

LEASE AND USE AGREEMENT

This Lease and Use Agreement ("Agreement") is made and entered into this _____ day of _____, 2014, by and between the CITY OF CLEARWATER, FLORIDA, a municipal corporation of the State of Florida, whose address is Post Office Box 4748, Clearwater, FL 33758-4748, hereinafter referred to as "Lessor" and Fields, Inc., a corporation of the State of Florida, d/b/a BareFoot Beach House, whose address is 332 S. Gulfview Blvd., Clearwater, FL 33767, hereinafter referred to as "Lessee".

WITNESSETH:

That in consideration of the covenants herein contained, the granting of this Agreement, and the sums paid and to be paid hereunder, the Lessor hereby leases to the Lessee and the Lessee hereby leases from the Lessor, according to the terms, conditions and covenants herein contained, the following described premises located in the City of Clearwater, Pinellas County, Florida, to wit:

Food and beach accessory concession and restroom complex located on the West 140 feet of the East 215 feet of the South 1/2 of Lot 17, Lot 18 and Lot 19, Lloyd, White and Skinner Subdivision, in Section 7, Township 29 South, Range 15 East, as recorded in Plat Book 13, pages 12 and 13, of the Public Records of Pinellas County, Florida. (Exhibit "A" – "Leased Premises" or "Demised Premises" or "Food Concession Complex").

THE PARTIES HERETO HEREBY FURTHER COVENANT AND AGREE AS FOLLOWS:

1. Lease Term. The term of this Agreement is for a term of five (5) years, beginning on the 1st day of January, 2015 and ending on the 31st day of December, 2019. As referred to in this Agreement, an "Agreement Year" is that year that commences on the first day of January of each year and terminates on the thirty-first day of December of each year during the term of this Agreement. Reference to the City Manager throughout this Agreement refers to Lessor's City Manager or his designated agent.

The City Manager, in its sole discretion, may extend this Agreement for one (1) additional five (5) year period, on the same terms and conditions as are set forth herein without obtaining additional approval by the Clearwater City Council.

2. Use of Premises. The Food Concession Complex is leased to Lessee solely for the following uses and no other use can be made of the premises during the term without the written consent of the Lessor:

a. The Lessee shall have the exclusive right to sell the following merchandise at the Food Concession Complex defined below and as permitted by applicable City Ordinances and State Law:

- i. Hot dogs, hamburgers, and other like hot food such as French fries, as may be prepared using the grill and fryer;
- ii. Ice cream;
- iii. Cold sandwiches, both prepared and pre-packaged, cookies, popcorn, chips and other such packaged food items;
- iv. Any cold or hot non-alcoholic beverage;
- v. Sundry items and other personal beach recreational and clothing items. While not required, the Lessor encourages the Lessee to offer healthy food items such as fruits, salads and wraps; and
- vi. Gifts and seasonal merchandise.

b. The Lessee shall also have exclusive license to rent beach chairs, lounges, cabanas, umbrellas, floats, side tables, and any other beach equipment approved by the City Manager, subject to certain standards and restrictions as further described herein, from the Food Concession Complex and the beach area described herein. The equipment may be used on City-owned property South of the westward extension of First Street and North of the filled area used for parking, more particularly described as:

Lots 5 through 32 including the area of beach between the platted lots to the high tide mark, inclusive, of Lloyd, White and Skinner Subdivision (the platted lots are shown herein Exhibit "B" – the "Beach Equipment Rental Area"), less any of the above-described property used now or in the future by the Lessor for other purposes, and subject to certain concession rights held by the Hyatt Regency Clearwater Beach Resort & Spa ("Hyatt") to provide concessions within a facility open to the public which provides towels, lockers, minimal beach sundries, and other beach gear, but *not* including benches, beach chairs, lounges, umbrellas and side tables. Said Hyatt facility is 1200 square feet, MOL, located directly west of the Hyatt Regency Clearwater Beach Resort & Spa.

c. Lessee under this Lease shall act as concessionaire to provide beach chairs, lounges, umbrellas, side tables and the level of services associated with the Development Agreement, as amended, between the City of Clearwater and _____ dated _____ and recorded in the public records of Pinellas County in O.R. Book ____, Page ____ ("Hyatt Development Agreement"), said services being required to meet certain standards which shall be set forth in this Lease as Exhibit "C". Failure by the concessionaire to meet the service standards set forth in Exhibit "C", may result in the preemption by the Hyatt of providing such services (as more particularly provided for below) - only on that portion of beach directly west of the Hyatt property as defined by two parallel lines running from the northern-most boundary of the Hyatt property and the southern-most boundary of the Hyatt property west to the mean high water mark of the Gulf of Mexico as more particularly shown on Exhibit D, attached hereto and made part hereof ("Hyatt Concession Area").

Lessee shall own, maintain and store all rental equipment used on Beach Equipment Rental Area at Lessee's expense and shall be subject to the following covenants and conditions:

- i. If Lessee fails to comply with the standards in Exhibit C, the Hyatt may send written notice to the Lessor specifying non-compliance, Lessor shall immediately notify Lessee. Lessee shall have thirty (30) days from the receipt of written notice by the Lessor to Lessee to cure said non-compliance.
- ii. In the event that the non-compliance is not cured within thirty (30) days of receipt of written notice, the Lessee agrees that the Hyatt may thereafter provide beach rental services including the rental of beach chairs, lounges, umbrellas, side tables and the level of services associated therewith, and shall retain all income derived from the limited area described in Exhibit "D" as the Hyatt Concession Area. This partial right of termination is in addition to the rights of termination otherwise set forth in this Agreement, but shall not constitute an Event of Default as defined below.

