS IS", in their present condition and without any representations on the part of the TRUSTEES or the TRUSTEES' agents. It is understood and agreed that the TRUSTEES are under no duty to make repairs or alterations at the time of this Agreement or at any time thereafter.

13. SURRENDER. The FIRE DEPARTMENT shall, at the expiration or other termination of this Agreement, remove all of FIRE DEPARTMENT'S goods and effects from the premises (including, without hereby limiting the generality of the foregoing, all signs and lettering affixed or painted by the FIRE DEPARTMENT, either inside or outside the premises). The FIRE DEPARTMENT shall deliver to the TRUSTEES the premises and all keys, locks thereto, and other fixtures connected therewith, and all alterations and additions made to or upon the premises, in the same condition as they were at the commencement of the FIRE DEPARTMENT'S use of the property or as improved during the term hereof, reasonable wear and tear and damage by fire or other casualty only expected.

14. MISCELLANEOUS PROVISIONS.

14.1 Applicable Law. This Agreement shall be constructed in accordance with the laws of the Commonwealth of Massachusetts.

14.2 Modification, Waiver or Change. No modifications, waiver or change shall be made in the terms and conditions of the Agreement, except as may be mutually agreed upon in writing by all the parties hereto.

14.3 Successors and Assigns. His Agreement together shall insure to the benefit of and be binding upon the successors and assigns of each of the parties hereto.

14.4 Entire Understanding. This Agreement together with the exhibits attached hereto, if any, represent the entire understanding of the parties, and neither party is relying upon any representation not contained herein.

14.5 Severability. In the event that any provision of this Agreement shall be deemed invalid, unreasonable or unenforceable by any court of competent jurisdiction, such provision shall be stricken from the Agreement or modified so as to render it reasonable, and the remaining provisions of this Agreement, or the modified provision as provided above, shall continue in full force and effect and be binding upon the parties so long as such remaining or modified provisions reflect the intent of the parties as of the date of this Agreement.

14.6 Marginal Headings: Pronouns. The marginal headings uses in this Agreement are for convenience only and shall not be deemed to be a binding

portion of this Agreement. The pronouns he, she or it, are also used, it shall be deemed changed so as to render the sentence in which it is contained effective in accordance with its terms.

14.7 Availability of Funds. The parties' obligations under this Agreement are subject to the continued availability of funds.

4.8 Conflict of Interest. Each party shall adhere to the provisions of Massachusetts General Laws, Chapter 268A, with respect to the Conduct of Public Employees. In addition, no member, officer, or employee of either party, or its designees, or agents, no member of the governing body of the locality in which the program is situated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the program during his/her tenure or for one (1) year thereafter (or such longer period as may be provided in Chapter 268A of the Massachusetts General Laws), shall have any interest in any contract or subcontract, or the proceeds thereof, for work to be preformed in connection with the program assisted under this contract. Each party shall incorporate, or cause to be incorporated, in all such contracts or subcontracts a provision prohibiting such interest, pursuant to the purposes of this subsection.

14.9 Non-Discrimination. The FIRE DEPARTMENT agrees that its personal representatives, successors in interest, assigns, agents and employees, will not discriminate against any person or class of persons, by reason of gender, age, sexual orientation, race, color, creed, religion, national origin and/or handicap, in providing any services or in the use of any of its facilities provided for the public. The FIRE DEPARTMENT further agrees to comply with the provisions of Massachusetts General Laws, Chapter 151B.

IN WITNESS WHEREOF, the TRUSTEES and FIRE DEPARTMENT have hereunto set their hands and seals this _____ day of _____, 200__.

In the presence of:

TRUSTEES

The FIRE DEPARTMENT