d. Solicitation; Amusement/Sound Devices. The Lessee is specifically prohibited from hawking or other verbal solicitation of any type either at the Food Concession Complex or the Beach Equipment Rental Area. No coin-operated amusement devices or machines or any jukeboxes will be allowed. No inside or outside loud speakers will be permitted.

e. Restroom Maintenance. The Lessee is responsible for the cleanliness and daily maintenance of the public restrooms, at Lessee's expense, including the provision of all toiletries/supplies for public restrooms at 332 S. Gulfview Blvd and 410 S. Gulfview Blvd. Lessee shall provide bathroom attendants at the Food Concession Complex bathrooms during peak times of the year and provide for a daily maintenance log on when cleanliness and supplies were checked. The use of equipment or vehicles necessary to maintain said restrooms, will be permitted in accordance with the City's policies, as may be amended from time to time. The conditions under which the vehicles are operated must be authorized in writing by the City Manager.

f. Business Expenses. The Lessee is responsible to provide all equipment and supplies needed to operate the Food Concession Complex at Lessee's expense.

g. Operations; Hours. The hours of operation for the Food Concession Complex, Beach Equipment Rental Area and restrooms at the Leased Premises shall be no earlier than 6:00 a.m., with a minimum requirement that the Food Concession Complex shall be open at least seventy (70) hours per week. The beach rental equipment shall be removed from the Beach Rental Area and stored out of public view no later than one hour after sunset. The use of equipment or vehicles on the beach will be permitted in accordance with the City's policies, as may be amended from time to

time by the City Manager, for distribution and pickup of beach equipment and restroom maintenance only. No food trucks shall be permitted on the Beach Equipment Rental Area at any time. The times for distribution and pickup and the conditions under which the vehicles are operated must be authorized in writing by the City Manager.

3. Product Pricing. The Lessor reserves the right to review and approve prices to be charged for all sale and rental items. A list of current prices must be submitted within twenty (20) days of the date of this Agreement, and within twenty (20) days of any substantial changes to food and beverage prices and beach rental prices.

4. Parking. The Lessor will provide at no charge to Lessee five (5) parking spaces for use by Lessee's employees during the term of this Agreement, the location of which will be at the determination of the Lessor. Lessee understands that the approved use of these spaces is subject to change based on other municipal needs and, therefore, Lessor reserves the right to recapture these five (5) parking spaces as needed.

5. Rent. The Lessee hereby covenants and agrees to pay rent for the Food Concession Complex as follows:

(a) Base Rent in equal monthly payments, which will be due and payable on the first day of each month, an amount in accordance with the following schedule:

<u>Years of Agreement</u>	<u>Total Minimum Rental</u>	<u>Monthly Payments</u>
1 - 5	\$100,008 annually	\$8,334 per month

(b) Plus, as additional rent, Lessee shall pay annually at the end of each agreement year, the percentage specified on the amount between the figures listed below:

20% - Between \$750,000 and \$1 million in gross sales

22.5% - Between \$1 million and \$1.5 million in gross sales

25% - Between \$1.5 million or more in gross sales

Lessee shall pay all amounts due as stated above within thirty (30) days of the end of each agreement year. Lessee further agrees to provide Lessor within fifteen (15) days of the end of each monthly period during the term of this Agreement the statement showing the amount of gross sales during the preceding month, as well as a signed copy of the front and back of the Florida Department of Revenue Sales and Use Tax Return. The statement used by the Lessee to report such sales will be in such form as to be satisfactory to the City Manager, and must be certified as correct by the Lessee's Chief Financial Officer, or his designee, showing the amount of gross sales at and/or

from the Demised Premises during the monthly periods reported by the statement in the amount of year-to-date gross sales for the calendar year.

The term "Gross Sales" as used in this paragraph 5(b) means the entire amount of actual sales prices, whether for cash or otherwise, of all sales of food, services, beverages, clothing, or other receipts whatsoever of all business conducted in, on or from the premises, including mail or telephone orders received or filled at the premises except for any beach rental transaction as defined below. No deduction shall be allowed for uncollected or uncollectible credit accounts. Such term shall not include, however, any sums collected and paid out for any sales or excess tax imposed by any duly constituted governmental authority wherein Lessee is regarded as the collecting agent. It expressly does not include any income generated from the beach rentals, regardless of whether the BR transaction occurred at the Food Concession Complex.

6. As consideration for the license to utilize the Beach Rental Area and for the exclusive right of beach concessions, as described herein, Lessee shall pay to Lessor, on a monthly basis, 50% of the monthly gross sales for all beach rentals. This payment will be due within fifteen (15) days of the preceding month. The final payment shall be made by Lessee within fifteen (15) days of the end of Agreement term. The Lessee will provide the Lessor, within fifteen (15) days of the end of each monthly period during the term of the Agreement, a statement showing the amount of gross sales during the preceding month, as well as a signed copy of the front and back of the Florida Department of Revenue Sales and Use Tax Return. The statement used by the Lessee to report such sales will be in such form as to be satisfactory to the City Manager, and must be certified as correct by the Lessee's Chief Financial Officer, or his designee, showing the amount of gross sales at and/or from the Demised Premises during the monthly periods reported by the statement in the amount of year-to-date gross sales for the calendar year.

The term "Gross Sales" as used in this paragraph 6 means the entire amount of the actual sales price, whether for cash or otherwise, of all beach chairs, cabanas, umbrellas, floats and other receipts whatsoever from all beach rental business ("Beach Rental Transactions") conducted in, on or from the Leased Premises and Beach Rental Area as per this Agreement. No deduction shall be allowed for uncollected or uncollectible credit accounts. Such term does not include, however, any sums collected and paid out for any sales or excise tax imposed by any duly constituted governmental authority wherein Lessee is regarded as the collecting agent.

7. Capital Improvements. For capital improvements to restrooms and new storage facility for Parks and Recreation vehicles/equipment:

a. Lessee shall pay the following amounts of money to Lessor ("Capital Contribution") for the expansion and renovations of the restrooms as well as the construction of a new storage facility for the Parks and Recreation Department to house vehicles being displaced by the restroom expansion/renovations (collectively the "Renovations", as more specifically described in Exhibit "E", attached hereto and made a part hereof):

\$301,000 by January 31, 2015
\$100,000 by January 31, 2016

b. The City of Clearwater shall act as the project manager, be responsible for the design and construction of the Renovations, and shall use these funds to make the Renovations.

c. Construction of the restrooms shall be completed in two phases.

d. The Lessor shall return any Capital Contribution funds remaining after the completion of these improvements to the Lessee, without demand, within 60 days of Certificate of Occupancy.

e. In the event the City terminates this lease as permitted herein, except in the event of a Lessee default and except in the instance of a partial termination as provided for in paragraph 2(c), the City will reimburse the Lessee on a pro-rata basis for its Capital Contribution to the Renovations as follows:

<u>Lease Year</u>	<u>Reimbursement of Capital Contribution</u>
0 - 1	100% of Capital Contribution (made to date)
1 - 2	80% of Capital Contribution (made to date)
2 - 3	60% of Capital Contribution (made to date)
3 - 4	40% of Capital Contribution (made to date)
4 - 5	20% of Capital Contribution (made to date)

f. Such reimbursement shall be made within 60 days of written request by Lessee. Upon reimbursement, Lessee shall release all claims against the Lessor arising out of this Capital Contribution, and Lessee shall have no further claim on the Leased Premises with respect to the Capital Contribution.

8. Annual Gross Sales. The Lessee agrees to submit an audited certification of annual gross sales, as certified to by a Certified Public Accountant, within thirty (30) days of the end of each calendar year. The scope of the audit must include the Lessee's compliance with the terms of the Agreement to disclose the gross sales at or from the demised premises. The statement shall be prepared according to generally accepted accounting principles and practices, showing in all reasonable detail the amount of gross sales during the prior Agreement year. The Lessee also agrees to provide at the same time as the statement regarding annual gross sales, pertinent depreciation and amortization schedule as filed with the Internal Revenue Service for the prior year.

9. Amounts Due from Lessee to Lessor. Any amount due from Lessee to Lessor under this Agreement which is not paid when due shall bear interest at the maximum allowable legal rate from date due until date paid, together with a late charge of 5% of any amount due, to cover Lessor's extra expenses involved in collecting such delinquency; provided that such interest and late charges shall be automatically reduced by such amount as necessary to cause such charges to be in compliance with usury laws. The late charge must be paid within 30 days of the day the delinquent payment was due.

10. Observance of Laws and Ordinances; Encumbrances; Assignment.

a. Lessee agrees to observe, comply with, and execute promptly at its expense during the Lease Term, all laws, rules, requirements, orders, directives, codes, ordinances and regulations of governmental authorities and agencies and of insurance carriers which relate to its use or occupancy of the Leased Premises. The Lessee hereby covenants and agrees to make no unlawful, improper or offensive use of the leased premises.

b. Lessee further covenants and agrees not to assign, mortgage, pledge, hypothecate or sublet this Agreement in whole or in part without the prior written consent of Lessor. The consent of Lessor to any assignment, mortgaging, pledging, hypothecating, or subletting shall be at the Lessor's sole discretion, and shall not constitute a waiver of the necessity for such consent to any subsequent assignment, mortgage, pledging, hypothecating or subletting. This paragraph shall be construed to include a prohibition against any assignment or subletting by operation of law. If this Agreement is assigned, or if the premises or any part thereof are sublet or occupied by anybody other than Lessee, Lessor may collect rent from the assignee, sub-tenant or occupant, and apply the net amount collected to the rent herein required, but no such occupancy or collection shall be deemed a waiver of this covenant, or the acceptance of the assignee, sub-tenant or occupant and tenant, or a release of Lessee from the further performance by Lessee of covenants on the part of Lessee herein contained. If at any time during the term of this Agreement, any or all of the corporate shares of Lessee shall be transferred by sale, assignment, bequest, inheritance, operation of law or other disposition so as to result in a change in the present effective voting control of Lessee by the person, persons or entity which presently is the ultimate owner of a majority of such corporate shares on the date of this Agreement, lessee shall promptly notify Lessor in writing of such transfer and shall provide to Lessor the name, address, financial statement and business experience resume for the immediate preceding five (5) years of the proposed assignee. This information shall be in writing and Lessor, at its sole discretion shall have the option of accepting the proposed assignee and can charge a reasonable fee to Lessee for processing such request. Lessee can request a transfer under this provision for no more than once in an agreement year unless specifically consented to in writing by Lessor.

c. If the new owner is a private or public corporation, Lessor shall promptly advise Lessee if it has any objections thereto and the reasons therefore. Lessor may terminate this Agreement any time after such change in control by giving Lessee ninety (90) days prior written notice of such termination. Lessee shall not permit any business to be operated in or from the premises by any concessionaire or Licensee.

d. The Lessee hereby covenants and agrees to promptly and continuously comply with all regulations and order of the Health Department and health officers of the local, state and national governments; and Lessee hereby covenants and agrees to keep, operate, and maintain the concession in such a manner as to include any

warnings of major violations or notices to show cause being issued by a regulatory agency authorized to inspect the premises under Florida Statute 509 as it presently exists or as it may be amended. In addition, Lessee agrees to forward to Lessor a copy of each inspection report issued in accordance with Florida Statute 509 as it presently exists or as it may be amended, within fifteen (15) days of receiving any such reports. The Lessee shall submit a copy of the approved renewal of Health Department certificate within (thirty) 30 days after renewal.

11. Taxes; Licenses; Permits. Lessee agrees that it will promptly pay all ad valorem real property taxes and personal property taxes that may be assessed against the Leased Premises during the term of this Agreement (excluding any taxes assessed for the public restrooms at both 332 S. Gulfview and 410 S. Gulfview Blvd.). Lessee further agrees that it will pay if applicable, any state sales tax due on the rental payment made by the Lessee to the Lessor and that it will pay all other taxes, including, but not limited to, occupational license, beverage license, and permits relating the operation of the business conducted on the leased premises, which are required by law. It is further agreed by the Lessor that nothing herein shall obligate Lessee to pay or to reimburse Lessor for the payment of assessments for permanent improvements, including but not limited to sidewalks, sewers, and streets, that would normally accrue to the Demised Premises.

12. Utilities. The Lessee hereby covenants and agrees to pay all bills for electrical current, gas, water, sewer, heat, refuse collection and other services to the premises when due including all operating costs for the renovated restroom facilities at the Food Concession Complex, and the restrooms at 410 S. Gulfview Blvd. Said utilities shall be directly billed to the Lessee and be individually metered for the premises. Any deposits for such utilities shall be the sole responsibility of the Lessee.

13. Contemplated Renovations. The Lessor will coordinate proposed phased improvements to the restroom facilities with the Lessee. The Lessor will construct improvements to the restrooms in a timely manner including all ADA requirements. Phase I of these renovations are anticipated to be completed by January 1, 2016. Phase II shall be completed by January 1, 2017.

14. Clearwater Marine Aquarium Display. The Lessee shall provide a maximum of 6 foot by 6 foot and minimum 4 foot by 4 foot shadowbox display space to the Clearwater Marine Aquarium for public information about the aquarium, its mission and location.

15. Waste. Lessee will use biodegradable materials whenever feasible.

16. Maintenance; Capital Repairs. Lessee shall keep the foundation, outer walls, roof and buried conduits of the Leased Premises in good repair. Lessee shall keep the inside of said premises and the interior doors, windows and window frames of said premises in good order, condition and repair and shall also keep the premises in a clean, sanitary and safe condition in accordance with law and in accordance with all

directions, rules and regulations of governmental agencies having jurisdiction. The Lessee shall be responsible for providing all light bulbs used on the premises. The plumbing facilities shall not be used for any other purposes than that for which they are constructed and no foreign substances of any kind shall be thrown therein, and the expense of any breakage, stoppage or damage resulting from the violation of this provision shall be borne by the Lessee. The heating and air-conditioning system and plumbing facilities shall be under the control of Lessee, and Lessee agrees that all operation, upkeep, repairs and replacements will be at Lessee's expense. In the event Lessor pays any monies required to be paid by Lessee hereunder, Lessor shall demand repayment of same from Lessee and Lessee shall make payment within ten (10) days of receipt of said demand. Lessee's failure to make such repayment within the ten (10) day period shall constitute a default under the terms of this lease and unpaid amounts shall become additional rent due. Lessee will provide all equipment necessary for the operation of the Food Concession Complex and Beach Equipment Rental. In addition to the items in paragraph 16, the Lessee will pay all normal day-to-day repairs and maintenance costs, being certain that any material used in repair and maintenance will be equal to or better than that originally provided, and all required insurance premiums. In general Lessee shall, at their expense, at all times during the term of this agreement, keep the premises and all improvements and facilities in good order, repair and condition. Notwithstanding this paragraph 16, nothing in this Lease shall obligate Lessee for any maintenance or capital repairs to the bathroom at 410 S. Gulfview Blvd.

17. Trash. Lessee will be responsible for picking up and disposing of all trash, garbage, and other debris, whether or not initiated from the sales of the food complex, within 100 feet of the Leased Premises. Lessee is authorized to place trash cans in the immediate area of the Leased Premises, said trash cans to be maintained by the Lessee.

18. Insurance; Indemnification. The Lessee shall, at its own cost and expense, acquire and maintain (and, if applicable to this Agreement, cause any sub-lessees, contractors, and/or subcontractors to acquire and maintain) during the term with the Lessor, sufficient insurance to adequately protect the respective interest of the parties. Coverage shall be obtained with a carrier having an AM Best Rating of A-VII or better. In addition, the Lessor has the right to review the Lessee's deductible or self-insured retention and to require that it be reduced or eliminated.

- a. Specifically the Lessee must carry the following minimum types and amounts of insurance on an occurrence basis or in the case of coverage that cannot be obtained on an occurrence basis, then coverage can be obtained on a claims-made basis with a minimum three (3) year tail following the termination or expiration of this Agreement:
 - i. **Commercial General Liability Insurance** coverage in the minimum amount of \$1,000,000 (one million dollars) per occurrence and \$2,000,000 (two million dollars) general aggregate.
 - ii. **Commercial Automobile Liability Insurance** coverage for any owned, non-owned, hired or borrowed automobile is required in the

- minimum amount of \$1,000,000 (one million dollars) combined single limit.
- iii. Unless waived by the State of Florida, statutory **Workers' Compensation Insurance** coverage in accordance with the laws of the State of Florida, and **Employer's Liability Insurance** in the minimum amount of \$100,000 (one hundred thousand dollars) each employee each accident, \$100,000 (one hundred thousand dollars) each employee by disease and \$500,000 (five hundred thousand dollars) aggregate by disease with benefits afforded under the laws of the State of Florida. Coverage should include Voluntary Compensation, Jones Act, and U.S. Longshoremen's and Harbor Worker's Act coverage where applicable. Coverage must be applicable to employees, and volunteers, if any.
 - iv. If the Lessee is using its own property or the property of Lessor in connection with the performance of its obligations under this Agreement, then **Property Insurance** on an "All Risks" basis with replacement cost coverage for property and equipment in the care, custody and control of others is required. Lessee understands that the Lessor shall not insure or self-insure loss of any kind to Lessee's personal property and Lessee is solely responsible for such losses regardless of cause.
 - v. The Lessor will maintain **Property Insurance and Flood Insurance** (if applicable) on a replacement cost basis on the building(s) or structure(s). The Lessor reserves the right to insure the property through self-insurance or any other insurance method at its discretion during the term of this Lease. Lessee agrees to reimburse the Lessor for such yearly cost of Property Insurance and Flood Insurance premiums. The Lessor shall bill the Lessee by providing invoices in the applicable increments. The current term of insurance is October 1 to October 1. Lessee also agrees to reimburse the Lessor for any deductibles or self-insurance co-pays in the event of a property or flood loss.
 - vi. The Lessor will maintain **Boiler and Machinery Insurance** if the buildings or structures include boiler(s), pressure vessel (s) or air conditioning/heating equipment. The Lessor reserves the right to insure the Boiler and Machinery items through self insurance or any other insurance method at its discretion during the term of this Lease. Lessee agrees to reimburse the Lessor for such yearly cost of Boiler and Machinery Insurance premiums. The Lessor shall bill the Lessee by providing invoices in the applicable increments. The current term of insurance is October 1 to October 1. Lessee also agrees to reimburse the Lessor for any deductibles or self-insurance co-pays in the event of a loss.
 - vii. The above insurance limits may be achieved by a combination of primary and umbrella/excess liability policies.

b. **Other Insurance Provisions:**

- i. Prior to the execution of this Agreement/Contract, and then annually upon the anniversary date(s) of the insurance policy's renewal date(s) for as long as this Agreement/Contract remains in effect, the Lessee will furnish the Lessor with a Certificate of Insurance(s) (using appropriate ACORD certificate, SIGNED by the Issuer, and with applicable endorsements) evidencing all of the coverage set forth above and naming the Lessor as an "Additional Insured" on the Commercial Liability Insurance policy. In addition when requested in writing from the Lessor, Lessee will provide the Lessor with certified copies of all applicable policies. The address where such certificates and certified policies shall be sent or delivered is as follows:

Lessor of Clearwater

Attn: Parks and Recreation Department

P.O. Box 4748

Clearwater, FL 33758-4748

- ii. Lessee shall provide thirty (30) days written notice of any cancellation, non-renewal, termination, material change or reduction in coverage.
- iii. Lessee's insurance as outlined above shall be primary and non-contributory coverage for Lessee's negligence.
- iv. Lessee agrees that the Lessor reserves the right to appoint legal counsel for any and all claims that may arise related to this Agreement or performance under this Agreement.
- v. Lessee shall defend, indemnify, save and hold the Lessor, its employees, officers, or directors harmless from any and all claims, suits, judgments and liability for death, personal injury, bodily injury, or property damage, arising directly or indirectly, including legal fees, court costs, or other legal expenses; except, for such claims of, or damages resulting from, gross negligence, or willful, wanton or intentional misconduct of the Lessor or its employees, officers, or directors or for statutory violation or punitive damages, except and to the extent the statutory violation or punitive damages are caused by, or result from, the acts or omissions of the Lessee or any of the Lessee's employees, representatives, or agents.
- vi. **The stipulated limits of coverage above shall not be construed as a limitation of any potential liability to the Lessor, and failure to request evidence of this insurance shall not be construed as a waiver of Lessee's obligation to provide the insurance coverage specified.**

19. Destruction of Premises. If at any time during the term of this Agreement, the building or premises or any part, system or component hereof (herein the "Demised

Premises") shall be damaged or destroyed, said Demised Premises and any additions or improvements thereto, shall be promptly repaired or rebuilt or restored to the condition as good as the same was immediately prior to such damage or destruction at the Lessee's risk and expense, utilizing Insurance proceeds as required hereunder, and in accordance with plans and specifications mutually agreed upon by the Parties at the time; or if none can be agreed upon, then in accordance with the original plans and specifications and any subsequent plans and specifications for any additions or improvements constructed prior to the damage. The work of restoration or rebuilding shall be in full compliance with all laws and regulations and government ordinances applicable thereto. The insurance proceeds shall be paid to the Lessor, and such proceeds will be used for the repair or restoration. Lessor shall retain control and oversight of the rebuilding as the property owner. Any cost of repairs or restoration in excess of the insurance proceeds shall be borne by the Lessee. Any insurance proceeds in excess of the cost of repairs or restoration shall belong to the Lessee.

During the period of such partial damage or destruction, the monthly guaranteed rent shall abate until commencement of business, after receipt of all building permits, whichever is sooner. Lessor shall not unreasonably withhold building permits Lessee applies for which are necessary to repair such damage or destruction.

The Lessee will be allowed to operate a mobile or portable service during the time of repair or reconstruction in accordance with the law, and upon approval from the City Manger at which point Base Rent is due and payable by Lessee.

If the Demised Premises shall be totally destroyed or so damaged as to render it practically useless during the term of this Agreement, then and in that event, the Lessor may terminate this Agreement as of the date of such damage, or upon thirty (30) days written notice to the Lessee. Should Lessor choose not to rebuild, Lessor shall still be entitled to applicable insurance proceeds as compensation for the Leased Premises asset.

20. Default; Remedies. Lessor, at its option, may exercise any of the remedies provided in Subsection 1 of this paragraph, except as otherwise provided herein, upon the happening of any one or more of the following events ("Events of Default").

- a. Events of Default shall be any of the following actions by Lessee:
 - i. Lessee's default in the payment of any rental or other sums due for a period of five (5) days after the due date;
 - ii. Lessee's continued default with respect to any other covenant of this Agreement for a period of fifteen (15) days after receipt of written notice of such default by Lessee from Lessor, provided that if such default reasonably required more than fifteen (15) days to cure, there shall be no Event of Default if Lessee has commenced correcting action within the fifteen (15) day period and is diligently pursuing such action;

iii. There shall be filed by or against Lessee in any event pursuant to any statute wither of the United States or of any state, a petition in bankruptcy or insolvency or for reorganization or arrangement, or for the appointment of a receiver or trustee of all or a portion of Lessee's property, or if the Lessee makes an assignment by operation of law, or if Lessee makes application to Lessee's creditors to settle or compound or extend the time for payment of Lessee's obligations, or if execution, seizure, or attachment for a period of 120 days. Failure to remove the levy, seizure or attachment within the 120 day period shall actuate the default provided by this paragraph and the bond posted shall be forfeited.

iv. Lessee's vacating or abandoning the premises, unless in the event of casualty or destruction at which point, the provision of Section 19 shall prevail.

v. Lessee's intentional understating gross sales by more than three (3) percent in sales reports given to Lessor and not otherwise corrected by annual audited statements provided to the City. An error occurring by reason of computer malfunction, typing, or other similar clerical error shall not be considered a default within the meaning of this paragraph.

b. Lessor, at its option, may exercise any one or more of the following remedies which shall be cumulative.

i. Terminate Lessee's right to possession under this Agreement and reenter and take possession of the premises, reletting or attempt to relet shall only involve a prospective tenant capable of providing comparable or better type services, at such rent and under such terms and conditions as Lessee may deem best under the circumstances for the purpose of reducing Lessee's liability, and Lessor shall not be deemed to have thereby accepted a surrender of the premises, and Lessee shall remain liable for all rents and additional rents due under this Agreement and for all damages suffered by Lessor because of Lessee's breach of any of the covenants of this Agreement. Said damages shall include, but not be limited to, charges for removal and storage of Lessee's property, remodeling and repairs, leasing, commissions and legal fees, and loss of prospective percentage rentals by Lessor. Said prospective percentage rents shall be calculated on the basis of Lessee's gross sales for the immediately preceding twelve (12) month period or for the period, adjusted on an annualized basis, commencing with the first day of this Agreement if this Agreement has not been in effect for twelve (12) months. In addition to its remedies hereunder, Lessor may accelerate all fixed rentals due under this Agreement, in which event the Lessee shall be liable for all past due rent, accelerated rent and damages as described above; however with respect to the accelerated rent, Lessor shall receive only the present value of such accelerated rent. At any time during repossession and reletting pursuant to this subsection, Lessor may, by delivering written notice to Lessee, elect to exercise its option under the following subsection to accept a surrender of the premises, terminate and cancel this Agreement, and retake possession and occupancy of the premises on behalf of Lessor.

ii. Declare this Agreement to be terminated, whereupon the term hereby granted and all right, title and interest of Lessee in the premises shall end and Lessor may re-enter upon and take possession of the premises. Such termination shall be without prejudice to Lessor's right to collect from Lessee any rental or additional rental which has accrued prior to such termination together with all damages, including, but not limited to the loss of prospective percentage rentals, suffered by Lessor because of Lessee's breach of any covenant under this Agreement.

iii. Exercise any and all rights and privileges that Lessor or may have under the laws of the State of Florida and/or the United States of America.

c. Additionally, the City may terminate this Lease in the event it determines, at a duly constituted City Council meeting, that the Leased Premises are required for any other municipal purposes by giving ninety (90) days written notice of such intended use, following which this Lease shall terminate in every respect, and both parties shall be relieved of any further obligations hereunder, except that Lessee shall be responsible for all monies due and owing hereunder at the time of such determination resulting from the operation hereof, together with any other monies due in accordance with this Lease.

21. Alterations and Improvements. Lessee shall secure prior written approval from Lessor for modifications or remodeling of existing facilities or for the construction of any new facilities, such approval not to be unreasonably withheld or delayed. The terms remodeling or modifications as used herein shall include only those events requiring the issuance of a building permit. It is agreed that the existing improvements, together with any improvements constructed by Lessee during the term of this Agreement on the demised premises, shall become the property of the Lessor upon the expiration or termination of this Agreement; provided, however, that said reference to improvements herein contemplates improvements to the real estate which become a part of the land as distinguished from personal property utilized by the Lessee. Lessee shall, at Lessee's expense, remove all of Lessee's personal property and those improvements made by Lessee which have not become the property of the Lessor, including trade fixtures and the like. All property remaining on the Premises after the last day of the term of this lease shall be conclusively deemed abandoned and may be removed by Lessor and Lessee shall reimburse Lessor for the cost of such removal.

22. Lessee shall, at his expense, at all times during the terms of this Agreement, keep the leased premises and all improvements and facilities thereon in good order, condition, and repair. It is specifically understood by Lessee that the Lessor has the right to inspect the leased premises and improvements at any time to ensure that the premises and improvements are indeed in good order, condition and repair. Upon the termination or expiration of this Agreement, Lessee shall repair any and all damages to the premises caused by the removal by Lessee of personal property.

23. Upon the termination or expiration of the Agreement for whatever cause, the Lessee shall have fifteen (15) days to remove, at his own expense, its equipment, signs, insignia, and other indicia of its tenancy or use.

24. Lessee shall have no power or authority to permit mechanic's or materialmen's liens to be placed upon the Premises in connection with maintenance, alterations, or modifications. Lessee shall, within fifteen (15) days after notice from Lessor, discharge any mechanic's liens for materials or labor claimed to have been furnished to the Premises on Lessee's behalf. Lessee agrees to indemnify and save harmless the Lessor by reason of any mechanic's lien which has not been discharged and which may be asserted as a claim against the leased property, and to furnish Lessor a good and sufficient bond signed by a reputable bonding company doing business in Florida, which bond shall be in an amount equal to 100 percent (100%) of the cost of construction of the contemplated improvements to the demised premises.

25. Eminent Domain. If the whole or any part of the premises hereby leased shall be taken by any public authority under power of eminent domain, then the term of this lease shall cease on the part so taken from the date title vests pursuant to such taking, and the rent and any additional rent shall be paid up to that day, and if such portion of the Demised Premises is so taken as to destroy the usefulness of the premises for the purpose for which the premises were leased, then from that day the Lessee shall have the right to either terminate this lease or to continue in possession of the remainder of the same under the terms herein provided, except that the rent shall be reduced in proportion to the amount of the premises taken. The parties agree that the Lessee shall not be entitled to any damages by reason of the taking of this leasehold, or be entitled to any part of the award for such taking, or any payment in lieu thereof.

26. Lessee acknowledges that it, its applicants for employment, employees, or volunteers, work or will work with children, the elderly, or the disabled. Therefore, if not otherwise required to conduct background checks by law, Lessee voluntarily agrees to register with the Florida Department of Law Enforcement ("FDLE") to participate in the Volunteer & Employee Criminal History System ("VECHS") for background checks, as authorized by the National Child Protection Act ("NCPA"), as amended, and Florida Statute 943.0542 (1999), as may be amended from time to time. Lessee agrees to secure the highest level of background screening available under VECHS, and that this level of background screening is necessary to effectively screen out those not suitable for contact with children, the elderly or the disabled. Lessee voluntarily agrees to require such screenings in accordance with the processes and procedures set forth by the FDLE and the FBI in order to secure criminal history information on its employees, volunteers and applicants. The Lessee acknowledges that the VECHS program is not available to entities currently mandated to obtain background checks by statute or other law. Lessee shall pay all costs associated with such background checks and will submit an Affidavit of Criminal Background Screening in substantially the form attached hereto, and incorporated herein, as Exhibit "F". Lessee shall secure releases from screened parties, use said criminal history information only as permitted by law, and shall unilaterally make the determination of a screened parties' fitness and suitability for

working with children, the elderly or the disabled. Lessor shall not be required to make such a determination under any circumstance. Lessee shall submit the Affidavit of Criminal Background Screening to Lessor *prior to* beginning its operations under this agreement. If for any reason, including denial of eligibility by the Florida Department of Law Enforcement, Licensee is unable to secure background checks in accordance with the VECHS program, Licensee shall secure the highest level of background screening allowed by law.

27. Lessee agrees to provide CPR training and certification for at least one employee on site per shift.

28. This lease and the rights of the Lessee hereunder are hereby made subject and subordinate to all bona fide mortgages now or hereafter placed upon the said premises by the Lessor and any other owner provided, however, that such mortgages will not cover the equipment and furniture or furnishings on the premises owned by the Lessee. The Lessee further agrees to execute any instrument of subordination which might be required by mortgagee of the Lessor.

29. Lessor covenants and agrees that upon payment by Lessee of the rents herein provided, and upon observance and performance by Lessee of all the covenants, terms and conditions required of the Lessee by the Agreement, Lessee shall peaceably and quietly hold and enjoy the leased premises for the term of the Agreement without hindrance or interruption by Lessor.

30. Notices hereunder shall be given only by registered letter and shall, unless otherwise expressly provided, be deemed given when the letter is deposited in the mail, postage prepaid, addressed to the party for whom intended at such party's address first herein specified or to such other address as may be substituted therefore by proper notice hereunder.

To Lessee:
Fields, Inc.
332 S. Gulfview Blvd.
Clearwater, FL 33767
Attn: Lisa Chandler
Steve Chandler

To Lessor:
City of Clearwater
P.O. Box 4748
Clearwater, FL 33756-4748
Attn: Kevin Dunbar
Director of Parks and Recreation

31. If the Certified Public Account providing the annual audit required in this Agreement is not an independent Certified Public Accountant, Lessee at the City Manager's option, agrees to make all records of gross sales pertaining to this Agreement available to an independent Certified Public Accountant chosen by the City Manager, for the purpose of confirming the fair representation of the previously submitted audits. Any such audit provided for in this paragraph may not go back for more than three (3) years. If an Independent Certified Public Accountant, chosen by the Lessor, audits the business operated hereunder, and finds that a fair representation of the gross revenues understates Agreement revenue due the Lessor, the cost of the

independent audit shall be borne by the Lessee; if the independent audit confirms the fair representation of the Lessee or overstates Agreement revenue due to the Lessor, the Lessor shall pay for the audit.

32. No sign of any type will be posted, erected, hung or otherwise placed in view of the general public so as to advertise any product or identify the Food Concession Complex unless permitted by the City of Clearwater Code of Ordinances, as they now exist or as they may be amended, and unless authorized and approved by the City Manager or their designee. However, the Lessee shall provide menu-type board or boards to be placed inside the food concession area so that they will be plainly visible to the public and list the food and drink items for sale with their corresponding prices. Lessee also will place a sign inside the food concession area so it will be plainly visible to the public, which states that the concession area and beach rentals are operated by Lessee and not Lessor. The Lessor will be responsible for signs at the entrance of the restrooms indicating appropriate gender. A sign denoting the price list of all beach equipment rentals must be posted by the Lessee at the entrance to the Food Concession Complex as well as at one other point must post from which the rental of beach equipment has heretofore been authorized.

33. Restroom facilities must be kept clean and sanitary at all times and are subject to inspection by Lessor. No coin-operated toilets or other coin-operated devices will be allowed in the aforementioned restroom facilities except upon written authorization of the City Manager. Lessee agrees to notify immediately the Lessor's Police Department at any time the Lessee becomes aware of any activity that is a violation of a law in the area of the Food Concession Complex.

34. Lessee's exclusive right, as referenced in Section 4 of this Agreement, to rent beach equipment from the leased premises does not deny members of the public the right to bring their own equipment for personal use.

35. All sales shall be recorded on a POS system and shall be maintained three (3) years for review by Lessor's auditor. The Lessee shall maintain an adequate set of books and records of its operation of the business of renting beach equipment and the sale of food, beverages and sundries, and his books and records must be provided to the City Manager upon request.

36. Public Records. Lessee shall comply with Lessor's requests for documents to fulfill a public records request, as may be required by Fla. Statute 119. All requests for public records will be administered by Lessor.

37. The Lessee will additionally provide Two Thousand Five Hundred (\$2,500.00) Dollars per year of this Agreement to the Clearwater Beach Patrol Lifeguards, in furtherance of supporting the safety of visitors to Clearwater Beach; payable by January 30th for each year of the Agreement.

38. Lessee shall not advertise any business not operated at, on, or from the premises without the prior written consent of the City Manager or their designee.

39. Lessee shall keep and provide a copy of their standards of operation to Lessor within thirty (30) days of the date of this Agreement. Standards of operation should include process for money collection and accounting thereof; as well as items such as dress code, equipment repair and replacement, training program for employees, maintenance training and customer relations.

Since the Lessee and Lessor are in a relationship to serve the needs of the public and at the same time be as profitable as possible for both parties, the Lessor reserves the right to not only review standards of operations and internal controls but also to make suggestions and recommendations for improvement.

40. To keep beach rental equipment in "new or as new condition". Lessee shall provide a replacement and repair schedule for all rental equipment covered by this agreement. New beach rental products, if offered, must be approved by the City Manager prior to offering to the customers.

41. Each Party shall be responsible for its own attorneys' fees and costs in the collection of any delinquent rent or additional payments or in the enforcement of any provision of this Lease.

42. Miscellaneous.

a. The Lessor shall have the unrestricted right of assigning this lease at any time, to a subsequent owner, and in the event of such assignment, the Lessor shall be relieved of all liabilities hereunder.

b. This contract shall bind the Lessor and its assigns or successors, and the Lessee and assigns and successors of the Lessee.

c. It is understood and agreed between the parties hereto that time is of the essence of this contract and this applies to all terms and conditions contained herein.

d. It is understood and agreed between the parties hereto that written notice sent by certified or registered mail, or hand delivered to the premises leased hereunder, shall constitute sufficient notice to the Lessee, and written notice sent by certified or registered mail or hand delivered to the office of the Lessor shall constitute sufficient notice to the Lessor, to comply with the terms of this contract.

e. The rights of the Lessor under the foregoing shall be cumulative, and failure on the part of the Lessor to exercise promptly any rights given hereunder shall not operate to forfeit any of the said rights.

f. It is hereby understood and agreed that Lessee shall use no signs in connection with the premises hereunder, except existing signs and signs inside the building, which signs shall be subject to the prior approval of the Lessor.

g. It is understood that no representations or promises shall be binding on the parties hereto except those representations and promises contained herein or in some future writing signed by the party making such representations or promises.

h. It is hereby agreed that if any installment of rent or any other sum due from Lessee is not received by Lessor within five (5) days after such amount shall be due, Lessee shall pay to Lessor a late charge equal to five percent (5%) of such overdue amount. The Lessor shall not be required to accept any rent not paid within five (5) days subsequent of the date when due absent the simultaneous payment of this late charge. The requirement for a late charge set out herein shall not be construed to create a curative period or a grace period for the timely payment of rent.

i. The invalidity or unenforceability of any portion of this lease shall in nowise affect the remaining provisions and portions hereof.

j. The Lessee herewith covenants and agrees that no hazardous materials, hazardous waste, or other hazardous substances will be used, handled, stored or otherwise placed upon the property or, in the alternative, that such materials, wastes or substances may be located on the property, only upon the prior written consent of the Lessor hereunder, and only in strict accord and compliance with any and all applicable state and federal laws and ordinances. In the event such materials are utilized, handled, stored or otherwise placed upon the property, Lessee expressly herewith agrees to indemnify and hold Lessor harmless from any and all costs incurred by Lessor or damages as may be assessed against Lessor in connection with or otherwise relating to said hazardous materials, wastes or substances at anytime, without regard to the term of this lease. This provision shall specifically survive the termination hereof.

k. The laws of the State of Florida shall govern this Lease, and any action brought by either party shall lie in Pinellas County, Florida.

IN WITNESS WHEREOF, the parties hereto have set their hands and seal this _____ day of _____, 2014.

Countersigned:

CITY OF CLEARWATER

George N. Cretekos
Mayor

By: _____
William B. Horne, II
City Manager

Approved as to form:

Attest:

Laura Lipowski Mahony
Assistant City Attorney

Rosemarie Call
City Clerk

WITNESS

FIELDS, INC.

Signature

By: _____

Print Name

Print Name: _____

Signature

Print Name

EXHIBIT "F"

AFFIDAVIT OF CRIMINAL BACKGROUND SCREENING

LESSEE NAME: _____

DATE: _____

By signing this form, I am swearing or affirming that all individuals employed by _____ (Lessee) or providing services to City under the Lease Agreement on behalf of Lessee on City property have been background screened in accordance with the background screening requirements set forth in Lease Agreement and been deemed eligible by Lessee to provide services as described in Lease Agreement. The information contained in this Affidavit is up to date as of the date this Affidavit is furnished to City Parks and Recreation Department per the requirements of Section 26 of the Lease Agreement.

All individuals providing services under the Lease Agreement on City property are listed below. Each individual shall be identified by name, birth date and date deemed eligible.

(List of Individuals)

Signature of Affiant

Sworn to and subscribed before me this ____ day of _____, 20____.

Notary Public
My Commission Expires:

My signature, as Notary Public, verifies the Affiant's identification has been validated by
